Supreme Court Modifies "Specific Jurisdiction" Analysis, Making It More Difficult To Obtain Personal Jurisdiction in Tort Suits

On June 27, 2011, the Supreme Court of the United States decided two companion cases -- *Goodyear Dunlop Tires Operations, S.A. v. Brown*,[1] and *J. McIntyre Machinery, Ltd. v. Nicastro*[2] -- addressing the ability of state courts to exercise personal jurisdiction over foreign corporations in tort suits where the defendants' products had entered the forum state after originally being sold elsewhere. In holding that neither case could proceed, the Court reiterated its longstanding distinction between "specific jurisdiction" and "general jurisdiction" and, in *J. McIntyre*, effectively eliminated the "stream of commerce" doctrine for purposes of establishing specific jurisdiction over a defendant.

I. Facts and Procedural History

In *Goodyear*, the parents of two 13 year-old boys from North Carolina sued Goodyear and three of its foreign subsidiaries because of a bus accident outside of Paris allegedly attributable to the defective manufacture of Goodyear tires in Turkey. The suit was filed in state court in North Carolina, and the foreign subsidiaries challenged the state court's jurisdiction over them. The tires manufactured and distributed by the subsidiaries were intended primarily for sale in Asia and Europe, and their specifications differed from most tires sold in the United States. However, a few tires made by the subsidiaries made their way not only into the United States, but into North Carolina -- despite a lack of advertising or solicitation of business in North Carolina, and no direct shipments of those tires into North Carolina. The North Carolina courts found personal jurisdiction to be proper, because the "stream of commerce" had taken the subsidiaries products into North Carolina -- even though it was not those tires that were involved in the accident.

In *J. McIntyre*, a man in New Jersey "seriously injured his hand while using a metal-shearing machine manufactured by J. McIntyre."[3] J. McIntyre is an English corporation, headquartered in the United Kingdom, and the machine was manufactured in the United Kingdom. The Supreme Court would ultimately focus its analysis around three additional facts. First, although J. McIntyre itself did not generally sell its machines to American buyers, they were distributed in the United States by a U.S. distributor not owned by J. McIntyre. Second, J. McIntyre officials attended annual scrap metal industry conventions in the United States (alongside the distributor) to advertise their machines, although never in New Jersey. Third, somewhere between one and four of these machines made their way into New Jersey.

II. Personal Jurisdiction and "Minimum Contacts"

Personal jurisdiction is the ability of a court to subject a person to suit in that court. The Court has long held that the Due Process Clause of the Fourteenth Amendment places limits on the ability of state courts to exercise personal jurisdiction over non-resident defendants who do not consent to be sued in that state.[4] In the

---

1 No. 10-76, slip op., 564 U.S. ____ (June 27, 2011) ("*Goodyear*"), *available at* http://www.supremecourt.gov/opinions/10pdf/10-76.pdf.

2 No. 09-1343, slip op., 564 U.S. ____ (June 27, 2011) ("*J. McIntyre*"), *available at* http://www.supremecourt.gov/opinions/10pdf/09-1343.pdf.

3 *J. McIntyre* at *2.

4 *See Pennoyer v. Neff*, 95 U.S. 714 (1878).

1945 landmark decision, *International Shoe Co. v. Washington*,[5] the Court held that in order for there to be personal jurisdiction, the defendant must "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."[6]

Even if a defendant has only committed "single or occasional acts" within a state, it is possible that personal jurisdiction may be exercised over that defendant, if the suit "arises out of or relates to the defendant's contacts with the [state]."[7] This category of personal jurisdiction is known as "specific jurisdiction." In contrast, "general jurisdiction" allows for personal jurisdiction over a defendant, regardless of the nature of the suit, if the defendant's "continuous corporate operations within a state are [sufficiently] substantial."[8]

In two highly fractured opinions in the 1980s,[9] the Supreme Court analyzed the extent to which a defendant's product, when carried in the "stream of commerce" to a state the defendant otherwise had few contacts with, subjected the defendant to specific jurisdiction in that state if the product injured someone in the state. From these opinions, it was clear that if the defendant's only connection to a state was an individual consumer taking defendant's product into that state, there were insufficient minimum contacts for specific jurisdiction.[10] What more was required was unclear.[11]

III. The Supreme Court's Decisions

In *Goodyear*, it was conceded that the presence of the European/Asian specification tires, which entered North Carolina through the "stream of commerce", was not sufficient for specific jurisdiction because the accident in France was unrelated to the presence of those tires in North Carolina. However, the North Carolina Court of Appeals had held the presence of those tires subjected the Goodyear subsidiaries to *general* jurisdiction -- that is, that they could be sued for anything in North Carolina (thus obviating the need for a relationship to the actual accident in question). The Supreme Court unanimously reversed that decision and described the general jurisdiction inquiry as whether the defendant corporation's contacts are "so continuous and systematic as to render them essentially at home in the forum State."[12]

The facts of *J. McIntyre* presented a much harder case for the Court, because the accident was related to the presence of the machine, which entered New Jersey through the "stream of commerce." The New Jersey Supreme Court had held that the mere presence of the defendant's product in the state was sufficient to establish specific personal jurisdiction over J. McIntyre as long as it was foreseeable that the defendant's products might

---

5 326 U.S. 310 (1945).

6 *Id.* at 316.

7 *Goodyear* at *7 (citing *International Shoe* at 318 and *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n. 8 (1984)).

8 *Id.*

9 *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) and *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987).

