

# Client Alert **Product Liability Law**

## *New Jersey Appellate Division Reverses Exercise of Personal Jurisdiction Over Foreign Manufacturer*

Several years ago, the U.S. Supreme Court reversed the New Jersey Supreme Court's exercise of personal jurisdiction over a foreign manufacturer in *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011). In *Nicastro*, the U.S. Supreme Court reviewed New Jersey's exercise of personal jurisdiction over a foreign manufacturer defendant in a product liability action under a "stream of commerce" theory. 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." Three years later, in *Patel v. Karnavati America LLC*, Docket No. A-2737-13T4, 2014 N.J. Super. LEXIS 139 (N.J. App. Div. Oct 9, 2014), the New Jersey Appellate Division applying *Nicastro*, reversed the trial court's determination that it had personal jurisdiction over a foreign manufacturer. Although the foreign manufacturer sold the allegedly defective machine to a distributor located in New Jersey, and knew that the machine would be re-sold to a New Jersey company for purposes of being used in New Jersey, the Appellate Division held that the record did not demonstrate sufficient "purposeful acts" for which the foreign manufacturer defendant would be on notice that it could be subject to jurisdiction in New Jersey.

### **Summary of the Case**

In November 2008, Plaintiff, a New Jersey resident, was injured at work in New Jersey while using a tablet press machine manufactured in India by Defendant Karnavati

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Engineering, Ltd. (“Karnavati”). Plaintiff asserted various product liability, breach of warranty and negligence claims against several defendants, including Karnavati, and the distributor GlobePharma, Inc. (“Globe”).

In 1998, Globe and Karnavati had entered into a two year “Exclusive Distribution Agreement”. The agreement expired in 2000, but Globe continued to acquire and resell Karnavati machinery on a non-exclusive basis. In 2002, Globe submitted a purchase order for the machine in question. Globe’s purchase order specifically stated that: (1) the machine needed to include specific modifications suggested by Plaintiff’s employer, Neil Laboratories/Advent Pharmaceuticals (“Neil Labs”); (2) Neil Labs would be visiting Karnavati in India for a trial run of the machine; and (3) Neil Labs had to be “totally satisfied” before it would accept the machine from Globe. In 2002, Globe paid for and took possession of the machine in India and then resold it to Neil Labs, located in New Jersey.

In its motion to dismiss for lack of jurisdiction, Karnavati, an India corporation which operated in India, demonstrated that the machine was manufactured and sold in India. Although Karnavati knew that it was selling the machine to Globe, a distributor located in New Jersey, and that Globe intended to re-sell the machine to Neil Labs to be used in New Jersey, Karnavati argued that since its incorporation, it had shipped only one machine to the U.S., was not registered to do business in New Jersey, did not advertise in New Jersey, never engaged in any sales in New Jersey, never paid taxes or solicited business in New Jersey, never attended any trade shows or conferences to advertise the machine in New Jersey specifically or in the U.S. generally, and never sent any employees to New Jersey. Furthermore, Karnavati never had any personal property, never owned any bank accounts, and never maintained any insurance for its products in New Jersey.

The trial court held that Karnavati was subject to jurisdiction in New Jersey. In distinguishing *Nicastro*, the trial court determined that jurisdiction was not based on Karnavati’s marketing efforts in the United States. Instead, the trial court found that the purchase order demonstrated that the machine was produced and sold for the purpose of benefitting a New Jersey company in New Jersey. As a result, the trial court determined that Karnavati had “purposely availed itself” of New Jersey and could be sued in New Jersey to answer for Plaintiff’s injuries.

In reversing the trial court, the Appellate Division explained that general jurisdiction only extends to out-of-state parties who have had sufficient contacts with New Jersey, and where those contacts satisfied the Due Process Clause of the Fourteenth Amendment and do not offend “traditional notions of fair play and substantial justice.”

The Appellate Division stated that a party may be subject to specific jurisdiction if the claims asserted arise directly out of the party's contact with New Jersey. Based on the record before it, the Appellate Division analyzed whether the sale of a single machine to Globe in India, even with Karnavati knowing that the machine would be delivered to an end-user in New Jersey, subjected Karnavati to jurisdiction in New Jersey.

Relying on *Nicastro*, the Appellate Division determined that Karnavati's knowledge that Globe, a New Jersey corporation, planned to re-sell the machine for use in New Jersey was insufficient to establish specific jurisdiction. The Appellate Division reasoned that these facts were insufficient because the sale occurred in India, the sale was not pursuant to Globe's expired exclusive distribution agreement with Karnavati, and there was insufficient evidence to demonstrate what interaction Karnavati had with Neil Labs in New Jersey. Indeed, Plaintiff and Globe presented no evidence to support any course of dealings between Neil Labs and Karnavati regarding the sale, or that Neil Labs interacted directly with Karnavati regarding the machine.

In addition, the Appellate Division rejected the argument that Karnavati's sale of the machine to Globe in India, where the purchase order stated that Globe intended to resell the machine in New Jersey, was sufficient under a post-*Nicastro* stream of commerce theory. Plaintiff and Globe failed to demonstrate Karnavati regularly sold machines to Globe in New Jersey, marketed in New Jersey, designed the machine for the New Jersey market, or provided services or advice to actual or potential New Jersey customers. Based on the record before it, the Appellate Division determined that Karnavati was not subject to specific jurisdiction in New Jersey because it had not purposely availed itself of the "privilege of conducting activities within the forum State."

### Ramifications for Foreign Manufacturers

The Appellate Division's Court's decision presents another victory for foreign manufacturers. A foreign manufacturer's knowledge that its product will be resold for use in New Jersey is not simply enough to satisfy the requisite "purposeful acts" in the post-*Nicastro* legal environment.

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If you would like additional information, please contact:

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**Beth S. Rose, Esq.**  
Chair, Product Liability Practice Group  
brose@sillscummis.com  
(973) 643-5877

**Charles J. Falletta, Esq.**  
Member, Product Liability Practice Group  
cfalletta@sillscummis.com  
(973) 643-5926