

Lower Courts Grapple With Meaning of *Nicastro* (Part II)

November 14, 2011 by [Sean Wajert](#)

Last [post](#) we talked about a federal district court attempting to apply the Supreme Court's decision in [J. McIntyre Machinery Ltd. v. Nicastro](#). This time, a state court.

In [Soria v. Chrysler Canada Inc.](#), No. 2-10-1236 (App. Ct. Ill., 10/24/11), the court modified an earlier opinion to account for *Nicastro*. But it still concluded that a Canadian automobile assembler was properly subject to personal jurisdiction in Illinois, regardless of the new decision.

This suit arose out of a vehicle collision in which plaintiff alleged that she was a passenger in a 1998 Plymouth Voyager minivan assembled by Chrysler Canada in Windsor, Canada. Plaintiff alleged she suffered a severe eye injury after the door to a passenger airbag module fractured during airbag deployment, sending out plastic fragments. Plaintiff alleged that Chrysler Canada was negligent in its manufacture, assembly, design, testing, inspection, and sale of the airbag module doors.

Regarding jurisdictional contacts, plaintiff alleged that Chrysler Canada knew that thousands of minivans and vehicles it manufactured were sold in the United States, including thousands in Illinois; about 85% of its production was exported to the United States in some years; it allegedly delivered its minivans and vehicles into the stream of commerce with the expectation that a certain percentage would be sold in Illinois; it did business in Illinois within the meaning of the Illinois long-arm statute; and it (along with Chrysler United States) designed, developed, assembled, manufactured, distributed, and transferred into the stream of commerce the Plymouth Voyager in which plaintiff was a passenger during the collision.

In contrast, Chrysler Canada argued that it was incorporated in Canada, had its principal place of business in Canada, and never transacted business, entered into contracts, owned real estate, maintained a corporate presence, telephone number, tax identification number, employees or agents in Illinois. Further, it contended that it did not ship, deliver, distribute, or sell the minivan in Illinois. Finally, Chrysler asserted that its website was not directed to or interactive with Illinois residents.

The trial court denied defendant's motion to dismiss.

The appellate court noted the defendant's argument that mere awareness that vehicles it assembled might be distributed by Chrysler United States to Illinois did not show sufficient minimum contacts. Plaintiff responded that Chrysler Canada had sufficient minimum contacts and was subject to specific personal jurisdiction in Illinois because it knew that the vehicles it assembled for Chrysler United States entered Illinois through the stream of commerce and because it intentionally served the United States market, including Illinois, by indirectly shipping its vehicles to the forum.

Chrysler urged that beyond its mere awareness that some of the vehicles it assembled “may” be swept into Illinois through the stream of commerce, there were no purposeful contacts (and, therefore, no sufficient minimum contacts) by Chrysler Canada directed at Illinois. Specifically, Chrysler Canada contended that it did not engage in commercial activities or other purposeful contacts in Illinois. Further, it did not receive vehicle orders from United States customers or dealerships; did not sell (or have control over the distribution of) vehicles to United States customers or dealerships; and did not ship vehicles to United States customers or dealerships.

The court reviewed the Supreme Court jurisprudence on personal jurisdiction, and in particular, the debate over the so-called “stream-of-commerce” theory of jurisdiction, which has commanded the approval of as many as 4 Justices at various times. The court concluded that under either a broad or narrow version of the stream-of-commerce theory, the trial court correctly found that sufficient minimum contacts exist to exercise personal jurisdiction over Chrysler Canada.

Chrysler Canada was not only aware that its products are distributed in Illinois (thus, the court thought, satisfying the narrow stream-of-commerce theory), but it had also purposefully directed its activities toward Illinois. While it is essential in each case that there be 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, when a commercial actor’s efforts are purposefully directed toward residents of a state, the absence of physical contacts does not alone defeat personal jurisdiction there, concluded the court.

The court found persuasive that the United States market, including Illinois, was Chrysler Canada’s primary market. Deposition testimony reflected that Chrysler Canada is aware that 82% of its production (albeit not all of which consists of Plymouth Voyager minivans) was distributed, through an established distribution channel, within the United States. During the relevant period, Chrysler Canada indirectly shipped products into the American market, including Illinois, through Chrysler United States, its parent corporation. The court agreed with plaintiff’s assertion that Chrysler Canada continuously and intentionally served or targeted this market and was set up to manufacture vehicles for (and derived significant revenue from) the United States market, including Chrysler dealerships throughout Illinois.

Much of that analysis skipped over the very thorny issue of the distinction between efforts to target the US market, in general, but including the forum state, and those that target a specific state, the forum state. Perhaps the court was influenced by the fact that Chrysler Canada conceded that, during 2008 and 2009, Chrysler United States ordered 28,000 vehicles of various makes and models, including minivans, for its independently-owned dealerships in Illinois. Also, unlike some product sellers, Chrysler Canada was specifically aware of the final destination of every product (i.e., vehicle) that it assembled. Thus, according to the court, Chrysler Canada had an expectation that its products would be purchased by Illinois consumers and, given the continuous nature of its assembly relationship with Chrysler United States, its contacts with Illinois were not random, fortuitous, or attenuated.