



GLOBAL CONNECTION

September 2011



Supreme Court Considers Foreign Manufacturer's Challenge on Jurisdiction

By Kelly Wilkins MacHenry

As published in *Business Law Today*, The ABA Business Law Section's Online Resource, on March 4, 2011, reprinted and/or posted with permission.

The United States Supreme Court is considering a fundamental issue for businesses whose products are sold in the United States: where can those businesses be sued? That is the central question in a product liability case that could either reinforce prior limits on where and if a foreign corporation may be sued in the United States, or could radically change the rules due to increased globalization of business. The U.S. Supreme Court has not taken a case focusing on such issues since 1987, nearly a quarter century ago. Through its upcoming opinions on this case and another that raises similar issues, the Supreme Court is likely to clarify this area of law. Regardless of the outcome, the

decisions could have dramatic effects on businesses that sell products in or into the United States.

The legal interpretation at issue is “personal jurisdiction,” which simply means a court’s power over a particular defendant. More precisely, at issue in this case is “specific jurisdiction,” meaning a claim that is based on the defendant’s contacts with that specific state.

Consider the facts from the manufacturer’s perspective. J. McIntyre Machinery, Ltd. (J. McIntyre) was a British corporation based in England. It manufactured heavy equipment used in the scrap metal industry. The machine at issue cut scrap metal into pieces. Curcio Scrap Metal, Inc. was a New Jersey company that bought one of the machines for its recycling business. Curcio Scrap Metal ordered the machine in 1995 from J. McIntyre’s exclusive distributor in the United States. The distributor was a distinct Ohio corporation. J. McIntyre manufactured the machine in England and shipped it from England to the distributor in Ohio. That was the last direct connection that J. McIntyre had with that machine. J. McIntyre contended that reliable evidence was that only one of this type of its metal-shearing machines (this particular one) had ever been sold by the distributor into New Jersey.

Now consider the events from Mr. Nicasastro’s perspective. Robert Nicasastro lived in New Jersey and worked for Curcio Scrap Metal for many years. On October 11, 2001, he was using the machine when his hand got caught in it, and four of his fingers were cut off by the machine. He and his wife later sued J. McIntyre in New Jersey state court. They asserted product liability claims, alleging the machine lacked adequate safety protections and was defectively designed. Nicasastro was unable to recover against the Ohio distributor, because it went bankrupt and dissolved before he filed suit. Nicasastro could not sue his employer because he was barred from doing so by worker’s compensation laws. Nicasastro had no other solvent defendant for his product liability claims other than J. McIntyre.

The New Jersey trial court dismissed Nicasastro’s case, finding there was no personal jurisdiction over J. McIntyre there because it did not have sufficient contacts with New Jersey. The appellate division disagreed and reversed, and the Supreme Court of New Jersey affirmed the appellate division’s decision. The New Jersey Supreme Court’s decision began, “Today, all the world is a market” and found that in the new global marketplace, the established standards for jurisdiction were “outmoded” and no longer applied. It rejected the ideas that J. McIntyre must have had “minimum contacts” with and “purposeful availment” of the state of New Jersey in order to be sued there. Instead, the New Jersey Supreme Court held that J. McIntyre knew or should have known that its distribution scheme could make its machines available to consumers in New Jersey. J. McIntyre appealed that decision to the U.S. Supreme Court, which

accepted the case.

In its challenge at the U.S. Supreme Court, J. McIntyre argued that finding that it could be sued in New Jersey would “radically revise the test for personal jurisdiction over a foreign manufacturer.” J. McIntyre contended that personal jurisdiction rests not on a consumer’s activity or where a product ultimately ends up, but rather on the quality of the defendant’s activities directed toward the state. It argued that the theme of a global marketplace had not been explored and was not supported by the evidence. It maintained that the basic methods of selling and transporting products across the world are essentially the same as in past decades—over air, sea, land and road. It asserted that the legislative and executive branches, not the courts, should be those to act to change the laws about jurisdiction.

Nicastro contended that J. McIntyre had the necessary minimum contacts with New Jersey. He maintained that J. McIntyre purposefully marketed its machine nationwide and put it into a distribution scheme for sales throughout the United States. He argued that J. McIntyre and its distributor worked together to promote and sell J. McIntyre’s products in the United States.

During argument at the Supreme Court, the justices expressed concern about the policy problem of potentially subjecting small businesses and those in developing countries to suit in all 50 states where laws vary. They questioned about what constituted sufficient knowledge of the distribution scheme by the manufacturer and what was purposeful conduct toward a state. The justices were very interested in how manufacturers’ websites or Internet communications could affect the analysis of jurisdiction.

If the Supreme Court upholds jurisdiction over J. McIntyre in this case, it could dramatically change how, and perhaps even whether, foreign companies do business in the United States. It would likely increase the prospect of plaintiffs bringing suits in any state or court in the country that they believe to be most favorable to them. It would probably change the way foreign companies advertise (including on the Internet), as well as how they deal with distributors and potential buyers. A decision in either direction by the Court could create serious economic challenges, particularly for smaller companies, on the one hand, or for injured plaintiffs, on the other.

The latest opinion from the Supreme Court directly on the same issue was decided in 1987. *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), related to a tire valve made by a Taiwanese company, and a claim between the valve supplier and the tire manufacturer. The Supreme Court agreed on the outcome and found there was no jurisdiction over the supplier. However, the Court was divided on the theory that should be applied, and two opinions were issued that split the Court and launched divergent views. The Supreme Court likely intends in its forthcoming decision in J. McIntyre to

clarify and update this area of law.

Past Issues
Snell & Wilmer
International Practice

©2011 All rights reserved. The purpose of this newsletter is to provide our readers with information on current topics of general interest and nothing herein shall be construed to create, offer or memorialize the existence of an attorney-client relationship. The articles should not be considered legal advice or opinion, because their content may not apply to the specific facts of a particular matter. Please contact a Snell & Wilmer attorney with any questions.

Snell & Wilmer L.L.P. | One Arizona Center | 400 East Van Buren Street | Suite 1900 | Phoenix, Arizona 85004
All rights reserved. The material in this newsletter may not be reproduced, distributed, transmitted, cached or otherwise used, except with the written permission of Snell & Wilmer L.L.P.