

THE UNITED STATES SUPREME COURT TO CONSIDER THE REACH OF PERSONAL JURISDICTION IN PRODUCT LIABILITY ACTIONS

Laura Erb Dean • 212.908.1215 • ldean@cozen.com

On September 28, 2010, the United States Supreme Court granted certiorari in two product liability cases, *J. McIntyre Machinery, Ltd. v. Nicastro*, No. 09-1343, 2010 U.S. LEXIS 5747, *1 (U.S. Sept. 28, 2010) and *Goodyear Luxembourg Tires, S.A. v. Brown*, No. 10-76, 2010 U.S. LEXIS 5750, *1 (U.S. Sept. 28, 2010), which are to be “argued in tandem.” In both cases, state courts found that they had personal jurisdiction over foreign companies. In response, the foreign companies petitioned the U.S. Supreme Court for review on due process grounds.

Nicastro v. J. McIntyre Machinery, Ltd.

On February 2, 2010, the Supreme Court of New Jersey issued a decision in *Nicastro v. McIntyre Machinery America, Ltd.*, 201 N.J. 48, 987 A.2d 575 (2010). Justice Albin, writing for the 5-2 majority, held 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.” *Id.* at 73, 987 A.2d at 589.

In *Nicastro*, plaintiff Robert Nicastro and his wife assert that Mr. Nicastro lost four fingers while working with a recycling machine due to the lack of a safety guard. The machine was manufactured by J. McIntyre Machinery, Ltd. (J. McIntyre), a company incorporated in the United Kingdom, and then sold through its exclusive United States distributor, McIntyre Machinery America, Ltd., headquartered in Stow, Ohio, to Curcio Scrap Metal, plaintiff’s employer.

J. McIntyre moved to dismiss. The trial court granted the motion, finding that the English manufacturer did not have sufficient minimum contacts with New Jersey to justify the state’s exercise of personal jurisdiction over it. The Appellate Division reversed and permitted the parties to conduct discovery to establish whether New Jersey had the authority

to exercise jurisdiction over J. McIntyre. At the conclusion of jurisdictional discovery, the trial court again granted J. McIntyre’s motion to dismiss for lack of personal jurisdiction. The Appellate Division again reversed. The New Jersey Supreme Court granted J. McIntyre’s petition for certification.

In support of its position, J. McIntyre argued that it had no knowledge that the distributor would sell the machine to a New Jersey customer. Therefore, J. McIntyre contended that the single act of placing the machine into the stream of commerce outside of New Jersey was not enough to subject it to personal jurisdiction in New Jersey.

Plaintiff, on the other hand, argued that J. McIntyre should be subject to jurisdiction in New Jersey because it targeted the United States as its geographical market and placed the product that injured plaintiff in the stream of commerce. Plaintiff further reasoned that, to permit the manufacturer to avoid personal jurisdiction, would be opening the door for foreign manufacturers to engage in “flanking maneuvering” that would leave injured citizens without legal recourse.

The New Jersey Supreme Court relied on its decision in *Charles Gendler & Co. v. Telecom Equipment Corp.*, 102 N.J. 460, 508 A.2d 1127 (1986), in which it used the stream-of-commerce theory to find that it had personal jurisdiction over a New Jersey telephone manufacturer. It ultimately held that New Jersey could exercise personal jurisdiction over J. McIntyre.

Goodyear Luxembourg Tires, S.A. v. Brown

On August 18, 2009, the North Carolina Court of Appeals issued a decision in *Brown v. Meter*, 681 S.E.2d 382 (N.C. App. 2009). Judge Ervin wrote the opinion, in which Judges Wynn and Stephens concurred. In his opinion, Judge Ervin held that so long as defendants intentionally placed their products into the stream of commerce without excluding North Carolina personal jurisdiction would exist. *Id.* at 395.

In *Brown*, Matthew Helms and Julian Brown were killed in a bus accident in France. Their parents, as administrators of the estates, claim that one of the bus' tires failed when its plies separated. Plaintiffs assert that Goodyear affiliates based in Turkey, France and Luxembourg negligently designed, constructed, tested, and inspected the tire at issue and that the companies failed to warn of latent defects.

The foreign defendants filed motions to dismiss alleging that the North Carolina court lacked personal jurisdiction over them. The trial court denied the motions. The foreign defendants appealed to the North Carolina Court of Appeals.

The court determined that since the subject accident occurred outside North Carolina the case involved general rather than specific jurisdiction. For that reason, the court reasoned that the relevant question was "whether [d]efendants' activities in the forum [were] sufficiently continuous and systematic, a higher threshold than that required to support the exercise of specific jurisdiction." *Id.* at 388.

Defendants argued that the "stream of commerce" analysis did not apply in instances involving general jurisdiction. The North Carolina Court of Appeals, however, noted that defendants did not cite a North Carolina case for that

proposition, and that the court did not know of one. Rather, the court stressed that the real issue is the extent to which the defendants' products were, in fact, distributed in North Carolina markets.

The court concluded "that the appropriate question that must be answered in order to determine whether [d]efendants are 'subject to the jurisdiction of the courts of this state' is whether [d]efendants have 'purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina.'" *Id.* at 391. In answering this question, Judge Ervin concluded that the court could exert personal jurisdiction over the foreign companies. Notably, the North Carolina Supreme Court declined to hear the case, denying a discretionary appeal earlier this year.

These two cases will provide the U.S. Supreme Court with an opportunity to clarify the scope of both specific and general jurisdiction over foreign companies. In addition, it will give the Court an opportunity to refine the status and definition of the "stream-of-commerce" standard. As such, the Court's decision could significantly influence the ways in which foreign companies do business in the United States.