

Personal Jurisdiction – SUPREME COURT UPDATE

David Popowski*



In the 2010 Term, the United States Supreme Court issued two decisions on the same day (June 27, 2011) regarding personal jurisdiction: *J. McIntyre Machinery, Ltd., v. Robert Nicastro*,¹ and *Goodyear Dunlop Tires Operations, S. A., v. Edgar D. Brown*.² Both decisions involve product liability cases and focus on the “stream of commerce” doctrine. The decisions are, however, insightful for transportation lawyers.

In *McIntyre*, Plaintiff, who worked in the metal recycling industry, severed four fingers on his right hand while using a metal-shearing machine in New Jersey that was manufactured in England by Defendant, an English company. The machine cost approximately \$23,000 and was sold by a distributor in the United States with no more than four sold in New Jersey. The lower court relied on the “stream of commerce” doctrine to find jurisdiction in New Jersey concluding that the manufacturer knew or reasonably should have known its products are distributed through a nationwide distribution system which might lead to sales in any state in the United States. The Supreme Court reversed 6 to 3 in a plurality decision written by Justice Kennedy, joined by Chief Justice Roberts and Justices Scalia and Thomas, and essentially eviscerated “stream of commerce.” The Court stated that the company had no office in New Jersey; it neither paid taxes nor owned property there; and it neither advertised in nor sent any employees to that state. It declared that *McIntyre Machinery* did not have a single contact with the state apart from the fact that the machine in question ended up there.³

In a concurring opinion, Justice Breyer, joined by Justice Alito, agreed that the New Jersey Supreme Court’s judgment must be reversed, but concluded that because this case does not present issues arising from recent changes in commerce and communication, it is unwise to announce a rule of broad applicability without fully considering modern-day consequences.

The plurality seems to state strict rules that limit jurisdiction where a defendant does not “inten[d] to submit to the power of a sovereign” and cannot be said to have targeted the forum. [cite omitted]. But what do those standards mean when a company targets the world by selling products from its Web site? And, does it matter if, instead of shipping the products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And, what if the company markets its products through pop-up advertisements it knows will be viewed in a forum? Those issues have serious commercial consequences but are totally absent in this case.⁴

Justice Ginsburg filed a dissenting opinion, joined by Justices Sotomayor and Kagan, in which she pointed to more extensive contacts by Defendant including active participation in trade shows in the United States.

Is not the burden on *McIntyre* UK to defend in New Jersey

fair, *i.e.*, a reasonable cost of transacting business internationally, in comparison to the burden on *Nicastro* to go to Nottingham, England to gain recompense for an injury he sustained using *McIntyre*’s product at his workplace in Saddle Brook, New Jersey?

The facts in *Goodyear* are that a bus en route to Charles DeGaulle Airport with young soccer players from North Carolina overturned outside of Paris and two 13 year-old boys died. Their parents sued *Goodyear USA*, an Ohio corporation, and three of its foreign subsidiaries in North Carolina because the plies of the tires separated. The tires were manufactured for the European and Asian markets and differ in size and construction from tires sold in the United States. Even though a small percentage of the non-U.S. tires were distributed in North Carolina, the lower court found there was jurisdiction. The Supreme Court, in an obviously easier decision than *McIntyre*, reversed in a unanimous decision by Justice Ginsburg in which she concluded: “[Defendants] are in no sense at home in North Carolina. Their attenuated connections to the State [cite omitted] fall far short of the ‘the continuous and systematic general business contacts’ necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State.”⁵

*Popowski Law Firm, LLC, Charleston, South Carolina


These cases bring to mind two decisions involving personal jurisdiction in truck accident cases: *Ocepek v. Corporate Transport, Inc.*,⁶ and later *Tyler v. Gaines Motor Lines, Inc.*⁷

In *Ocepek*, Plaintiff brought suit in Missouri for an accident which occurred in Ohio with a trucking company whose principal place of business was in New York. The Court held that the presence of an agent designated pursuant to (now) 49 U.S.C. §13304(a), **Service of process in court proceedings –Designation of agent**, is sufficient to confer personal jurisdiction on the District Court noting that the general rule is consent is a traditional basis for establishing personal jurisdiction.

In *Tyler*, two Plaintiffs originally from Florida who were injured in an accident with a Gaines Motor Lines truck in Asheville, North Carolina, brought suit in Maryland where Plaintiffs had subsequently moved and were being treated.

Gaines was regularly engaged in the transportation of textiles along the eastern seaboard, with terminals in the Carolinas, Virginia, Rhode Island, and New Jersey. Its trucks frequently traveled through Maryland, but it had only two customers there. It averaged 1.5 pickups/deliveries per week over the relevant year (out of 3,400 pickups/deliveries accomplished per week by Gaines). Gaines contended it did not actively pursue business within Maryland. It did log 119,000 miles on the highways of Maryland in 2000 and 126,000 miles in 2001 (out of 9,944,951 total miles and 10,877,851 total miles for those years respectively). Gaines was not registered to do business in Maryland, but had a registered agent for service of process pursuant 49 U.S.C. §13304(a). Gaines did not purchase fuel permits from or pay fuel tax directly to Maryland, nor did it register or garage any of its equipment within the state. Finally, Gaines had no employees in Maryland. The Court

held that: “Gaines’s designation of an agent for service of process pursuant to the Interstate Commerce Act does not provide the ‘consent’ of the corporation to be sued in the State of Maryland for a matter unrelated to its contacts with the state. [The Court] will consider Gaines’s appointment of an agent as part of the minimum contacts analysis.”⁸ The Court then transferred the case to North Carolina instead of dismissing for lack of personal jurisdiction to avoid an unnecessary legal issue.

It seems clear the personal jurisdiction debate has tightened with the site of the cause of action and a Defendant’s presence within a State being the driving factual inquiries. As transportation lawyers, our minds can certainly wander to a variety of factual circumstances where *McIntyre* and *Goodyear* can act as search lights for our lost ships. 

Endnotes

1. 131 S. Ct. 2780 (2010).
2. 131 S. Ct. 2846 (2010).
3. The Court noted that Congress could authorize the exercise of jurisdiction in an appropriate court and thus a litigant may thereby have the requisite relationship with the United States government, but not with the government of any individual State. *Supra* at 2790.
4. *Supra* at 2793.
5. *Supra* at 2857.
6. 950 F.2d 556 (8th Cir. 1991).
7. 245 F. Supp. 2d 730 (D. Md. 2003).
8. *Id.* at 732.