

## The Supreme Court's Personal Jurisdiction Reckoning

Law360, New York (February 16, 2011) -- The U.S. Supreme Court heard oral argument recently in two products liability cases that may radically change the personal jurisdiction rules governing where a defendant can be sued.

### Procedural and Legal Background

The cases are from North Carolina and New Jersey. In the North Carolina case, Goodyear Dunlop Tire Operations SA v. Brown (case number 10-76), Goodyear and its foreign affiliates were sued in North Carolina for an accident that occurred in France because the plaintiffs are residents of North Carolina.

The plaintiffs are parents of two teenage boys who died as a result of the accident. The trial court denied the foreign affiliates' motion to dismiss for lack of personal jurisdiction and the North Carolina Court of Appeals affirmed, concluding that the defendants were subject to general personal jurisdiction in North Carolina because they purposefully injected their product into the stream of commerce without any indication that they desired to exclude that state from distribution. The North Carolina Supreme Court declined to review the Court of Appeals' decision.

The New Jersey case, J. McIntyre Machinery Ltd. v. Nicastro (case number 09-1343), is in some aspects the mirror image of the North Carolina case. J. McIntyre also involves a foreign defendant, but otherwise presents significantly different facts.

The plaintiff in that case is a New Jersey scrap metal employee who lost four fingers while operating a metal recycling machine at a factory in New Jersey. The plaintiff sued the machine's manufacturer, J. McIntyre Machinery Ltd., based in the U.K., for his injuries.

The machine was sold in the U.S. through an exclusive distributor, McIntyre Machinery America. McIntyre Machinery is a distinct corporate entity from J. McIntyre and is independently operated and controlled. J. McIntyre moved to dismiss for lack of personal jurisdiction, and the issue worked its way through the state court system. Ultimately, the New Jersey Supreme Court held that J. McIntyre was subject to personal jurisdiction because it placed its product in the stream of commerce through a distribution scheme that targets a national market, including New Jersey.

It appears that by choosing to review these cases, the U.S. Supreme Court intends to clarify this area of law, which has remained in a somewhat chaotic state since the court issued a divided opinion in *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987).

*Asahi* involved a products liability suit filed after a motorcycle accident in California. The plaintiff sued the Taiwanese manufacturer of the tire tube, alleging that it was defective. The Taiwanese manufacturer sued *Asahi Metal Industry Co.*, the Japanese manufacturer of a component of the tube, for indemnification.

The Supreme Court determined that it would contravene due process for California to exercise personal jurisdiction over *Asahi*, but divided on the scope of the stream of commerce theory first posited by in *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980). Justices Sandra Day O'Connor and William J. Brennan each authored four-member plurality opinions expressing divergent views on the issue.

Federal and state courts have taken a variety of approaches to applying the stream of commerce theory since *Asahi*. Some courts have applied Justice O'Connor's "stream-of-commerce-plus" theory, which requires a defendant to purposefully direct its actions toward the forum state in addition to placing its product in the stream of commerce.

Others have taken Justice Brennan's approach, which does not require the plaintiff to present any "additional conduct," provided that the defendant knowingly placed the product in the stream of commerce.

Others have read *World-Wide Volkswagen* more expansively than Justice O'Connor's analysis in *Asahi*. Given this diversity, it is difficult to predict how the Supreme Court will decide *Goodyear* and *J. McIntyre*, but questions asked during oral argument indicate the issues likely to influence these decisions.

### **How Will the U.S. Supreme Court Decide *Goodyear* and *J. McIntyre*?**

In briefing and in oral argument before the Supreme Court, both *Goodyear* and *J. McIntyre* argue that the court's jurisprudence establishes that personal jurisdiction is improper in the respective venues.

## ***J. McIntyre***

J. McIntyre argues that neither World-Wide Volkswagen nor either of the plurality opinions in *Asahi* establishes that a defendant may be subject to personal jurisdiction in a state simply by placing a product in the stream of commerce. Rather, something more is required, whether it be purposeful conduct, knowledge or awareness. It argues that this “something more” is absent from this case.

However, the New Jersey Supreme Court disagreed, assigning significant weight to the fact that the machine in question was sold by J. McIntyre’s exclusive distributor throughout the U.S., including New Jersey. The question remains whether the Supreme Court will take a similarly negative view of J. McIntyre’s knowledge of the distribution scheme employed by its U.S. distributor.

During oral argument, the justices focused on what constitutes sufficient knowledge in this context. For example, Justice Elena Kagan asked whether J. McIntyre targeted the U.S. When the company’s lawyer conceded that it did, she asked if this means that J. McIntyre targeted all 50 states, including New Jersey. The lawyer responded that J. McIntyre aimed to sell its product anywhere it could and that it was McIntyre Machinery America that actually managed the marketing.

Justice Sonia Sotomayor noted that, although there was no legal control of McIntyre Machinery by J. McIntyre, there was some coordination, as evidenced by J. McIntyre officials attending trade shows in the U.S. with McIntyre Machinery officials. She also noted that McIntyre Machinery received marketing suggestions from J. McIntyre on at least one occasion.

In response to a question from Justice Stephen Breyer, Arthur F. Fergenson stated that *Asahi* refutes the proposition that personal jurisdiction is proper in any state where a foreign manufacturer’s product ends up if that manufacturer entered into an arrangement with an independent company to distribute the product throughout the entire U.S.

