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***United States Supreme Court Revisits Due Process Limitation on
“Stream of Commerce” Exercise of Personal Jurisdiction¹***

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Ever since the United States Supreme Court established, in *International Shoe v. Washington*,² the modern conceptual boundaries of personal jurisdiction, it has periodically revisited the issue in the face of evolving world commerce. *International Shoe* held that a forum's exercise of personal jurisdiction did not violate federal Due Process so long as the defendant's conduct there evidenced certain “minimum contacts” and jurisdiction comported with “traditional notions of fair play and substantial justice.”³ The Court ruled that a Delaware corporate resident doing business primarily in Missouri was subject to personal jurisdiction for a lawsuit brought in Washington state over the company's failure to pay unemployment taxes for employees working in Washington. But the Court noted that “single or isolated items of activities in a state . . . are not enough to subject [a defendant] to suit on causes of action unconnected with the activities there.”⁴

In so ruling, the Court created a distinction between what has come to be known as “general” personal jurisdiction, where the acts that create purported “minimum contacts” in the forum are not directly connected to the act or controversy giving rise to the lawsuit, and “specific” personal jurisdiction, where they are. Subsequently, in *McGee v. International Life Insurance Co.*, the Court established that single or isolated acts related to the controversy would support specific jurisdiction.⁵

While these broad proclamations of “minimum contacts” and “fair play and substantial justice” today remain the outer boundaries of a Constitutional Due Process analysis of personal jurisdiction, they do not provide an easy answer for courts or practitioners dealing with practical, everyday questions involving the limits of a court's power. The Supreme Court has largely left it to the state and lower federal courts to develop their own jurisprudence over this domain within these Constitutional bounds. Nevertheless, the Supreme Court occasionally examines the issue and provides further guidance as to its limitations, particularly in the cases of defendants who place goods or services into the “stream of commerce.”

1 This article was originally published in the Fall 2011 issue of The Sidebar, a publication of the American Association for Justice. All rights are reserved by the author.

2 326 U.S. 310 (1945).

3 *Id.* at 316.

4 *Id.* at 317.

5 355 U.S. 220 (1957).

Notable decisions involving this evolving jurisdictional concept include *World-Wide Volkswagen v. Woodson*,⁶ which rejected a claim of personal jurisdiction in an Oklahoma state court based solely on the fact that the subject wreck occurred there, where the defendant had no other contacts with the forum; *Helicopteros Nacionales de Columbia, S.A., v. Hall*,⁷ which also rejected personal jurisdiction based on the defendant's regular purchases from the forum state, where the claim arose outside the forum; and *Asahi Metal Industry Co. v. Superior Court*,⁸ which once again found personal jurisdiction lacking, where the defendant placed an allegedly defective tire component into the stream of commerce that ended up in the forum state of California. The *Asahi* Court elaborated on the “fair play and substantial justice” aspect of *International Shoe* and held that jurisdiction was improper, in part, because the benefit to the plaintiff in maintaining jurisdiction in California was slight, while the burden on the defendant was severe.

This past summer, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*⁹ and *J. McIntyre Machinery, Ltd., v. Nicastro*,¹⁰ the Supreme Court issued its latest proclamations concerning the extent to which a forum can exercise personal jurisdiction based on a “stream of commerce” analysis in the context general and specific jurisdiction, respectively.

In *Goodyear Dunlop*, the parents of two minor children killed in a bus accident outside Paris filed suit in a North Carolina state court against Goodyear Tire and Rubber Company (Goodyear USA) and three foreign subsidiaries, one of which, based in Turkey, manufactured a tire alleged to have caused the bus wreck. Goodyear USA acknowledged that it regularly engaged in commercial activity in North Carolina and did not object to personal jurisdiction there. The remaining defendants did object, arguing that they had insufficient minimum contacts with the state to subject them to personal jurisdiction there, as the tires they manufactured were not typically sold in the United States. But the plaintiffs claimed, and the Supreme Court acknowledged, that at least some of the tires manufactured by the subsidiaries entered the stream of commerce and made their way to North Carolina, and further, that the tire involved in the Paris wreck bore markings permitting its sale in the U.S.¹¹ The Court noted that the number of such tires reaching North Carolina was “tens of thousands out of tens of millions”

6 444 U.S. 286 (1980)

7 466 U.S. 408 (1984).

8 480 U.S. 102 (1987).

9 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. ___, 131 S. Ct. 2846 (June 27, 2011).

10 *J. McIntyre Machinery, Ltd., v. Nicastro*, 564 U.S. ___, 131 S. Ct. 2780 (June 27, 2011).

11 The Court noted, however, that this did not necessarily mean that the tires were intended for sale in the United States.

manufactured between 2004 and 2007.¹² The plaintiffs sought to invoke jurisdiction over the subsidiaries on the basis of this general stream-of-commerce contact.

