

Goodyear and McIntyre: General and Specific Personal Jurisdiction Addressed by the U.S. Supreme Court

On Monday, the United States Supreme Court issued its first decisions on personal jurisdiction since 1990. In *Goodyear Dunlop Tires Operations v. Brown*, the Court unanimously held that there was no general jurisdiction over a non-U.S. subsidiary in North Carolina based only on the subsidiary's products being sold in the state. In *J. McIntyre Machinery Ltd. v. Nicastro*, a divided Court (with no majority) held that a non-U.S. company is not subject to jurisdiction in New Jersey on any stream-of-commerce theory where it sold its products to a distributor in Ohio and never entered, advertised, or sold its products in New Jersey itself. Here is some very preliminary analysis.

In the *Goodyear* case, the families of two North Carolina teenagers killed in a 2004 Paris bus accident alleged a defective Goodyear tire—manufactured by Goodyear subsidiaries based in France, Luxembourg and Turkey—contributed to the crash. The district court held that Goodyear's substantial sales and commercial activities in North Carolina justified the assertion of general jurisdiction over the company. Goodyear, on the other hand, argued that such a broad view of general jurisdiction would mean that companies like it could literally be sued anywhere.

The Supreme Court agreed with Goodyear, and narrowed the permissible instances of general personal jurisdiction to situations analogous to the 1952 case of *Perkins v. Benguet Mining Co.* In that case—which still remains the only instance of general personal jurisdiction ever sustained by the Supreme Court—a Philippines corporation that had ceased all activities there during the Japanese occupation during World War II and was operating entirely out of offices in Ohio during the duration of the War, was subject to general personal jurisdiction in that state. In *Goodyear*, unlike in *Perkins*, the foreign subsidiaries were “in no sense at home in North Carolina” The Court rejected the lower court's “sprawling view” of general jurisdiction under which “any substantial manufacturer or seller

of goods would be amenable to suit, on any claim for relief, wherever its products are distributed.” More is required than simply doing a lot of business in the state. At the very least, the company must be formally registered to do business in the state, have offices or plants or stores in the state, have agents in the state, etc. Some commentators have already remarked that Goodyear “could be read as suggesting that even this is not enough.” Even those examples are not as continuous, systematic, and substantial as having one’s “home” office in the state, as in *Perkins*.

The decision in *McIntyre* clarifies far less than *Goodyear*. This case arose from a products-liability suit filed in New Jersey state court. The plaintiff, a citizen of New Jersey, injured his hand while using a metal-shearing machine manufactured by J. McIntyre Machinery, Ltd., a company incorporated and operating in England. The question was whether the New Jersey courts have jurisdiction over J. McIntyre, notwithstanding the fact that the company neither marketed goods in the State nor shipped them there. The Court granted cert in *McIntyre* to resolve a question that had been left open 25 years ago in *Asahi*: whether putting a product into the stream of commerce expecting it to reach a particular state was sufficient purposeful availment or whether the defendant must somehow “target” the forum.

The Court in *Asahi* divided 4-4-1 on that question, with Justice O’Connor arguing that something more is required and Justice Brennan arguing that placing the product into the stream of commerce was sufficient. A quarter of a century later, four justices, lead by Justice Kennedy, again emphatically rejected the Brennan view, but we still do not have a majority. Fearing the rapid changes to modern commerce and communication, Justice Breyer—joined by Justice Alito—thought it “unwise to announce a rule of broad applicability without full consideration of the modern-day consequences.” In their view, there was no jurisdiction over the defendant here even under a stream-of-commerce theory, and therefore no reason to resolve the question. Some commentators have noted that, while Justice Breyer’s opinion stood in the way of a clear majority, it nevertheless suggests that the Court is not going to wait another twenty years before trying to create a more-modern framework; it just needs the right (likely internet-centered) case.

Much more is left to be written on these decisions, which we will continue to cover on this site.