



SUPREME COURT LIMITS PERSONAL JURISDICTION OVER OUT-OF-STATE DEFENDANTS

On June 27, 2011, the Supreme Court issued a pair of important decisions limiting state courts' personal jurisdiction over out-of-state defendants, *Goodyear Dunlop Tires Operations, S.A. v. Brown*, No. 10-76 (U.S. June 27, 2011), and *J. McIntyre Machinery, Ltd. v. Nicastro*, No. 09-1343 (U.S. June 27, 2011). The Court addressed the two basic categories of personal jurisdiction—general jurisdiction and specific jurisdiction—and endorsed narrower limits on both than have been applied by many lower courts. The general jurisdiction decision, *Goodyear*, significantly clarified what has been a murky legal standard, and did so in a way that presents significant new opportunities for corporations to avoid jurisdiction in improper forums. In the specific jurisdiction case, *McIntyre*, the Court's inability to agree on a majority opinion injected additional confusion into an already unsettled area.

The first decision, *Goodyear*, addressed "general" personal jurisdiction, which permits a state to assert all-encompassing jurisdiction over any and all suits

against a defendant—regardless of whether the suit relates to the defendant's contacts with the state—when the defendant has sufficiently significant contacts with the state. The Court's prior cases were less than clear about how significant those contacts had to be, and the most frequently invoked standard in the lower courts has been one that requires "continuous and systematic contacts" with the state—a phrase that gives no guidance as to the type, nature, or extent of the necessary contacts. Many lower courts found this standard satisfied as long as the defendant was in some sense "doing business" in the state on an ongoing basis, even if the amount of business was relatively insubstantial in comparison to the defendant's operations as a whole. *Goodyear* calls many of these cases into question by suggesting a much narrower scope for general jurisdiction: the Court emphasized that general jurisdiction over a corporation is permissible only in a state "in which the corporation is fairly regarded as at home," and indicated that the paradigm is the state of incorporation or principal place of business.

In *Goodyear*, North Carolina teenagers were killed in a bus accident while traveling in France. Their parents brought a wrongful-death suit in North Carolina state court against, among others, three overseas Goodyear affiliates, including the one who had manufactured the bus's tires. Those affiliates manufactured and distributed tires primarily for Europe and Asia, and the tire at issue had never been distributed in North Carolina. Nevertheless, the North Carolina Court of Appeals exercised general jurisdiction over the Goodyear affiliates on the ground that a relatively small but continuous flow of other tires they made or distributed had reached North Carolina through the "stream of commerce"—*i.e.*, they had been sold to other entities, which in turn distributed them in North Carolina.

Jones Day represented the Goodyear affiliates, who were the petitioners in the Supreme Court. That Court reversed, in a unanimous opinion by Justice Ginsburg that defined general jurisdiction in terms significantly narrower than the version that has been applied in many lower courts. The Court emphasized in three separate places that general jurisdiction was reserved for a state in which the defendant was at "home," including a key passage suggesting that the relevant state for a corporation should be "equivalent" to the state of domicile for an individual: "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." Giving further content to this notion, the Court cited an academic article "identifying domicile, place of incorporation, and principal place of business as 'paradigm' bases for the exercise of general jurisdiction," and referred to *Perkins v. Benguet Consol. Mining Co.*, 342 U. S. 437 (1952)—a case in which the corporation had its principal place of business in the state—as the "textbook" case for general jurisdiction.

The Court thus rejected the state court's "stream of commerce" theory for general jurisdiction, noting with disapproval that the lower court's "sprawling view" would allow "any substantial manufacturer or seller of goods [to] be amenable to suit, on any claim for relief, wherever its products are distributed." And the Court expressly rejected the notion that mere sales of a corporation's products could support general jurisdiction, stating flatly that "even

regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales."

Although *Goodyear* does not expressly criticize any lower court cases other than the North Carolina decision under review, the Court's definition of general jurisdiction as reserved for "home" states unmistakably calls into question the more expansive notions of general jurisdiction that have been applied in many lower courts. It remains to be seen whether the lower courts will fully effectuate *Goodyear*'s suggestion that general jurisdiction should be limited to a corporation's state of incorporation or principal place of business. And it is likewise an open question whether registering to do business in a state (and appointing an agent for service of process) will be treated as a valid consent to general jurisdiction—a question on which there is a split of lower court authority. But, at a minimum, *Goodyear* presents significant new obstacles to forum-shopping plaintiffs and significant new opportunities for defendants to resist jurisdiction in circumstances where that would not have been viable under prior law.

