

CLIENT ALERT

Supreme Court Hears Arguments on Expanding U.S. Jurisdictional Reach over Foreign Manufacturers

Jan.26.2011

On January 11, 2011, the Supreme Court heard arguments in two cases from state supreme courts that, if affirmed, would significantly expand the reach of U.S. courts' jurisdiction over foreign manufacturers whose products are sold in the United States. The first case, *McIntyre Machinery, Ltd. v. Nicaastro* (New Jersey), involved specific personal jurisdiction, the type of jurisdiction that is based on the ties between the defendant, the forum state, and the cause of action in a particular case. The second, *Goodyear v. Brown* (North Carolina), involved general personal jurisdiction, which is based more broadly on whether the defendant has established "continuous and systematic" ties with the forum state.

The Supreme Court has not addressed the issue of personal jurisdiction - either general or specific - since the 1980s. It last dealt with general jurisdiction in *Helicopteros Nacionales v. Hall* in 1984, holding that a Colombian corporation could not be sued in a Texas court for deaths that occurred with the crash of one of its helicopters in Peru, because the corporation had not formed continuous and systematic general business contacts with the state of Texas. In 1987 the Court issued a split opinion on the specific jurisdiction issue in *Asahi Metal Industry Co. v. Superior Court of California*. Four Justices, led in an opinion by Justice Sandra Day O'Connor, favored a test that required not only placing a product into the stream of commerce, but some additional action by the defendant "purposefully directed towards the forum state." The four Justices led by Justice Brennan, however, opined that "no additional conduct was needed" and that because a defendant benefited from the sale of the product in the forum state and the protection of the forum state's commercial laws, a foreign manufacturer should reasonably foresee being subjected to that state's jurisdiction. These two plurality opinions have left U.S. courts confused as to what test to apply in finding specific jurisdiction.

Both respondents in *Goodyear* and *McIntyre* argued that global trade has evolved to the extent that enabling U.S. citizens to sue foreign manufacturers for product-related injuries in U.S. state courts is necessary to hold foreign manufacturers accountable for defective products that they market in the U.S. On the other side, with the U.S. weighing in through an amicus brief, the Justices expressed concern with the potential consequences for global trade and foreign relations if they were to find personal jurisdiction over the foreign manufacturers in these cases. Justice Breyer observed, "I would worry . . . about a rule of law that subjects every small business . . . in every developing country to have to be aware of the law in 50 States simply because they agreed to sell to an independent company who is going to sell to America."

While it is difficult to predict how the Supreme Court will rule, the results could have significant legal and business consequences for the following foreign manufacturers whose products are sold in the United States:

- **Foreign manufacturers that are subsidiaries of U.S. companies:** If the Court finds general jurisdiction in *Goodyear* based on the relationship between the U.S. parent and its subsidiaries, it could mean an increased risk of lawsuits for foreign manufacturers who sell products primarily to other countries, but who are nonetheless subsidiaries of a U.S. company and manufacture their products at the direction of that parent company.

- **Foreign subsidiaries of U.S. companies whose products are involved in an accident that injures U.S. citizens outside the United States:** If the Court finds general jurisdiction in *Goodyear*, U.S. citizens – or even non-U.S. citizens - injured in accidents involving products manufactured by a foreign subsidiary of a US company, in a location outside the U.S., could theoretically sue the foreign manufacturer in a court in the U.S. Although *forum non conveniens* arguments would still be available for the foreign manufacturer in such cases, they would still incur significant costs in responding to these suits.
- **Foreign manufacturers with U.S. distributors:** If the Court finds specific jurisdiction in *McIntyre*, a foreign manufacturer that utilizes a U.S. distributor to sell its products anywhere in the United States could be found to "target" the forum state sufficiently to establish personal jurisdiction.
- **Foreign manufacturers that sell products to U.S. citizens via the Internet:** Although the parties did not raise this issue in their briefs, Justices Alito and Breyer voiced concern during argument about whether personal jurisdiction would exist for a foreign manufacturer that never set foot in the United States but sold products to U.S. citizens online. Counsel for the respondent in *McIntyre* stated that "it depends on the website," but argued that at a minimum, Internet sales to U.S. buyers should constitute "targeting the forum state" and thereby give rise to personal jurisdiction over the manufacturer.
- **Foreign manufacturers of component parts:** *McIntyre* raises the question of whether specific jurisdiction exists for foreign manufacturers who sell component parts that end up in the United States. The manufacturer's counsel in *McIntyre* conceded that if component part manufacturers "specifically target" the United States, jurisdiction may exist. Targeting the U.S. could include (1) forming a joint venture whereby one partner manufactures the components and the other the end product and the product is sold in the United States; or (2) selling components to a foreign company that only sells its products to the United States.

Crowell & Moring is following these cases closely and will advise when the Supreme Court issues its decision in these two cases. Both foreign manufacturers and U.S. companies with manufacturing facilities outside the U.S. should be concerned about the possible expansion of the concept of personal jurisdiction.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Laurel Pyke Malson

Partner – Washington, D.C.
Phone: +1 202.624.2576
Email: lmalson@crowell.com

Clifford J. Zatz

Partner – Washington, D.C.
Phone: +1 202.624.2810
Email: czatz@crowell.com