Like the Japanese defendant in *Asahi*, J. McIntyre contends that it had no offices or employees in New Jersey, did not engage in any direct sales or marketing there, and did not control or design the distribution scheme that carried its product into that state.

However, unlike J. McIntyre, the Japanese defendant in *Asahi* did not have an exclusive U.S. distributor for its product; it sold the product to a Taiwanese company that integrated it into the tire that was later sold in California. It remains to be seen how much weight the Supreme Court ultimately will place on these factual differences.

The justices also discussed policy issues implicated by the case, including the potential effect that a ruling in the plaintiffs’ favor could have on small and struggling foreign businesses whose products end up in the U.S. They also touched on potential implications with respect to judgments imposed on U.S. companies by foreign jurisdictions.

## **Goodyear**

Unlike *J. McIntyre*, the event that gave rise to the claims in *Goodyear* did not take place in plaintiffs' chosen forum of North Carolina. The accident in question occurred in France. Taking advantage of this, *Goodyear* argues that the stream of commerce theory cannot support personal jurisdiction in a case premised on general jurisdiction.

"Specific jurisdiction" applies where the claim arises out of or is related to the defendant's contacts with the forum state. In contrast, "general jurisdiction" applies where a defendant's contacts with a state are so extensive that the state can exercise personal jurisdiction over that defendant with respect to virtually any claim, regardless of origin.

*Goodyear* argues that decisions from several federal and state courts establish that mere placement of products generally by the manufacturer into the stream of commerce cannot support the exercise of personal jurisdiction over the manufacturer by a given state if the claims asserted are unrelated to the products actually distributed in that state.

*Goodyear* also argues that the Supreme Court's own jurisprudence in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny limits the stream of commerce doctrine to cases where the allegedly defective product was distributed in the forum state.

As in *J. McIntyre*, the Supreme Court's resolution of *Goodyear* likely will turn on the court's interpretation of the facts. *Goodyear* argued that the court's past decisions have required much greater contacts with the forum state than the 45,000 tires that the North Carolina Court of Appeals concluded were evidence of the company's "continuous and systematic contacts" with the state.

According to *Goodyear*, the only Supreme Court decision since *International Shoe* to uphold the exercise of general jurisdiction, *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), involved a defendant that was physically present in the forum and was conducting its headquarter operations there.

Oral argument focused on whether the parent company's sales of tires in the U.S. should be considered in determining the foreign subsidiaries' contacts with North Carolina. Interestingly, The U.S. Department of Justice participated in oral argument as *amicus curiae* supporting *Goodyear*, but did not participate in the *J. McIntyre* argument. Counsel for the DOJ explained that the *Goodyear* decision presented more serious implications because general jurisdiction is by nature a more expansive exercise of state power than specific jurisdiction.

The justices appeared somewhat skeptical of the Goodyear plaintiffs' assertion that jurisdiction is proper in North Carolina despite the fact that the incident took place in France and the foreign companies had little contact with the state. Justice Ruth Bader Ginsburg expressed concern that the North Carolina Court of Appeals seems to have "blended" general and specific jurisdictional analyses in determining that exercising personal jurisdiction was proper.

As with J. McIntyre, there was also discussion of the potential policy implications, with plaintiffs' counsel arguing that a decision in Goodyear's favor would incentivize outsourcing. This argument did not fare well with Justice Antonin Scalia, who was unconvinced that a U.S. company would rather face suit in China, for example, than North Carolina.

Regardless of the final resolution, it is clear that the Supreme Court's determination of the central issues in these cases could have serious implications for foreign companies whose products are sold in the U.S.

### **Potential Implications of Goodyear and J. McIntyre**

A decision finding personal jurisdiction proper in either Goodyear or J. McIntyre could significantly affect foreign defendants' ability to predict the forums in which they will likely have to defend against a lawsuit. This is especially true in cases like Goodyear, where the cause of action arises out of an injury allegedly caused by a product that was not itself distributed in the forum state.

It also presents the opportunity for forum shopping as plaintiffs could rest assured that the exercise of personal jurisdiction will likely be found proper in any state where a defendant's products are brought by the stream of commerce, even when the defendant was only abstractly aware that its products could end up there.

On the other hand, a decision in favor of either defendant could require future plaintiffs to travel to a state other than their residence (or, in some cases, to another country) to seek redress if they are hurt by a product manufactured by a foreign company. However, this result seems markedly less unreasonable in cases like Goodyear where the cause of action is unrelated (or only loosely related) to the plaintiff's chosen forum.

A decision favoring the plaintiffs in either case could also affect foreign companies' decisions to do business in the U.S. as well as U.S. companies' decisions to conduct interstate business. This poses significant economic implications, especially in light of the current down economy. As Goodyear's briefing to the Supreme Court notes, a decision that personal jurisdiction is proper in these cases could affect the international relations interests. The justices addressed aspects of this issue during oral argument and the court acknowledged it previously in *Asahi*.

Finally, it bears noting that, in personal injury cases in particular, a plaintiffs' prospective damages in the U.S. typically vastly exceed any potential damages award in many foreign jurisdictions, particularly in Europe.

Given these implications, any company whose products are sold in the U.S. should be on the lookout for these decisions, which should be announced some time in the next few months.

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