

Lower Courts Grapple With Nicastro Meaning

November 11, 2011 by [Sean Wajert](#)

We have [posted before](#) about the thorny and important issue of U.S. courts exercising personal jurisdiction over foreign product sellers. Earlier this year, 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 high court opinions on this issue in two decades. But because the former was a plurality decision, lower courts have continued to [struggle](#).

In the past few weeks, two courts have confronted what type of conduct may subject a foreign product maker to personal jurisdiction. The first today, and the second in a later post.

In [Windsor v. Spinner Industry Co.](#), No. 1:10-cv-00114 (D.Md., 10/20/11), plaintiffs alleged that the front wheel of their bicycle dislodged, causing him and his toddler son, Tyler, to be thrown to the ground. Defendant Joy is a Taiwanese corporation that designs and manufactures bicycle components, including a mechanism called a “quick release skewer,” which is used to hold wheels in place. Plaintiffs alleged that their bicycle contained one of Joy’s quick release skewers and that a defect in the skewer contributed to the cause of their accident.

The parties agreed that Joy sells its products to distributors, manufacturers, and trading companies who then market them in every state in the U.S., but that Joy has no direct contacts with the forum state of Maryland. Plaintiffs contended that the nationwide marketing of Joy’s products by intermediaries created sufficient minimum contacts between Joy and Maryland to subject Joy to specific jurisdiction there. Joy moved to dismiss.

The district court noted that the Due Process Clause of the Fourteenth Amendment sets the outer boundaries of state judicial authority. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2853 (2011). Consistent with due process, jurisdiction over non-resident defendants exists only to the extent that the defendants have certain minimum contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

Readers know that such contacts, if they exist, can give rise to one of two species of personal jurisdiction: general or specific. General jurisdiction exists where a non-resident maintains “continuous and systematic” contacts with the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984). Under these conditions, courts of the forum state may exercise jurisdiction over the defendant in any suit properly before them, even if the subject matter is completely unrelated to the defendant’s activities in the forum. Specific jurisdiction arises where a non-resident lacks continuous and systematic contacts with the forum, but has nonetheless purposefully availed itself of the privilege of conducting activities within the forum state. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Under these latter circumstances, courts of the forum state may exercise jurisdiction over the defendant only with respect to claims that arise out of the defendant’s activities in the forum.

The issue presented in this case was the extent to which a state may exercise specific jurisdiction over a non-resident manufacturer whose only connection to the forum is that its products were sold there by third-party distributors. Although the idea that jurisdiction automatically travels with the chattels has long been rejected, some courts have at times endorsed a so-called “stream of commerce” doctrine, approving the assertion of 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.

The Supreme Court in *McIntyre* addressed, but split, on how to handle these issues. The deciding votes were cast by Justices Breyer and Alito, who concurred in the judgment reversing the New Jersey Supreme Court. In his concurring opinion, Justice Breyer rejected the notion that a non-resident defendant could be subjected to suit in a state based solely on foreseeability, agreeing with the plurality that personal jurisdiction required purposeful availment of a particular forum. He further explained that the standard of purposeful availment, the correct legal standard, may still require further explication in the context of modern global commerce, but that the facts of that case did not present an adequate vehicle for crafting any new rules. Although the concurrence and the plurality differed as to what might constitute “purposeful availment” in the context of national or global marketing, they both firmly embraced the continuing significance of individual state sovereignty and, on that basis, noted that specific jurisdiction must arise from a defendant’s deliberate connection with the forum state.

With that understanding, the facts alleged, even if proven, would be insufficient to demonstrate jurisdiction over Joy, said the court. First, although plaintiffs made much of the Internet marketing of Joy’s products, the web presence of Joy or its distributors in Maryland was immaterial because plaintiffs did not purchase their bicycle on the Internet. Further, plaintiffs offered no details about the particular chain of distribution that brought the allegedly defective skewer to the end seller. At best, plaintiffs’ theory of jurisdiction amounted to no more than the “knew or should have known” standard that the Supreme Court explicitly rejected in *McIntyre*.

The court also rejected the plaintiffs’ arguments that jurisdiction was proper because certain of the manufacturers and distributors to whom Joy sold its products not only market their products in Maryland, but maintain established channels of distribution there. The argument was that where a foreign manufacturer sells its products to large national retail chains that have an established and ongoing presence in every state in the U.S., such a relationship evinces more than the mere foreseeability, but an actual intent to serve the forum market, and hence purposeful availment. But the court found this line of reasoning indistinguishable from the clearly rejected position that jurisdiction lies in a forum when a defendant places its product in the stream of commerce with the expectation that it will be sold there.