

# Case note

29 June 2011

---

## Shortening the long arm of US Law?

Since 1987 the process by which courts in the United States garner jurisdiction over foreign companies has been "unclear." Two cases decided by the United States Supreme Court on 27 June 2011 provide clarity but no long term certainty.

In each of *J McIntyre Machinery Ltd v Nicastro* and *Goodyear Dunlop Tires Operations SA v Brown*, questions arose involving the exercise of jurisdiction by US state courts over foreign-based companies. The two appeals involved product liability claims against companies domiciled in the United Kingdom, Turkey, France and Luxembourg. All had been held subject to US state court jurisdiction even though the companies did not operate in the US and were only involved in the export of products to particular parts of the US.

In *McIntyre* a divided Supreme Court held that New Jersey courts had no jurisdiction over an English machinery manufacturer who sold goods to an Ohio distributor despite the fact that one of McIntyre's machines eventually landed in New Jersey and was an alleged cause of injury.

In *Goodyear* a unanimous Supreme Court held that a state court in North Carolina did not have general jurisdiction over the foreign defendants in relation to personal injury occurring in France merely because some of the tyres manufactured by those foreign companies reached North Carolina.

### General and specific jurisdiction

The jurisdiction of US courts over defendants (US and foreign) is based on whether the actions of a defendant are directed at the "society or economy" in the relevant legal jurisdiction (in most cases individual states). That jurisdiction may be either general or specific.

General jurisdiction will exist where a defendant's conduct "manifest an intention to submit to the power" of the relevant state. Some examples include consent, presence within the jurisdiction at time of suit, citizenship or domicile. Importantly these factors are also relevant in Australian courts as to questions of "international jurisdiction" - a threshold issue in determining whether a foreign judgment is enforceable at common law in Australia.

Specific jurisdiction is more limited. It will be exercised when a claim arises out of the clear contact between the defendant and the state - but is confined to that particular suit involving that particular contact.

## The decisions

While the foreign defendant in *McIntyre* had "directed marketing and sales efforts at the United States", it could not be said that New Jersey was a target of those efforts. Rejecting a test based on notions of "fairness and foreseeability" Justice Kennedy, speaking for the plurality, noted:

"The defendant's transmission of goods permits the exercise of jurisdiction only 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."

While the facts of the case showed that McIntyre was intent on serving the US market in general and that one of its machines eventually found its way to New Jersey, it could not be shown that the company "purposely availed itself of the New Jersey market." As a result, the state court was held not to have jurisdiction.

In *Goodyear* the Court held that the mere fact that the foreign companies sold tyres to United States markets, including North Carolina, was insufficient to establish general jurisdiction. There was no jurisdiction in relation to a product liability suit involving a motor vehicle accident in France. Speaking for the Court, Justice Ginsburg noted that the mere introduction of tyres by the foreign companies into a stream of commerce which eventually flowed to North Carolina

"...does not establish the 'continuous and systematic' affiliation necessary to empower North Carolina courts to entertain claims unrelated to the foreign corporation's contacts with the State."

## Importance?

The two decisions clarify circumstances in which US state courts will be entitled to exercise jurisdiction over foreign companies. If a company specifically targets or concentrates on sales to a particular forum it is likely that specific jurisdiction will arise if claims result in that forum from such activities. And the test for establishing general jurisdiction will involve an analysis of the traditional linking factors mentioned above. Those issues will be important to product manufacturers, exporters and their insurers in determining what interaction, if any, they have with US markets and the enforcement of judgments arising from claims made in the US.

There is a caveat. In *McIntyre* Justice Breyer (joined by Justice Alito) in a concurring opinion questioned whether "the nature of international commerce has changed so significantly to require a new approach to personal jurisdiction." There was also withering dissent from Justice Ginsburg (joined by Justice Sotomayor and Justice Kagan) who described the decision as turning back the clock. These issues, while clarified, are not 100% certain.

### David Miller

#### Partner

T: 02 8281 4419

E: dem@cbp.com.au

[>>> return to first page](#)

T 61 2 8281 4555  
F 61 2 8281 4567  
E law@cbp.com.au  
I www.cbp.com.au

Level 42, 2 Park Street  
Sydney NSW 2000  
Australia

DX 280 Sydney  
Advoc Asia member

Colin Biggers  
& Paisley

LAWYERS