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The Supreme Court Limits Personal Jurisdiction over Foreign Defendants: A Potential End to the Stream of Commerce Theory

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On June 27, 2011, the Supreme Court of the United States decided two personal jurisdiction cases: *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76, and *J. McIntyre Machinery, Ltd. v. Nicastrò*, No. 09-1343. In *Goodyear Dunlop Tires*, the Supreme Court addressed whether a state court can exercise general jurisdiction over a foreign defendant—i.e., a defendant outside the forum state—for the introduction of goods into the stream of commerce. And in *J. McIntyre Machinery*, the Supreme Court addressed the circumstances under which a state court can exercise specific jurisdiction over a foreign defendant—for an injury that occurred in the state—based on goods merely introduced into the stream of commerce. In both cases, the Supreme Court limited the ability of state courts to assert personal jurisdiction over foreign defendants.

- A unanimous Supreme Court explicitly held that a court may not exercise general jurisdiction over a foreign defendant merely because that defendant introduced goods into the stream of commerce. Thus, the Court reaffirmed that there are high hurdles for a court to exercise general jurisdiction over a foreign defendant. (*Goodyear Dunlop Tires*.)
- A sharply divided Supreme Court ruled that a foreign defendant's single sale in the forum State was an insufficient basis for the state court to exercise specific jurisdiction. While there was no majority opinion for the Court, six Justices indicated that a foreign defendant may not be passively subject to personal jurisdiction merely due to the introduction of goods into the stream of commerce. (*J. McIntyre Machinery*.)

While *Goodyear Dunlop Tires* reflects a relatively straightforward application of pre-existing "minimum contact" precedent, *J. McIntyre Machinery* foreshadows a long overdue clarification in the Supreme Court's due process jurisprudence that, if eventually adopted by the Court, will likely eliminate the ability of plaintiffs to exercise specific jurisdiction over a foreign defendant based solely on goods placed in the stream of commerce.

GOODYEAR DUNLOP TIRES

In *Goodyear Dunlop Tires*, the Supreme Court addressed whether a foreign defendant can be sued in state court for an accident that occurred outside the forum State due to the defendant's placement of goods into the stream of commerce.

Plaintiffs, North Carolina residents, filed a wrongful death action in North Carolina state court against foreign subsidiaries of Goodyear. The lawsuit was based on a fatal bus accident that occurred in France. Notwithstanding the foreign subsidiaries' nearly non-existent contacts to North Carolina, the North Carolina Court of Appeals held that there was general jurisdiction over the foreign subsidiaries because some tires made by the foreign subsidiaries had been placed into the stream of commerce and eventually were sold in North Carolina.

The Supreme Court unanimously reversed. Writing for the Court, Justice Ginsburg noted that the foreign subsidiaries' acts of placing tires in the stream of commerce that reached North Carolina might be relevant if the accident had occurred in North Carolina (i.e., for specific jurisdiction). Slip op. at 9-11. Here, however, all of the acts at issue had occurred

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outside the State. *Id.* at 4-5. This meant that only “continuous and systematic general business activities” conducted in North Carolina would support general jurisdiction of the foreign defendants; the subsidiaries’ “sporadic[]” sales of its tires, made through intermediaries, were “far short” of sufficient. *Id.* at 12-13. The Court rejected the contrary rule of the state appellate court as rendering “any substantial manufacturer or seller of goods . . . amenable to suit, on any claim for relief, wherever its products are distributed.” *Id.*

J. MCINTYRE MACHINERY

J. McIntyre Machinery addressed the circumstances in which a state court can properly exercise specific jurisdiction over a foreign defendant for goods placed in the stream of commerce.

The case involved a suit in New Jersey state court against a British manufacturer, arising out of a workplace accident in New Jersey. The New Jersey Supreme Court held that the foreign defendant was amenable to suit in New Jersey state court because it “knew or reasonably should have known that its products were distributed through a nationwide distribution system that might lead to sales in any of the fifty States.” Plurality op. at 1-2. In a fractured decision with no majority opinion, the United States Supreme Court reversed.

