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The business friendly and more often conservative majority of the US Supreme Court has re-visited issues regarding the amenability of foreign corporations to US lawsuits. In both decisions released on Monday the court narrowed the scope of a state's right to assert personal jurisdiction against foreign manufacturers.

The first of the two decisions focused on a state's right to assert general jurisdiction over a foreign corporation. General jurisdiction permits a forum to hear any type of claim against a defendant, even if the claim has no relationship to the forum or did not arise from the defendant's specific activities within the forum. This is the broadest of the jurisdictional bases permitted. The second basis, referred to as specific jurisdiction, permits a state to hear a claim against a foreign manufacturer for only the claim related to the jurisdictional creating activity that occurs within the state, i.e., contract performed in the state, or sending a product into the forum that causes injury. Specific jurisdiction confers jurisdiction over a foreign defendant for only those claims from which the specific activity has created the controversy at issue.

In Goodyear Dunlop Tires SA v Brown the court considered whether a foreign manufacturer could be haled into a state court for a foreign accident in which the product was never manufactured or sold from or to the forum state. In essence, under what circumstances could the state consider a claim against a foreign manufacturer for an incident with no relationship to the state.

Residents of North Carolina brought a lawsuit for injuries and death to their son who died in a bus accident in Paris, France. The targeted product was the tire and the US plaintiffs named both the US tire company and certain foreign affiliates. However, it was the foreign affiliates who had manufactured and sold the tires – in the European markets. While these were affiliated companies of the US company (the international tire and rubber corporation, Goodyear), the foreign affiliates did not manufacture tires in the United States, had no offices in the United States, never solicited business nor did they directly ship tires to the United States. A small percentage of tires (numbers in the tens of thousands – as opposed to millions) were distributed in the United States by US affiliates – not the foreign affiliates.

The state court, however, denied a motion to dismiss. The court held that it could exercise general jurisdiction over the foreign manufacturer and hear the non North Carolina related claim premised on the sole fact that there was evidence that tires manufactured by these foreign entities (not even the tires related to the Paris accident) reached North Carolina through the “stream of commerce.”

The United States Supreme Court reversed the lower court decision since the claims were unrelated to any activity of the foreign entities in the forum State. The general rule has been that a court may assert general jurisdiction over foreign corporations to hear all claims against them when the affiliations or activities of the foreign corporation within the state are so continuous and systematic as to render them essentially at home in the forum state.

It was clear that specific jurisdiction could not be a basis to hold the foreign entities as defendants. The accident occurred in France, the tire was manufactured and sold abroad. The question was whether general jurisdiction existed based on the North Carolina appellate court finding that certain tires made abroad by these entities reached North Carolina through the stream of commerce. The North Carolina appellate court found that tires from these foreign entities reached North Carolina as a consequence of a highly organized distribution process involving other Goodyear USA subsidiaries and that the tires in Paris conformed to tire standards established by the United States Department of Transportation and bore markings for sale in the United States.

The Supreme Court rejected this position finding that so limited a connection between the forum and foreign corporation was clearly an inadequate basis for the exercise of general jurisdiction. It did not establish the continuous and systematic affiliation necessary to empower a court to entertain claims unrelated to the foreign corporation's contacts with the State. Noting that the United States Constitution's 14th amendment due process considerations required rules that promoted fair play and substantial justice, the Supreme Court found that continuous corporate operations within a state must be so substantial and of such a nature as to justify a suit against it on causes of action arising from dealings entirely distinct from those activities.

The Supreme Court noted that it has seldom considered the general jurisdiction criteria – yet over the years some courts have invoked a stream of commerce criteria to permit jurisdiction – where a product has traveled through an extensive chain of distribution before reaching the ultimate consumer.

The court's decision, therefore, sought to clarify the quality and nature of business activity that would be required to constitutionally permit the exercise of general jurisdiction. While the sending of a product into a state might support a claim for specific jurisdiction where the injury arose from that activity, it would not and should not bolster the exercise of general jurisdiction. Therefore, any and all continuous activities within a state might not necessarily support a finding that the foreign corporation is constitutionally amenable to suits unrelated to the in state activities. The mere purchases or sales of products in the state, even if occurring at regular intervals, may not be enough to warrant the assertion of general jurisdiction. Every seller of goods does not by virtue of the sale appoint the goods as his agent for service of process. The court noted that even regularly occurring sales of a product would not justify the exercise of jurisdiction over a claim unrelated to those sales.

