

Supreme Court Decides Two Personal Jurisdiction Cases

June 29, 2011 by [Sean Wajert](#)

At the end of the term, the Supreme Court decided two important personal jurisdiction cases, [J. McIntyre Machinery Ltd. v. Nicastro](#), U.S., No. 09-1343, and [Goodyear Luxembourg Tires SA v. Brown](#), U.S., No. 10-76. The first opinions on this issue in two decades. Readers may recall we [posted](#) on these cases before, including on the [grant of cert](#) and the [oral arguments](#).

Personal jurisdiction addresses the reach of the court's power over a party, and without such jurisdiction, any ruling by the court is not binding on the party. Plaintiff lawyers focus on personal jurisdiction as part of the equation where they can sue; defendants as part of where they can be sued properly. As a general matter, a defendant can only be sued where it has sufficient minimum contacts with the state such that a suit there does not offend traditional notions of fair play and substantial justice.

The issue framed in *Nicastro* was: Whether, consistent with the Due Process Clause and pursuant to the stream-of-commerce theory, a state may exercise in personam jurisdiction over a foreign manufacturer when the manufacturer targets the U.S. market for the sale of its product and that product is purchased by a forum state consumer. The corresponding issue in *Brown* was: Whether a foreign corporation is subject to general personal jurisdiction, on causes of action not arising out of or related to any contacts between it and the forum state, merely because other entities distribute in the forum state products placed in the stream of commerce by the defendant.

Let's start with *Brown*. Plaintiffs were North Carolina residents whose sons died in a bus accident outside Paris, France. They filed suit for wrongful death in North Carolina state court. Alleging that the accident was caused by a tire failure, they named as defendants Goodyear USA, an Ohio corporation, and petitioners, three Goodyear USA subsidiaries, organized and operating, respectively, in Luxembourg, Turkey, and France. The tires at issue were manufactured primarily for European and Asian markets and differ in size and construction from tires ordinarily sold in the United States. The foreign subs affiliates were not registered to do business in North Carolina; had no place of business, employees, or bank accounts in the State; did not design, manufacture, or advertise their products in the state; and did not solicit business in the State or sell or ship tires to North Carolina customers. But, a small percentage of their tires were redistributed in North Carolina by other Goodyear USA affiliates.

The state court denied defendants' motion to dismiss the claims against them for want of personal jurisdiction. A unanimous Supreme Court reversed.

The Court first reviewed the general principles: The Fourteenth Amendment's Due Process Clause sets the outer boundaries of a state tribunal's authority to proceed against a defendant. *International Shoe* (you remember that one from law school) provides that state courts may only exercise personal jurisdiction over an out-of-state defendant who has certain minimum contacts with a state such that the maintenance of the suit does not offend traditional notions

of fair play and substantial justice. The Court has recognized that jurisdiction could be asserted where the corporation's in-state activity is "continuous and systematic" and gave rise to the episode-in-suit. The commission of "single or occasional acts" in a state may also be sufficient to render a corporation answerable in that state with respect to those acts, though not with respect to matters unrelated to those forum connections. These became known as "specific jurisdiction." This notion is distinguished from cases in which the continuous corporate operations within a state are so substantial and of such a nature as to justify suit against it on causes of action even arising from dealings entirely distinct from those activities, "general jurisdiction." *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U. S. 408.

Here, defendants lacked the kind of continuous and systematic general business contacts necessary to allow North Carolina to entertain a suit against them unrelated to anything that connects them to the state. The so-called stream-of-commerce cases on which the North Carolina court relied relate to exercises of specific jurisdiction in products liability actions, in which a nonresident defendant, acting *outside* the forum, places in the stream of commerce a product that ultimately causes harm *inside* the forum. Many state long-arm statutes authorize courts to exercise specific jurisdiction over manufacturers when the events in suit, or some of them, occurred within the forum state. The North Carolina court's stream of commerce analysis ignored the essential difference between specific and general jurisdiction. Flow of a manufacturer's products into the forum may or may not bolster an affiliation germane to *specific* jurisdiction, but here North Carolina was not a forum in which it would be permissible to subject petitioners to *general* jurisdiction.

[Finally, plaintiffs failed to preserve the possible argument that the courts should disregard petitioners' discrete status as subsidiaries and treatment of all Goodyear entities as a "unitary business," so that jurisdiction over the parent would draw in the subsidiaries as well.]

More contentious and complex were the issues in *Nicastro*, which resulted in a 6-3 decision with a plurality opinion by Justice Anthony Kennedy. Justices Breyer and Alito concurring in the judgment; and Justices Ginsburg, Sotomayor and Kagan dissenting.

