

United States Supreme Court to Tackle Stream of Commerce Theory for Personal Jurisdiction

by Neal Walters and Paul Jenkins

In a development that may have a significant impact on product liability litigation in New Jersey and nationwide, the U.S. Supreme Court has decided to review a recent New Jersey Supreme Court opinion that expanded the “stream of commerce” theory for personal jurisdiction. The U.S. Supreme Court’s ultimate decision on the appeal may limit the ability of state courts to exercise personal jurisdiction over product companies.

On Sept. 28, 2010, the United States Supreme Court granted *certiorari* in *Nicastro et al. v. McIntyre Machinery America Ltd.*,¹ a case that has been viewed as expanding the stream of commerce theory for personal jurisdiction in New Jersey. *Nicastro* involved a personal injury lawsuit against the British manufacturer of an industrial metal cutter. The New Jersey Supreme Court, in a Feb. 2, 2010, opinion, acknowledged that the manufacturer had no presence in or even “minimum contacts” with New Jersey that would justify a state court’s exercising jurisdiction. Nevertheless, the Court upheld the exercise of personal jurisdiction over the defendant through an expansion of the Court’s existing stream of commerce theory.

The Court in *Nicastro* 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.” Notably, it further held that “a manufacturer [that] does not want to subject itself to the jurisdiction of a New Jersey court while targeting the United States market... must take some reasonable step to prevent the distribution of its products in this State.”

A dissent to the *Nicastro* decision argued that the Court had failed to follow New Jersey’s stream of commerce precedent, which had established that the mere act of placing a product into the stream of commerce was, alone, insufficient to trigger personal jurisdiction. The dissent pointed out that the *Nicastro* opinion could effectively subject a foreign corporation to personal jurisdiction in New Jersey even if the corporation never targeted New Jersey residents and had no other actual contacts with the state.

The United States Supreme Court also granted *certiorari* in a similar North Carolina case, *Goodyear Luxembourg Tires, et al., v. Brown, et al.*² In *Goodyear*, the North Carolina Court exercised personal jurisdiction over foreign tire manufacturers on the basis of a nationwide tire distribution

scheme, even though no evidence existed that the defendants had targeted North Carolina residents. Similar to the Court’s reasoning in *Nicastro*, the Court in *Goodyear* emphasized that the defendants had not taken affirmative steps to limit the distribution of their tires to exclude North Carolina. There was no dissent in *Goodyear*.

Product manufacturers and suppliers need to stay tuned to this development, and the United States Supreme Court’s treatment of the *Nicastro* and *Goodyear* cases. The Court may use these cases to dramatically redefine the stream of commerce theory for personal jurisdiction that has existed in one form or another for several decades. ■

ENDNOTES

1. 201 N.J. 48, 987 A.2d 575 (2010).
2. 681 SE2d 382 (2009), *certif. granted* 131 S. Ct. 63 (2010), ___ WL ___, 79 USLW 3194 (U.S. Sept. 28, 2010) (No. 10-76).

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