

## ALERTS AND UPDATES

### U.S. Supreme Court Overturns N.J. Supreme Court's Extension of Long-arm Jurisdiction

June 28, 2011

On June 27, 2011, the U.S. Supreme Court issued a decision addressing personal jurisdiction over foreign manufacturers for products liability claims involving products shipped to and sold in the United States. In *J. McIntyre Machinery, Ltd. v. Nicastro*,<sup>1</sup> Justice Kennedy authored a plurality opinion for four members of the Court that, combined with Justice Breyer's concurring opinion, overturned the Supreme Court of New Jersey's decision that had held a foreign manufacturer of an industrial recycling machine was subject to New Jersey's long-arm jurisdiction, in a New Jersey products liability case under the stream-of-commerce doctrine. As articulated by the N.J. Supreme Court, a foreign manufacturer that distributed its products through a nationwide system that might cause those products to be sold in any of the 50 states was subject to personal jurisdiction in New Jersey, notwithstanding the absence of traditional minimum contacts with the forum state. Although six members of the Court rejected that principle under the facts of the case at bar, the opinions of the two concurring Justices, Breyer and Alito, and of the dissenting Justices, Ginsburg, Sotomayor and Kagan, left open the possibility that in the appropriate case, "the relevant contemporary commercial circumstances,"<sup>2</sup> could support a stream-of-commerce theory of personal jurisdiction.

Justice Kennedy's plurality opinion sought to clarify personal jurisdiction concepts that have remained unclear since *Asahi Metal-Industry Co. v. Superior Court of Cal., Solano Cty.*<sup>3</sup> was decided in 1987. Justice Kennedy noted that the Due Process Clause of the U.S. Constitution protects a defendant's right "not to be coerced except by lawful judicial power" and that judicial power is not lawfully exercised unless a defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."<sup>4</sup> In a products liability case, it is a defendant's conduct reflecting its "purposeful availment" that makes jurisdiction consistent with "traditional notions of fair play and substantial justice."<sup>5</sup>

Generally, Justice Kennedy explained, defendants that operate their businesses primarily outside a state have rights under the Due Process Clause "not to be subjected to judgment in its courts as a general matter." Justice Kennedy reiterated that the primary inquiry should be whether the manufacturer's activities in placing goods into the stream of commerce "manifest an intention to submit to the power of a sovereign." According to the plurality, the transmission of goods can support the exercise of jurisdiction only where the defendant actually targets the forum, as opposed to merely predicting that its goods may reach an ultimate consumer in the forum state. Thus, Justice Kennedy concluded that the manufacturer's actions, not merely its expectations, "empower a State's courts to subject him to judgment."

The plurality also concluded that the manufacturer had not purposefully directed any conduct at New Jersey; rather, discovery revealed only an intent by the manufacturer to serve a national market. Because the manufacturer did not engage in any specific activities in or toward New Jersey that revealed "an intent to invoke or benefit from the protection of its laws[,] New Jersey is without power to adjudge the rights and liabilities" of the manufacturer, and New Jersey's exercise of jurisdiction in this context violated due process.

Justice Breyer, joined by Justice Alito, issued a concurring opinion agreeing with the majority's conclusion, but they believed it was "unwise to announce a rule of broad applicability without full consideration of the modern-day consequences" of the majority opinion. Specifically, the concurring Justices did not believe that the underlying factual record actually implicated modern concerns in the context of the global economy. Justice Breyer emphasized that the underlying facts did not include,

for example, the sale of products on the Web; the consignment of goods through an intermediary such as Amazon.com; or the marketing of products using pop-up Web advertisements intended for viewing in the forum state, which could all have considerable commercial consequences. Based on the limited facts relied upon by the N.J. Supreme Court, the concurring Justices agreed with the plurality's conclusion that the U.S. Supreme Court's existing precedents did not support the exercise of personal jurisdiction. In contrast, Justice Ginsburg's dissent opined that the stream-of-commerce theory—where, as here, the foreign manufacturer specifically targeted the entire U.S. market, not individual states—was consistent with the concept of fundamental fairness under the Due Process Clause as articulated in past personal jurisdiction jurisprudence.

A majority of the U.S. Supreme Court in *Nicastro* rejected the N.J. Supreme Court's holding that a manufacturer's mere awareness that its products might be sold in New Jersey satisfied the purposeful-avilment requirement of established personal jurisdiction case law. While a plurality of the Justices would reject the stream-of-commerce theory as a viable basis for personal jurisdiction, five of the nine Justices left open the possibility that an appropriate factual matrix in another case could warrant the application of a stream-of-commerce theory to assert jurisdiction over a nonresident manufacturer, based on the defendant's minimum contacts with the forum state. Thus, personal jurisdiction jurisprudence following *Nicastro* appears to remain rooted in a careful weighing and analysis of pertinent jurisdictional facts regarding, as articulated in *Shaffer v. Heitner*,<sup>6</sup> the relationship among "the defendant, the *forum*, and the litigation," with particular focus on the defendant's conduct—as opposed to its mere expectations—as a key factor in the personal jurisdiction analysis.

## For Further Information

If you have any questions about this *Alert* or would like more information, please contact [James J. "J." Ferrelli](#), [Paul M. da Costa](#), any [member](#) of the [Products Liability and Toxic Torts Practice Group](#), or the attorney in the firm with whom you are regularly in contact.

## Notes

1. *J. McIntyre Mach., Ltd. v. Nicastro*, 2011 U.S. LEXIS 4800 (U.S. June 27, 2011).
2. *Id.*, Justice Breyer concurring.
3. *Asahi Metal-Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102 (1987).
4. *Nicastro*, citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).
5. *Nicastro*, citation omitted in original.
6. *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977).

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