

Jurisdiction of U.S. courts over foreign manufacturers

In two opinions last term, the Court adopted a narrow approach that offers some guidance but raises new questions.

BY PETER TROOBOFF

During its 2010-2011 term, the U.S. Supreme Court had the opportunity to furnish comprehensive guidance on the personal jurisdiction of U.S. state courts over foreign manufacturers of products that are sold into this country through global distribution networks. The Court was asked in two cases to clarify the limits that the due process clause of the 14th Amendment places on personal jurisdiction exercised by state courts over such manufacturers. The



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personal jurisdiction that offers some valuable guidance to the courts and business community but also raises new questions and potential problems. U.S. courts, state and federal, will undoubtedly face challenges in applying the holdings in future cases that involve increasingly sophisticated global distribution arrangements for non-U.S. products, Web-based marketing programs and other store-less sales arrangements.

In *Goodyear*, the petitioners challenged North Carolina's assertion of personal jurisdiction over non-U.S. affiliates in Luxembourg, Turkey and France of The Goodyear Tire & Rubber Co. The respondents were the administrators of the estates of two teenage soccer players from North Carolina who died tragically in 2004 in a bus accident on the way to de Gaulle Airport. The French accident was alleged to have been caused by the separation of plies on a bus tire

that was manufactured by the Turkish petitioner, which is a subsidiary of the U.S. parent company. The tire in question was not generally distributed in the United States but it met U.S. safety standards.

The Court reversed unanimously the intermediate appellate court of North Carolina, as the solicitor general had urged. In an opinion by Justice Ruth Bader Ginsburg, the Court held, first, that the North Carolina court lacked specific jurisdiction because "the episode-in-suit, the bus accident, occurred in France, and the tire alleged to have caused the accident was manufactured and sold abroad."

The North Carolina Court of Appeals also asserted general personal jurisdiction over the defendants, in which case they would be answerable for claims such as those arising from the French accident that were unrelated to the basis for such jurisdiction. That court rested its general jurisdiction finding on the alleged "continuous and systematic" activities of the defendants within North Carolina. It concluded that such activities included defendants placing their tires "in the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina." Ginsburg responded by noting an erroneous elision by the North Carolina court between "case-specific and all-purpose (general) jurisdiction."

THE PRACTICE

Commentary and advice on developments in the law

court consolidated the cases for argument. *Goodyear Dunlop Tires Operations S.A. v. Brown*, No. 10-76 (June 27, 2011), and *J. McIntyre Machinery Ltd. v. Nicastro*, No. 09-1343 (June 27, 2011). The parties and a number of amici urged the Court to undertake the challenging task of clarifying the several differing opinions and disputed interpretations arising from its last personal jurisdiction case implicating international markets and trade, *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987).

In its two opinions, the Court generally adopted a narrow approach to

Relying on *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), she wrote that the “[f]low of a manufacturer’s products into the forum... may bolster an affiliation germane to specific jurisdiction.”

She rejected the “sprawling view of general jurisdiction” over the non-U.S. companies that the North Carolina court adopted because under that view “any substantial manufacturer or seller of goods would be amenable to suit, on any claim for relief, wherever its products are distributed.” Instead, Ginsburg wrote, for a corporation, the paradigm forum for exercising general jurisdiction is an equivalent place to an individual’s domicile “in which the corporation is fairly regarded as at home.” From that perspective, she concluded, the non-U.S. affiliates “are in no sense at home in North Carolina” even if there were “regularly occurring sales” of their products in the state.

In *Nicastro*, the petitioner, a U.K. manufacturer of scrap metal shear machines, argued that New Jersey lacked personal jurisdiction over the petitioner to hear the respondent’s claim for damages sustained in New Jersey during the operation of a U.K.-manufactured machine that met U.S. safety standards. The respondent’s employer bought the machine at a U.S. trade show in Las Vegas from the exclusive Ohio-based distributor of the machines, which was not an affiliate of the manufacturer, although its name resembled that of the U.K. company. The Supreme Court of New Jersey held, 5-2, over a strong dissent, that the exercise of specific personal jurisdiction over the petitioner was constitutionally permissible.

The solicitor general did not file an amicus brief, and during oral argument on *Goodyear* the government declined an express invitation from the Court to offer a view on the spe-

cific-jurisdiction issue presented. On the other hand, a group of 17 prominent American law professors in the field joined in an amicus brief urging the Court to revisit *Asahi* and affirm the New Jersey court’s decision. The law professors argued that “it makes no difference that the Petitioner did not specifically target the *individual* states” when the foreign manufacturer “purposefully engaged the U.S. distributor” to serve the entire U.S. market for the sale of products that meet U.S. safety standards. If New Jersey could not assert personal jurisdiction over McIntyre U.K. for injuries caused by its machine in that state, the manufacturer, the professors argued, could end up not being subject to suit “in *any* U.S. state, despite its deliberate efforts to access the entire U.S. market.”

Writing for a plurality with Chief Justice John Roberts Jr., and justices Antonin Scalia and Clarence Thomas, Justice Anthony Kennedy rejected this argument and reversed. Returning to the divided opinions in *Asahi*, Kennedy rejected “general fairness considerations [as] the touchstone of jurisdiction.” Instead, he grounded jurisdiction on discerning the defendant’s “intention to submit to the power of the sovereign” based on a forum-by-forum analysis of whether the defendant’s conduct was “purposefully directed” at a particular state and whether in this case McIntyre U.K. “purposefully availed itself of the New Jersey market.” His opinion forcefully rejected finding such purposeful action in the defendant’s foresight. Kennedy conceded that this ruling may result in a defendant having in “exceptional” cases “the requisite relationship with the United States Government” but not for personal jurisdiction with any particular state.

Justice Stephen Breyer concurred in a separate opinion that Justice Samuel Alito Jr. joined. The facts showed “no specific effort by the

British Manufacturer to sell in New Jersey” and, thus, Breyer saw a clear basis for rejecting specific jurisdiction under existing precedents. However, he rejected the plurality’s “seemingly strict no-jurisdiction rule” that relies on the defendant’s intent. Breyer saw weaknesses in a new and broader “stream of commerce” rule that relies on foreseeability because that approach might unfairly affect small manufacturers or those with limited U.S. distribution.

In a strong dissent joined by justices Sonia Sotomayor and Elena Kagan, Ginsburg emphasized that a majority of the Court — the dissenters plus Breyer and Alito — rejected the “consent” or “submission” analysis of personal jurisdiction propounded by the four-vote plurality. Relying on the professors’ brief, she emphasizes that McIntyre U.K. “ ‘purposefully availed itself’ ... of the [U.S.] market nationwide, not a market in a single State or a discrete collection of States.” Ginsburg contrasted the heavy burden for Nicastro of pursuing his tort claim in England against the lesser one for McIntyre U.K. of defending in New Jersey court “as an incident of its efforts to develop a market for its industrial machines anywhere and everywhere in the United States.” She noted that, under the Brussels Regulation, an E.U. court at the place of injury would readily assume personal jurisdiction over McIntyre U.K. in a case concerning harm caused by its U.K.-made product.

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