

Alerts and Updates

NEW JERSEY SUPREME COURT EXTENDS LONG-ARM JURISDICTION TO FOREIGN MANUFACTURERS UNDER THE STREAM-OF-COMMERCE THEORY

February 12, 2010

On February 2, 2010, the Supreme Court of New Jersey ("Court"), in *Nicastro v. McIntyre Machinery America, Ltd.*,¹ held that a foreign manufacturer of an industrial recycling machine is subject to New Jersey's long-arm jurisdiction under the stream-of-commerce theory. As the Court stated, "Today, all the world is a market," and the evolution and integration of the American economy into the global economy served as the foundation for the Court's ruling, notwithstanding the absence of traditional jurisdictional factors based upon physical presence or a minimum-contacts analysis.

Nicastro has broad implications for manufacturers outside New Jersey—both in the U.S. and other nations—that sell products for distribution in the United States. Irrespective of its involvement in the actual distribution system, a foreign or out-of-state manufacturer that knows or reasonably should know that its products are distributed through a nationwide system that might result in sales in any state "must expect" that it will be subject to jurisdiction in New Jersey if one of its products is sold to a New Jersey company and injures a New Jersey consumer. The manufacturer's mere awareness and use of a distribution system by which it receives economic benefits from possible sales to New Jersey companies would trigger personal jurisdiction in New Jersey. The holding of *Nicastro* may well be followed and applicable in some or all of the other 49 states, the District of Columbia and other U.S. territories.

Plaintiff Robert Nicastro, with his wife Roseann, filed a products liability lawsuit in New Jersey state court, alleging that he lost four fingers while working with a recycling machine due to the lack of a safety guard. Defendant J. McIntyre Machinery, Ltd. ("J. McIntyre") designed and manufactured the machine at its headquarters in the United Kingdom, and sold it to its exclusive U.S. distributor, McIntyre Machinery America, Ltd. ("McIntyre America"), located in Ohio, which then sold and shipped the machine to Nicastro's employer, Curcio Scrap Metal ("Curcio"), located in New Jersey. Curcio had decided to purchase the machine after its owner had met representatives from McIntyre America at a trade convention in Las Vegas, also attended by a J. McIntyre representative.

Discovery established that J. McIntyre and McIntyre America were independently owned, operated and controlled, but that J. McIntyre directed much of McIntyre America's advertising and sales efforts. The machine was labeled and came with

instructions listing J. McIntyre's name, address, telephone number and fax number, and referencing both U.S. and U.K. safety regulations. J. McIntyre executives attended exhibitions, trade conventions and conferences around the United States between 1990 and 2005, although none were in New Jersey. The Court found that these facts demonstrated "calculated efforts to penetrate the overall American market," and that J. McIntyre "clearly knew or should have known that the products were intended for sale and distribution to customers located anywhere in the United States."

The "preeminent issue" for the Court was whether the Due Process Clause, properly applied, rendered a state powerless to provide relief to a resident who suffered serious injury from a product sold and marketed by a foreign manufacturer through an independent distributor, knowing that the final destination might be a New Jersey consumer. Reviewing personal jurisdiction jurisprudence, the Court explained that "[t]he power of a state to subject a person or business to the jurisdiction of its courts has evolved with the changing nature of the American economy." The Court's analysis included a review of its decision in *Charles Gendler & Co. v. Telecom Equipment Corp.*,² as well as the U.S. Supreme Court's decision in *Asahi Metal Industry Co. v. Superior Court of California*,³ and its progeny. In *Charles Gendler*, the Court defined the stream-of-commerce theory to establish personal jurisdiction over a nonresident manufacturer for injuries caused by its defective product where the manufacturer introduced its product into the stream of commerce with actual or imputed knowledge that its product would be sold in the forum state. The *Nicastro* Court stated that its recognition of the stream-of-commerce theory in *Charles Gendler* was supported by *Asahi* and other precedent, which had "embraced the stream-of-commerce theory in one form or another."

The Court concluded that "a foreign manufacturer that places a defective product in the stream of commerce through a distribution scheme that targets a national market, which includes New Jersey, may be subject to the *in personam* jurisdiction of a New Jersey court in a product-liability action." This holding would ensure that manufacturers who target defective products "at a wide geographic market that includes New Jersey will not be immune from suit" in New Jersey. The Court observed that the stream-of-commerce theory is "particularly suitable" in products liability cases, but would not necessarily substitute for other analysis—namely, minimum contacts—in contract or other cases.

Nicastro, which arguably extends prior precedent, may be reviewed by the U.S. Supreme Court, as suggested by the two dissenting justices. For now, this decision will subject foreign or out-of-state manufacturers to jurisdiction in New Jersey products liability suits.

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 [New Jersey–licensed 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. *Nicastro v. McIntyre Mach. Am., Ltd.*, 2010 N.J. LEXIS 19 (N.J. Feb. 2, 2010).
2. *Charles Gendler & Co. v. Telecom Equipment Corp.*, 102 N.J. 460 (1986).
3. *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987).