A second argument relied upon by the plaintiffs was also rejected - a single enterprise theory – an argument that sought to consolidate all the Goodyear companies. This theory would seek to pierce the corporate veils for jurisdiction. The court's summary rejection of this theory undermines plaintiff bar reliance on the growth of the multi national and multi faceted corporation as a back door means of subjecting peripheral foreign members of the corporate

family to United States jurisdiction based on the parent or some affiliates relationship to a state forum. The Supreme Court refused to pierce the veil simply because there was an affiliation. The corporate entities involved were separate and distinct – and the foreign corporate entities were not responsible for any tires coming into North Carolina – these were effected by only United States affiliates.

The effect of Goodyear is to limit substantially the exercise of jurisdiction over foreign product manufacturers for non forum related controversies or claims unless the foreign manufacturer has established a presence in the forum on a systematic and continuous basis. While the regular sale of product sent into the forum may create a basis for an action based on that in state product (specific jurisdiction) [see further refinement of this basis in the accompanying decision released by the court in McIntyre v NiCastro], the fact of such sales into the forum may not alone create a foundational basis for general jurisdiction.

As noted the Supreme Court in Goodyear acknowledged that under the doctrine of specific jurisdiction a state could exercise jurisdiction over a foreign manufacturer where that manufacturer's product entered the forum and causes harm. In an accompanying decision, McIntyre Machinery v NiCastro, a divided Supreme Court considered under what circumstances specific jurisdiction could be founded on a foreign manufacturer's product entering the forum.

The New Jersey venue lawsuit involved a hand injury occurring in New Jersey on machine manufactured in England. The English manufacturer had not intentionally or directly sent the product into New Jersey. Rather a United States distributor had generally agreed to sell the machinery in the United States. Four of machines manufactured by the English company ended up in New Jersey. There was no evidence that the English manufacturer participated or knew about the sale of the offending product in New Jersey. While the manufacturers representative attended trade shows in the United States, no visits were made to New Jersey.

The New Jersey Supreme Court upheld jurisdiction based on a finding that the English manufacturer knew or reasonably should have known that its products were distributed through a nationwide distribution system that might lead to sales in any of the States, including New Jersey.

The United States Supreme Court reversed this decision holding that the distribution generally into the stream of commerce in the United States is insufficient to establish specific jurisdiction against a foreign manufacturer within a forum where an injury arises from use of the product without evidence that the manufacturer intentionally sold the product or distributed it in or to the forum state.

The decision narrowed a broader interpretation of the scope of specific jurisdiction flowing from the 1987 Supreme Court decision in Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty. The Court had determined that it would be constitutionally permissible to exercise jurisdiction over a foreign manufacturer where that entity purposefully availed itself of the privilege of conducting activating within the forum State, thus invoking the benefits and protections of its laws.

The Supreme Court had previously recognized that where a defendant has placed goods into the stream of commerce with the expectation that they would be purchased by consumers within a forum state it might indicate such purposeful availment. But the issue remained – did the defendant’s activities manifest an intention to submit to the power of the sovereign. The plurality decision noted that the concept of purposeful availment has been reduced to the benchmarks of fairness and foreseeability – what did the defendant know or expect or reasonably should have expected. While this might establish a basis for establishing a level of overall fairness, the Supreme Court plurality now underscores that it is proof of a foreign entity’s intentional availment of the protection of the forum jurisdiction that controls. A defendant’s actions and not its expectations empower a State court to subject a defendant to its judgments. Specifically targeting a forum as a market (conduct directed at the society or economy) as opposed to merely predicting that its goods may reach the state is required since the criteria is whether the foreign party purposefully availed itself of the benefits and protections of the forum states laws.

Two justices, joining in the plurality but writing their own concurring opinion noted expressly that a defendant’s particular conduct and economic realities of the market will differ from case to case. But nevertheless purposeful activities must be directed to the particular state and not merely the United States. In the case at bar while there was clear evidence that the English manufacturer knew it was availing itself of the United States market, this was insufficient for jurisdiction without proof that such it was availing itself of the New Jersey market.

Both of these decisions narrow the reach of personal jurisdiction. The benchmark for general jurisdiction must be more than mere sales or even regularity of sales. Sales alone may only open the door for specific jurisdiction if the sales give rise specifically to a claim. However, the scope of specific jurisdiction was narrowed confirming that specific jurisdiction must be based on intentional sales into the forum and a plaintiff may not rely on constructive evidence that the foreign entity should have know or recognized that it’s product might enter the forum state.

For the time being, these decisions reinforce a wall of protection for global companies that transact business indirectly in various forums – those who do not rely on brick and mortar operations – or those whose business web extend through complicated networks of distribution and relationships with other companies.