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Supreme Court Tightens Requirements for State Courts to Exercise Jurisdiction Over Foreign Corporations

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Recently, the Supreme Court addressed the standards for state courts asserting jurisdiction over foreign corporations. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76 (June 26, 2011) and *J. McIntyre Mach., Ltd. v. Nicastro*, No. 09-1343 (June 27, 2011), the Court held that North Carolina and New Jersey state courts had overstepped their authority by exercising jurisdiction over foreign corporations. Although neither opinion announced a new bright-line rule, they help clarify the conditions under which the assertion of jurisdiction is appropriate.

Traditional Jurisdictional Requirements

The broad principles informing jurisdictional analysis are well known and long established. The “outer boundaries” of a state’s jurisdictional authority to “hale a defendant before a court” are defined by the due process clause of the Fourth Amendment. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No 10-76, slip op., at 6 (June 26, 2011). *Goodyear* characterized the Court’s decision in *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945) as the “canonical opinion” defining those “outer boundaries”: jurisdiction is constitutional if the defendant has “minimum contacts [with the state] such that the...suit does not offend traditional notions of fair play and substantial justice.” *Intl. Shoe* at 316.

Jurisdiction can be either “general” or “specific” (also known as “limited” jurisdiction). General jurisdiction allows a court to assert jurisdiction over *any activity*, including those that occurred outside the state, and is proper when a defendant has significant “continuous and systematic” contacts within a state. *Helicopteros Nacionales Colombia v. Hall*, 466 U.S. 408 (1984). Specific jurisdiction allows a court to assert jurisdiction over a defendant for claims arising out of the defendant’s specific contacts within the state. *Int’l Shoe*, 326 U.S., at 317.

A “stream of commerce” analysis has been applied to the assertion of jurisdiction over a manufacturer whose products are intentionally distributed in a way that allows them to enter a particular state’s market. See *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980). Under that analysis, a state does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state. *Id.* at 567. However, the mere foreseeability of the entry of one’s product into a forum state is never enough to establish jurisdiction on its own. See *Asahi Metal Indus. Co. v. Super. Ct.*, 480 U.S. 102, 111-12 (1987) (O’Conner, J., plurality opinion).

Factual Background

In *Goodyear*, the Supreme Court reviewed a North Carolina trial court’s assertion of jurisdiction over three foreign subsidiaries of the Goodyear Dunlop company. The subsidiaries were sued with the parent corporation over a bus accident in France that involved allegedly defective tires manufactured by the subsidiaries. Because the tires were manufactured and the injury occurred outside North Carolina, the state court asserted general jurisdiction over the defendants. *Goodyear*, slip op., at 3. Although the subsidiaries had “no place of business[,] . . . [did] not design, manufacture or advertise[,] . . . [did] not solicit business in . . . [nor] themselves sell or ship tires to North Carolina customers,” an appellate court upheld the assertion of jurisdiction because the subsidiaries’ products were placed “into the *stream of interstate commerce* without any limitation on the extent to which those tires could be sold in North Carolina.” *Goodyear*, slip op., at 4-5 (emphasis added).

It recognized that a “higher threshold” was necessary to assert general jurisdiction but found the subsidiaries’ activities met that threshold because: (a) the subsidiaries allowed their products to enter the stream of commerce without any “attempt to keep these tires from reaching the North Carolina market” and (b) the plaintiffs would experience hardship if they were forced to litigate outside the state. *Id.* at 5-6.

In *McIntyre*, a British manufacturer of shearing machines employed an independent corporation to sell and distribute its products in the U.S. and elsewhere. At most, four shearing machines were sold to U.S. customers. One injured a New Jersey man, who then sued the British manufacturer in New Jersey.

Unlike *Goodyear*, *McIntyre* involved a state court asserting *specific* jurisdiction over a foreign defendant. Even though *McIntyre* neither directly sold nor directly marketed its goods in New Jersey, the court, relying on the *Asahi* plurality opinion, found that it

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had specific jurisdiction over the company because, if a company “knows or reasonably should know that its products are distributed through a nationwide. . . system that might lead to those products being sold in *any* of the fifty states,” jurisdiction is proper in all of those fifty states, irrespective of defendant’s attempts, or lack thereof, to market to a particular state. *Goodyear*, slip op., at 1-2.

Clarifying the Standard

The Supreme Court unanimously reversed the state court in *Goodyear*. It held that the stream of commerce analysis “may bolster an affiliation germane to *specific* jurisdiction” but not to general jurisdiction. *Goodyear*, slip op., at 10-11 (emphasis in original). And, even in cases concerning specific jurisdiction, it held that the plaintiff must still demonstrate “some [additional] act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws”. *Id.* at 7 (quoting *Hanson v. Deckla*, 357 U.S. 235, 253 (1958)).

The Court also found that the defendants’ “attenuated connections to the State [fell] far short of the ‘continuous and systematic general business contacts’ necessary” for general jurisdiction. *Id.* at 13 (quoting *Helicopteros Nacionales de Colombia*, 466 U.S. at 416). The Court was extremely skeptical of the North Carolina court’s view of general jurisdiction, which the Supreme Court argued would render “any manufacturer or seller of goods. . . amenable to suit, on any claim of relief, wherever its products are distributed,” in clear violation of the Court’s previous precedents in *Helicopteros Nacionales de Colombia* and *Perkins*. *Id.*

In *McIntyre*, the Supreme Court held that New Jersey lacked specific jurisdiction over the foreign corporation. Even though a majority of the Court agreed that the New Jersey Supreme Court’s standard for specific jurisdiction was incorrect, the Court did not agree on *why* the New Jersey court lacked jurisdiction. *McIntyre*, slip op., at 5, 11. In fact, the Court split 4-4-1 and issued a plurality opinion.

The plurality opinion rejected the trial court’s reliance on Justice Brennan’s plurality opinion in *Asahi*, declaring that: “Justice Brennan’s concurrence, advocating a rule based on . . . fairness and foreseeability, is inconsistent with the premises of lawful judicial power.” *Id.* at 8. Rather, the proper inquiry was whether the defendant “purposefully avails itself of the privilege of conducting activities within the forum State.” *Id.* (Kennedy, J., plurality op.).

However, in the case of a plurality opinion, the controlling opinion is the narrowest concurring opinion, rather than the plurality opinion itself. The controlling opinion, Justice Breyer’s concurrence, did not address the continued vitality of *Asahi*. Instead it confined itself to examining whether the contacts between New Jersey and *McIntyre* were of sufficient quality to justify the assertion of jurisdiction under the Court’s existing precedent. Justice Breyer found that the “single, isolated sale” of the defendant’s products failed to meet those standards. He noted that “the relevant facts . . . show no regular course of sales [T]here is no something more, such as special state-related design, advertising . . . or anything else that would justify jurisdictional authority over the defendant.” *Id.* at 3 (Breyer, J. concurring op.).

In sum, while the two opinions do provide additional guidance to state courts examining the propriety of asserting jurisdiction over a foreign defendant, much is left in the dark. The Court’s inability to reach to a majority consensus in *McIntyre* leaves the continued vitality of *Asahi* an open question. However, under the plurality opinion expressed by Justice Kennedy, and possibly under the concurrence of Justice Breyer, foreign manufacturers appear to be able to insulate themselves from being haled into local courts.