Both the Supreme Court and the North Carolina appellate court agreed that the question was one of general, rather than specific, personal jurisdiction, since the case was neither related to, nor arose from, the tires that reached the state. The North Carolina court held that the subsidiary-produced tires reached North Carolina as a result of having been placed in the stream of commerce “without any limitation on the extent to which those tires could be sold” there, and therefore the companies had established sufficient minimum contacts to justify personal jurisdiction.¹³ In a unanimous decision authored by Justice Ginsburg, the Supreme Court disagreed and reversed.

The *Goodyear Dunlop* Court noted that only two of its post-*International Shoe* cases, *Perkins v. Benguet Consolidated Mining Co.*¹⁴ and *Helicopteros*,¹⁵ had addressed the limits of general personal jurisdiction, which requires a showing that the foreign defendant's contacts with the state are sufficiently continuous and systematic to justify being brought into court. The Court reaffirmed *Perkins* as the prototypical case where general jurisdiction would be appropriate. In that case, the Court found jurisdiction to be appropriate in Ohio where, although the defendant was a Philippine company, it conducted all of its business activities in the forum state. It was, the Court held, essentially at home in Ohio, and had conducted virtually all of its operations from that forum during the period in which the act giving rise to the lawsuit had occurred. Turning back to the case before it, the Court held that Goodyear Dunlop presented a factual scenario closer to *Helicopteros*, where, although the defendant had engaged in substantial commerce within the forum state, it could not be considered “at home” there, and the *Goodyear Dunlop* Court declined to expand jurisdiction in that context. This ruling serves to affirm a sharp limitation of court power under the general-personal-jurisdiction theory.

In its other decision, *Nicastro*, the Court addressed the arguably more difficult question of whether a defendant was subject to jurisdiction in a forum (a New Jersey state court) where its product, finding its way to that forum, had caused injury. Since the product placed into commerce was, itself, the mechanism of the injury, the case involved an analysis of specific personal jurisdiction. *Nicastro* was

¹² Slip op. at 12, 131 S. Ct. at 2852.

¹³ The North Carolina plaintiffs based jurisdiction on a provision of the state's long-arm statute that provided a forum in the state for any claim to the full extent of federal due process, regardless of where the tort and injury occurred. N.C. Gen. Stat. § 1-75.4 (1)(d). Not all states have such provisions and in those states, an exercise of personal jurisdiction may be limited even where federal Due Process is satisfied.

¹⁴ 342 U.S. 437 (1952).

¹⁵ 466 U.S. 408.

injured by a metal-shearing machine manufactured in England and sold through a U.S. distributor. The New Jersey supreme court held that jurisdiction in the state was proper based on the existence of the U.S. distributor, the sale of at least one, but no more than four, of the company's machines in the state, and the attendance of company officials at trade shows in several U.S. states (but none in New Jersey).

A divided Supreme Court reversed the decision, with Justices Breyer and Alito concurring and agreeing with the reversal, but disagreeing that the case should serve as a vehicle for a broad pronouncement of jurisdictional doctrine, since the facts did not implicate modern international commerce concerns. Justice Ginsburg dissented, joined by Justices Sotomayor and Kagan.

The opinion by Justice Kennedy noted that an exercise of personal jurisdiction requires some act by which the defendant “purposefully avails itself”¹⁶ of the forum state. It acknowledged the uncertainty arising from its decision in *Asahi* with regard to the implications of a stream-of-commerce analysis and noted that by placing a product into that stream of commerce a defendant *may* have purposefully availed itself of the forum.¹⁷ Nevertheless, under the facts presented, the Court held that New Jersey lacked personal jurisdiction over the defendant, finding that the defendant's limited contacts with the state were insufficient to demonstrate such purposeful availment, despite the fact that it derived substantial income from U.S. sales. Thus, the Court held, the fact that a defendant's product reaches a forum state through the stream of commerce is, without more, insufficient to establish personal jurisdiction over the defendant. Justice Ginsburg's dissent argued that the majority's opinion “turn[ed] back the clock” to a time before the development of modern long-arm jurisprudence where manufacturers of dangerous products could escape accountability by selling their products through independent domestic distributors.¹⁸

In sum, *Goodyear Dunlop* and *Nicastro* embody the Supreme Court's reluctance to expand the jurisdictional reach of U.S. courts, and, at least in under the facts presented therein, to limit their availability in cases involving an invocation of personal jurisdiction based solely a defendant's participation in international commerce. The state and lower federal courts will likely reach varied decisions within the limitations of these decisions until the Supreme Court again decides to address the issue.

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16 Slip op. at 9, 131 S. Ct. at 2785 (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

17 Slip op. at 16, 131 S. Ct. at 2788 (citing *World-Wide Volkswagen*, 444 U.S. at 298).

18 Slip op. at 35-36, 131 S. Ct. at 2794-95.