The second decision, *McIntyre*, addressed "specific" personal jurisdiction, which applies when the suit arises from or relates to the defendant's contacts with the state. In particular, *McIntyre* dealt with the "stream of commerce" variant of specific jurisdiction, in which a manufacturer has no direct contact with the forum state, but its products are sold there by a third party distributor and cause injury in the state. In an earlier decision, *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U. S. 102 (1987), the Court split evenly over the circumstances in which such an out-of-state manufacturer could be sued in the state where its products caused injury. After more than two decades without revisiting the issue, the Court appeared poised, in *McIntyre*, to resolve the disagreement in *Asahi*. In a sharply divided opinion, however, the Court failed to do so. Instead, what emerged was a narrow holding—that specific jurisdiction does not exist over a manufacturer when the distributor has made only a single sale in the state, even if that sale leads to an in-state injury involving the manufacturer's product. The Court left all other questions open, deepening the confusion in an already confused area.

In *McIntyre*, the defendant was an English manufacturer of metal-shearing machinery. It distributed its products into the United States through a U.S. distributor, which sold at least one machine to a New Jersey company. An employee of that company, the plaintiff, was injured while working on the machine and brought a product-liability suit against the manufacturer. The New Jersey Supreme Court found specific jurisdiction in New Jersey because (1) the injury occurred there; (2) the defendant had distributed its products through a nationwide distribution system; and (3) the defendant took no steps to prevent its products from reaching New Jersey. The U.S. Supreme Court reversed.

Writing for a plurality that included Chief Justice Roberts and Justices Scalia and Thomas, Justice Kennedy stated that, in cases involving products moving through the stream of commerce, specific jurisdiction is proper only where “the defendant can be said to have targeted the forum.” Applying that standard, the plurality found that the defendant had not targeted New Jersey by establishing a nationwide distribution system, as that fact showed only “an intent to serve the U.S. market.”

In the controlling opinion, Justice Breyer, joined by Justice Alito, agreed that specific jurisdiction was lacking. Justice Breyer concluded “that a single sale of a product in a State does not constitute an adequate basis for asserting jurisdiction over an out-of-state defendant, even if that defendant places his goods in the stream of commerce, fully aware (and hoping) that such a sale will take place.” Justice Breyer, however, refused to “go further,” finding the case an “unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules.” On one hand, he was concerned with how the plurality opinion would apply in different circumstances, such as when a company sells products from a web site, and expressed doubt about the plurality’s strict rule requiring that the defendant specifically targeted a particular state. On the other, he expressed concern that the New Jersey Supreme Court’s decision would unfairly expand specific jurisdiction to reach even a small manufacturer who

sells goods to a global distributor, knowing that the distributor might resell them anywhere in the world.

Justice Ginsburg, in a dissent joined by Justices Sotomayor and Kagan, suggested that a company should not be able to avoid specific jurisdiction with the simple expedient of using “a U.S. distributor to ship its machines state-side.” Instead, she would have held that a manufacturer who engaged a U.S. distributor “to promote and sell its machines in the United States, ‘purposefully availed itself’ of the United States market nationwide, not a market in a single State or a discrete collection of States.” Accordingly, she would have found that specific jurisdiction was proper in “all States in which [the manufacturer’s] products were sold by its exclusive distributor.”

The net result of *McIntyre* is that there are four votes on the Supreme Court for a strict requirement that the defendant has specifically targeted a particular state, and a narrower controlling opinion by Justice Breyer that proposes no general standard to govern stream of commerce cases. In short, the jurisdictional principles governing stream of commerce cases have emerged—against all odds—even murkier than they were under *Asahi*.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

Meir Feder

New York
+1.212.326.7870
mfeder@jonesday.com

Eric E. Murphy

Columbus
+1.614.281.3925
eemurphy@jonesday.com