Justice Kennedy, writing for a four-Justice plurality, explained that the personal jurisdiction inquiry should focus on whether the State could legitimately exercise sovereign authority over a defendant. Endorsing the approach of Justice O’Connor’s four-Justice plurality in *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987), Justice Kennedy explained that “[i]n a products-liability case like this one, it is the defendant’s purposeful availment that makes jurisdiction consistent with ‘traditional notions of fair play and substantial justice.’” Plurality op. at 5. This means that the defendant must have purposefully availed itself of the privilege of acting within the forum State and receiving the protection of its laws. Plurality op. at 6-7.

Justice Kennedy thus rejected the contrasting view of Justice Brennan’s four-Justice plurality opinion in *Asahi* that had reasoned that the mere placement of goods in the stream of commerce was sufficient. Plurality op. at 7-8. Rather, purposeful availment requires a foreign defendant to have affirmatively targeted sales to the forum State in particular; merely placing goods in the stream of commerce is insufficient. If the foreign defendant merely targeted the United States as a whole, rather than any particular State, the state court could not exercise personal jurisdiction. *Id.* at 8-9. Because the foreign defendant J. McIntyre directed its sales efforts at the United States generally, rather than to New Jersey in particular, the plurality concluded that New Jersey courts lacked personal jurisdiction over the company. *Id.* at 11.

Justice Breyer, joined by Justice Alito, wrote a separate opinion concurring only in the judgment. Justice Breyer explained that, although the foreign defendant made a single sale in New Jersey, the absence of any further marketing or sales efforts directed at the forum State created insufficient minimum contacts to warrant personal jurisdiction. Concurring op. at 2-3. In contrast to the plurality opinion, Justice Breyer declined to “go further.”

Justice Ginsburg dissented for three Justices. The dissent asserted that, under existing minimum contacts precedent, J. McIntyre’s efforts to sell its products nationwide (such efforts including appearing repeatedly at national trade shows and engaging an American distributor to attempt to sell its products throughout the United States) sufficed to create personal jurisdiction in a forum in which a sale of the company’s product, and an injury allegedly caused by that product, had occurred. Dissenting op. at 4-7.

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POTENTIAL IMPLICATIONS

Justice Kennedy's broad plurality opinion would have significantly limited the power of state courts to assert personal jurisdiction over foreign defendants who place goods in the stream of commerce. But his opinion, while making clear that there is strong support for Justice O'Connor's more restrictive *Asahi* approach, fell one vote short of fundamentally altering the Court's understanding of "traditional notions of fair play and substantial justice" under the Due Process Clause.

This is not likely to be the final word on the plurality's view, however. Justice Breyer (writing for himself and Justice Alito) expressed that the plurality opinion raised difficult and potentially troubling questions relating to, for example, online sales and Internet retailers. As such, he preferred to wait for a case that fully presented and developed those questions before reaching any definite conclusions. Concurring op. at 4.

Yet Justice Breyer also made clear that he was quite skeptical of the broad stream-of-commerce rule suggested by Justice Brennan's plurality in *Asahi*. Justice Breyer expressed doubt over the fairness of a rule that might allow state courts to assert jurisdiction against a manufacturer merely because its goods are sold to a national distributor, "no matter how large or small the manufacturer, no matter how distant the forum, and no matter how few the number of items that end up in the particular forum at issue." *Id.* at 5.

Thus, it is clear the Supreme Court has not finished addressing the question of personal jurisdiction. At least four Justices favor a more restrictive jurisdictional rule, and three would preserve the Court's existing standards. And while the two Justices in the middle remain undecided, Justice Breyer's opinion concurring in the judgment evinces significant skepticism over the stream-of-commerce jurisdictional approach. A future case that explains how a more restrictive jurisdiction rule will operate in the modern, often Internet-driven, global economy may soon give the Court the opportunity to more definitively reject the stream-of-commerce rule.

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