

# Client Alert **Product Liability Law**

## *U.S. Supreme Court Reverses New Jersey's Exercise of Personal Jurisdiction Over Foreign Manufacturer*

In *J. McIntyre Machinery, Ltd. v. Nicastro*, Docket No. 09-1343, 2011 U.S. LEXIS 4800 (June 27, 2011), the U.S. Supreme Court reversed a New Jersey Supreme Court holding that courts in this state can exercise personal jurisdiction over a foreign manufacturer defendant in a product liability action under a “stream of commerce” theory if, based on its nationwide distribution system, the manufacturer has reason to know that its product may end up in New Jersey. The U.S. Supreme Court held that the proper analysis required a demonstration that the foreign manufacturer “purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” Because the foreign manufacturer did not advertise, sell its product, conduct business, or otherwise target the State of New Jersey, it was not subject to jurisdiction in New Jersey in the underlying products liability lawsuit. Although six Justices agreed to reverse the New Jersey Supreme Court, the Court failed to issue a majority opinion.<sup>1</sup>

### **Summary of the Case**

Petitioner J. McIntyre Machinery, Ltd. (“J. McIntyre”), a United Kingdom company, manufactured recycling machines and sold them in the United States exclusively through an independently owned and operated distributor, McIntyre Machinery America,

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<sup>1</sup> Justice Kennedy delivered the opinion joined by Chief Justice Roberts and Justices Scalia and Thomas. Justices Breyer, joined by Justice Alito, filed an opinion concurring in the judgment, but not the reasoning of Justice Kennedy. Justice Ginsburg filed a dissenting opinion joined by Justices Sotomayor and Kagan.

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Ltd. (“McIntyre America”), based in Ohio. McIntyre America sold the recycling machine to Nicastro’s employer during a 1995 trade show in Las Vegas and shipped the machine to New Jersey. In October 2001, Nicastro was injured during a work-place accident involving the machine resulting in the loss of four fingers. Jurisdictional discovery revealed that: 1) J. McIntyre targeted the United States market as a whole by engaging McIntyre America to sell J. McIntyre’s machines throughout the country; 2) J. McIntyre attended annual scrap recycling industry trade shows with McIntyre America in the U.S. to advertise its machines; and 3) no more than four of J. McIntyre’s recycling machines ended up in New Jersey. However, there was no evidence that J. McIntyre targeted New Jersey in any specific manner, or that McIntyre America was under J. McIntyre’s control.

### Rejection of the Stream of Commerce Doctrine of Jurisdiction

Relying on the “stream of commerce” doctrine of jurisdiction, the New Jersey Supreme Court held that J. McIntyre was subject to jurisdiction in New Jersey because it knew or had reason to know that through its distribution scheme, J. McIntyre products were being sold in New Jersey. Although never adopted by a majority of the U.S. Supreme Court, the stream of commerce theory of jurisdiction, as set forth in Justice Brennan’s concurring opinion for four Justices in *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102 (1987), provides that jurisdiction based on the placement of a product into the stream of commerce satisfies due process if the defendant was aware that its product was being marketed in the forum state. Justice O’Connor, also writing for only four Justices in *Asahi*, rejected Justice Brennan’s stream of commerce theory on the grounds that merely placing a product into the stream of commerce was insufficient to satisfy due process, without more, because it did not demonstrate acts by the defendant purposefully directed toward the forum State.

In *J. McIntyre v. Nicastro*, Justice Kennedy attempted to clarify the *Asahi* decision by reiterating the general rule that “the exercise of judicial power is not lawful unless the defendant ‘purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its law.’” *Id.* at \*9 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). Justice Kennedy noted that a “[c]ourt may subject a defendant to judgment only when the defendant has sufficient contacts with the sovereign such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Id.* at \*13 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotations omitted)). While the “stream of commerce” theory may subject manufacturers and distributors to jurisdiction in a particular State under certain circumstances, it only applies in situations “where the defendant can be

said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.” *Id.* at \*16-17.

Despite New Jersey’s interests in affording protection to a New Jersey citizen injured in New Jersey by J. McIntyre’s product, Justice Kennedy determined that the stream of commerce theory could not supersede the limits on judicial authority guaranteed by the Due Process Clause and, therefore, could not subject J. McIntyre to jurisdiction in New Jersey without evidence that “reveals an intent to invoke or benefit from the protection of [New Jersey’s] laws.” *Id.* at \*24-25. As framed by Justice Kennedy, the jurisdictional rule should focus on “whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct.” *Id.* at \*20.

### Justice Breyer’s Concurring Opinion

Justices Breyer disagreed with Justice Kennedy’s reasoning. While acknowledging that the “globalization of the world economy has removed national borders as barriers to trade” that may require adoption of new rules of law, Justice Breyer determined that this was not the appropriate case to overrule the Court’s precedents or to announce a new jurisdictional rule of broad applicability. *Id.* at \*25-26.

In agreeing to reverse the New Jersey Supreme Court, Justice Breyer determined that under existing precedents, Nicastro failed to satisfy his burden of demonstrating that it was proper to exercise jurisdiction over J. McIntyre, who manufactured machines in the United Kingdom, sold them through an independent distributor in Ohio, and attended trade shows in the United States, but not in New Jersey. *Id.* at \*26-27. Although Justice Breyer acknowledged that the global economy might require a re-examination of the Court’s current jurisdictional precedents, he determined that this matter was not the appropriate case “without a better understanding of the relevant contemporary commercial circumstances” and that he could only concur in the judgment finding no jurisdiction over J. McIntyre in New Jersey. *Id.* at \*34-35.

### Justice Ginsburg’s Dissent

Justice Ginsburg wrote that, “the splintered majority today ‘turn[s] the clock back to the days before modern long-arm statutes when a manufacturer, to avoid being haled into court where a user is injured, need only Pilate-like wash its hands of a product by having independent distributors market it.’” *Id.* at 36 (citation omitted). She feared that

the Court's decision would allow foreign manufacturers to insulate themselves from products liability litigation in the U.S. by engaging a U.S. distributor to ship its goods throughout the U.S. market. Justice Ginsburg cautioned that the Court's decision may very well prevent States from protecting their citizens against defective products. Under the facts presented, she found that J. McIntyre engaged McIntyre America to promote and sell its machines throughout United States and, thus, purposefully availed itself of the U.S. market and to jurisdiction in New Jersey, the fourth largest U.S. market in which its products were sold and where its machine injured a New Jersey resident. *Id.* at \*54-57. In her view, New Jersey's exercise of jurisdiction over J. McIntyre satisfied due process because by targeting the U.S. market as a whole J. McIntyre was subject to jurisdiction throughout the U.S., and New Jersey, where plaintiff resided and where the accident occurred. *Id.* at \*44-48, 55-57.

### Ramifications for Foreign Manufacturers

The Court's decision presents a significant victory for foreign manufacturers who distribute their products through an independent U.S. distributor. Although the Court did not produce a majority opinion, there was consensus among a majority that Justice Brennan's "stream of commerce" theory alone cannot subject a foreign manufacturer to jurisdiction without additional evidence of purposefully targeting the forum State. In light of the ever changing global economy, *Nicastro* is unlikely to be the Court's final word on jurisdiction over foreign manufacturers in products liability lawsuits. For the time being, however, foreign manufacturers will likely be able to avoid jurisdiction by utilizing an independent nationwide distributor that targets the entire U.S. market without specifically targeting any one State in particular.

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