Plaintiff injured his hand while using a metal-shearing machine that petitioner/defendant J. McIntyre Machinery, Ltd. manufactured in England, where the company is incorporated and operates. Nicastro filed a products liability suit in a state court in New Jersey, where the accident occurred. Defendant argued there was no personal jurisdiction. Nicastro's jurisdictional claim was based on three primary facts:

- 1) a U. S. distributor agreed to sell J. McIntyre's machines in this country;
- 2) J. McIntyre officials attended trade shows in several states, although not in New Jersey; and
- 3) exceedingly few J. McIntyre machines (the record suggested only one), ever ended up in New Jersey.

The NJ [state court held](#) that jurisdiction could be exercised as long as the manufacturer 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 states-- even though at no time had it advertised in, sent goods to, or in any relevant sense targeted this specific state. This is a version of the so-called "stream-of-commerce" doctrine of jurisdiction, discussed by a plurality of the court in *Asahi Metal Industry Co. v. Superior Court of Cal.*, *Solano Cty.*, 480 U. S. 102.

The Supreme Court reversed. The exercise of jurisdiction here would violate due process when the defendant never engaged in any activities in New Jersey that revealed an intent to invoke or benefit from the protection of the state's laws. The plurality's due process analysis is intriguing, and very traditional. A court may subject a defendant to judgment only when the defendant has sufficient contacts with the sovereign such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. But, "free-form" fundamental fairness notions divorced from traditional practice cannot transform a judgment rendered without authority into law. That some might argue subjecting the defendant to suit is "fair" is not enough. As a general rule, the sovereign's exercise of power still requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. In cases like this one, it is the defendant's purposeful availment that would make jurisdiction consistent with "fair play and substantial justice" notions.

Justice Kennedy then went on to address the stream of commerce notion, stating that no "stream-of-commerce" doctrine can displace that general rule of purposeful availment, even for products liability cases. He acknowledged that the standards for determining state jurisdiction over an absent party have been a bit unclear because of decades-old questions left open in *Asahi*. This imprecision arising from *Asahi*, for the most part, resulted from its statement of the relation between jurisdiction and the notion of placing a product in the "stream of commerce." That concept, like other metaphors, has its "deficiencies as well as its utilities." A defendant's placement of goods into commerce "with the expectation that they will be purchased by consumers within the forum State" may sometimes indicate purposeful availment. But that does not swallow the general rule of personal jurisdiction. The principal inquiry in cases of this sort is still whether the defendant's activities manifest an intention to submit to the power of a sovereign. And the conclusion in this case that the authority to subject a defendant to judgment depends on purposeful availment is consistent with Justice O'Connor's *Asahi* opinion, not that of Justice Brennan.

Nicastro did not establish below that J. McIntyre engaged in conduct purposefully directed at New Jersey. The company had no office in New Jersey; it neither paid taxes nor owned property there; and it neither advertised in, nor sent any employees to, the State. Indeed, the trial court found that petitioner did not have a single contact with the State apart from the fact that the machine in question ended up there. That's not enough.

Justice Breyer, joined by Justice Alito, agreed that the New Jersey Supreme Court's judgment must be reversed, but concluded that because this case did not present the new and special issues arising from recent changes in commerce and communication, it was unnecessary to

get into full analysis of the stream of commerce issue as it might be applied to 21st century marketing. Rather, the outcome of the case could be determined by the Court's existing precedents, which have held that a single isolated sale, even if accompanied by the kind of sales effort indicated in the record here, is not sufficient. Here, the relevant facts showed no "regular flow" or "regular course" of sales in New Jersey, nor any special state-related design, advertising, advice, or marketing.

So what does it all mean? It is significant for foreign companies that the Court corrected the mistake of some lower courts which have blended the concepts of specific and general jurisdiction. And a majority of the Court feels that the mere fact that your product ends up in a state and injures someone there is not, by itself, sufficient to confer jurisdiction on that state's courts. Both the plurality and the concurrence seem to agree that a rule like that adopted by the NJ court would erroneously permit every state to assert jurisdiction in a products liability suit against any domestic manufacturer who sells its products (made anywhere in the United States) 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. But there is no majority agreement *so far* on whether there can ever be a proper exercise of jurisdiction when a case presents "contemporary commercial circumstances" regarding the sale of a product – presumably things like use of Internet marketing. And if a foreign defendant directs his conduct at the entire United States, the plurality suggests that conceivably the defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular state, but it is not clear if the rest of the Court agrees. The plurality thought this might be rare in that foreign corporations will often target or concentrate on particular states, and it might depend on the product/industry.