10 *World-Wide Volkswagen* (holding that there was no personal jurisdiction over a New York car dealership and distributor, who sold cars only in the northeast, for a suit in Oklahoma based on an accident that occurred there after an individual customer drove one of the cars to Oklahoma).

11 *Goodyear* at *1 ("The rules and standards for determining when a State does or does not have jurisdiction over an absent party have been unclear because of decades-old questions left open in *Asahi*.").

12 *Id.* at *2.

reach the state.[13] The Court was therefore forced not only to decide whether the facts warranted a finding of specific jurisdiction given the manner in which J. McIntyre sold its products, but more fundamentally to confront an issue that the Court could not agree on 24 years ago in *Asahi*: what threshold question should courts resolve in these types of cases. The Court reversed the decision of the New Jersey Supreme Court by a tally of six-to-three, finding that there was no specific jurisdiction in the case. In so doing the Court vitiated the "stream of commerce" doctrine it twice suggested in the 1980s -- the plurality opinion characterizing it merely as a "metaphor."[14] However, the Court's decision did not result in a majority-supported theory to supplant the "stream of commerce" doctrine because no more than four justices could agree on a single rationale for the result.

Writing for a plurality of four Justices, Justice Kennedy's opinion[15] rejected the "stream of commerce"/foreseeability test set forth by the New Jersey Supreme Court and stated a more narrow view of personal jurisdiction. According to Justice Kennedy, the relevant inquiry was whether "the defendant's activities manifest an intention to submit to the power of a sovereign."[16] In an opinion concurring in the judgment, Justice Breyer[17] believed that the Court's prior precedents dictated a finding of no jurisdiction. Justice Breyer reasoned that there was no "something more" that showed that the foreign defendant availed itself of the New Jersey forum.[18] Importantly, the concurring opinion rejected the plurality's "seemingly strict no-jurisdiction rule"[19] and would leave for another day broad pronouncements about personal jurisdiction in light of modern commercial practices such as web-based advertising. Justice Ginsburg's dissent[20] advocated a more open-ended fairness inquiry, with a significant focus on the foreseeability of the product entering the state (the decisive issue in the eyes of the New Jersey Supreme Court), the control the defendant had over whether the product would enter the state, and the defendant's promotion of the product.[21]

IV. Significance

The six-Justice agreement in *J. McIntyre* that there is no specific jurisdiction in "stream of commerce" cases when a product enters a given state, without any further *direct* contact by the defendant to the forum, even if it was foreseeable to the defendant that its product would reach that state, is significant. The decision will likely immediately limit the scope of jurisdiction over both international corporations and domestic corporations whose products reach states in which they were not originally sold.

---

13 *J. McIntyre* (Breyer, J. concurring in judgment) at *5 (citing *Nicastro v. McIntyre Machinery America, Ltd.* 201 N.J. 48 (2010)). This position is the closest to the law in the European Union, which as Justice Ginsburg's dissent points out, allows tort suits wherever the harmful event occurred or at the place of injury. *J. McIntyre* (Ginsburg, J. dissenting) at *17-18. Justice Ginsburg was not pleased that the Court's decision would put United States plaintiffs at a further comparative disadvantage. *Id.* at *17.

14 *J. McIntyre* at *6.

15 Justice Kennedy's opinion was joined by Chief Justice Roberts, and Justices Scalia and Thomas.

16 *J. McIntyre* at *7.

17 Justice Breyer's concurrence was joined by Justice Alito.

18 *J. McIntyre* (Breyer, J. concurring in judgment) at *3.

19 *Id.* at *4.

20 Justice Ginsburg's dissent was joined by Justices Kagan and Sotomayor.

21 *Id.* (Ginsburg, J. dissenting) at *4-6, 11.

However, there also appears to be agreement among five Justices that a "freeform"[22] fairness analysis (as described by the Kennedy plurality opposed to it), is still appropriate -- and Justice Breyer made clear that he thinks the size of the defendant is a relevant factor in that analysis.[23] Undoubtedly, there will be a good deal of litigation in the coming years, likely on some of the questions Justice Breyer (who may well be the swing vote in future decisions) said he was unsure about, given modern changes in technology and commerce, including the potential jurisdiction over companies who advertise into distant places from their website, and whether or not it is relevant that a defendant distributes its product indirectly through a subsidiary (a point the Kennedy plurality and the Ginsburg dissent sparred over).[24]

One further wrinkle is that Justice Kennedy mentioned in *dicta* that J. McIntyre, while not submitting to the sovereignty of the State of New Jersey, may, by its appearance at trade shows in various U.S. states, and its targeting of the United States market generally, have subjected itself to the sovereignty of the United States. Under this view, if Congress so provided, a defendant such as J. McIntyre might be able to be sued in a federal court in New Jersey, although not in a state court in New Jersey.[25]

* * *

If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Jon Mark at 212.701.3100 or jmark@cahill.com; or John Schuster at 212.701.3323 or jschuster@cahill.com.

22 *J. McIntyre* at *5.

23 *Id.* (Breyer, J. concurring in judgment) at *5-6.

24 *Id.* at *1, 4-5.

25 *J. McIntyre* at *8-9 (mentioning that personal jurisdiction requires a "sovereign-by-sovereign" analysis), 10-11 (discussing that since "petitioner directed marketing and sales efforts at the United States" it was possible that "Congress could authorize the exercise of jurisdiction in appropriate courts."). *See also, id.* (Ginsburg, J. dissenting) at *12 n. 12 (pointing this out, and arguing that there is "no basis in the Due Process Clause for such a curious limitation").