

Supreme Court Shifts Basic Personal Jurisdiction Rules

By M. Derek Harris, Litigation News Associate Editor

The rivers of commerce took a turn in favor of product manufacturers at the end of the current term of the U.S. Supreme Court. In two June opinions, the Court rejected a quarter-century-old notion that placement of products in the “stream of commerce” can subject foreign manufacturers to personal jurisdiction in state court products liability cases.

In *J. McIntyre Machinery, Ltd. v. Nicastro*, Justice Kennedy, joined by three other Justices, delivered a plurality opinion. The opinion clarifies the “rules and standards for determining when a State does or does not have jurisdiction over an absent party,” declaring they “have been unclear because of decades-old questions left open in *Asahi Metal Indus. Co. v. Sup. Ct. of Cal., Solano Cty.*”

Following the 1987 *Asahi* decision, the primary question left open was: “If a defendant knows its product will end up in a forum and defendant benefits from it, can the defendant be subjected to jurisdiction in the forum without more conduct specifically directed toward the forum?” explains Cassandra Burke Robertson, Cleveland, a professor of international law and a member of the

ABA Section of Litigation’s International Litigation Committee.

In *Nicastro*, plaintiff’s severe injuries were caused by “a three-ton metal shearing machine” manufactured by McIntyre that “severed four fingers on Robert Nicastro’s right hand.” McIntyre, a British corporation, had “no office in New Jersey; it neither paid taxes nor owned property there; and it neither advertised in, nor sent any employees to, the State.”

The Supreme Court reversed the New Jersey Supreme Court’s finding of jurisdiction. The plurality found that at no time did McIntyre “engage in any activity in New Jersey that reveal[ed] an intent to invoke or benefit from the protection of its laws.” Thus, New Jersey’s exercise of jurisdiction over McIntyre violated due process.

In *Nicastro*, Justice Kennedy retreated from Justice Brennan’s test in *Asahi* that made “foreseeability the touchstone of jurisdiction.” He pronounced, “[I]t is the defendant’s purposeful availment that makes jurisdiction consistent with ‘fair play and substantial justice’ notions,” and that “[n]o ‘stream of commerce’ doctrine can displace that general rule for products-liability cases.”

Justice Kennedy’s purposeful availment approach “makes the most sense in today’s international trade environment,” says Edward M. Mullins, Miami, cochair of the Section of Litigation’s International Litigation Committee. “With the global

economy increasing, it is becoming more important to have established rules as to when a defendant can be hauled into a foreign court,” he adds.

While Justice Kennedy’s approach may make sense, it also raises concerns. The opinion “is ostensibly a roadmap for how a foreign entity can avoid liability in the U.S., even when it knows its products are being marketed here,” contends Andrew S. Pollis, Cleveland, cochair of the Section’s Consumer and Civil Rights Litigation Committee.

Nicastro was not the only attack on the stream of commerce doctrine this term. In a second opinion issued the same day as *Nicastro*, the Court unanimously declared that a foreign manufacturer’s placement of its goods in the stream of commerce cannot be the sole basis for exercising jurisdiction. This ended a products liability action arising out of a bus accident in Paris, France, that killed two teenage boys from North Carolina. *Goodyear Dunlop Tires Operations, S.A. v. Brown*.

RESOURCES:

- *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011).
- *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011).
- *Asahi Metal Industry Co. v. Sup. Ct. of Cal., Solano County*, 480 U.S.102 (1987).