



## Supreme Court Refines Rules of Personal Jurisdiction in Products Liability Cases

By Andrew J. Reitz of Faruki, Ireland & Cox PLL. Reprinted with permission.

Do you produce products that enter the “stream of commerce” that end up being distributed to foreign jurisdictions? Do you fear you may be subject to personal jurisdiction in a location in which you do not maintain an office, do not pay taxes, do not advertise, and do not have any employees? Are you wary that you may have to litigate products liability cases in foreign jurisdictions as a result of your global and international presence? Two recent Supreme Court decisions bear consideration when assessing such exposure.

In June, the United States Supreme Court issued two opinions rejecting the long standing precedent subjecting foreign manufacturers to personal jurisdiction in state court products liability cases where products are placed in the “stream of commerce”: (1) Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), and (2) J. McIntyre Machinery, Ltd. V. Nicastro, 131 S. Ct. 2780 (2011). These two decisions benefit product manufacturers.

In Goodyear, the issue was whether foreign subsidiaries of a

United States parent corporation are amendable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State. The Supreme Court unanimously declared that a foreign manufacturer’s placement of goods in the stream of commerce cannot be the sole basis for exercising jurisdiction. Respondents, North Carolina residents whose sons died in a bus accident outside of Paris, France, filed suit in North Carolina state court seeking damages for wrongful death claiming negligence in the design, construction, testing, and inspection of a failed tire that allegedly caused the accident. Respondents named as defendants Goodyear USA, an Ohio corporation, and three Goodyear USA subsidiaries in Luxembourg, Turkey, and France. Goodyear USA did not contest the North Carolina court’s jurisdiction over it as it had plants in the state and engages in commercial activity in North Carolina. Goodyear USA’s subsidiaries, however, claimed that North Carolina lacked jurisdiction because the

*(Continued on page 4)*

### Inside this issue:

<b>Products Liability Jurisdiction</b>	<b>1</b>
<b>Tech Tip:</b>	<b>2</b>
<b>BNA Resources</b>	
<b>2012 Subscriber Renewals</b>	<b>3</b>
<b>Upcoming CLEs</b>	<b>5</b>
<b>Products Liability Resources</b>	<b>7</b>
<b>Calendar</b>	<b>8</b>

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By Julie Koehne, Systems Librarian

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## 2012 Subscriber Renewals

It's time to renew your Hamilton County Law Library subscription for the coming year. Here are some answers to frequently asked questions:

### Q: When will I receive my invoice?

A: We will be mailing invoices to our patrons in early December. Law firm invoices go to our contact person, either the librarian or the office manager, typically.

### Q: Can I pay early? I have money burning a hole in my pocket.

A: Sure! Anytime! We'll extend your subscription through December 2012.

### Q: May I pay with a credit card?

A: We're exploring options for credit card payments, but we're not ready yet.

### Q: I haven't been a subscriber for a while. What does it take to join again?

A: \$100! We'd be glad to have you back.

### Q: If I wait to pay until, say, June, can I pay less?

A: No. We follow a calendar year for this purpose. All of our services are available to patrons throughout the year so we don't prorate the fee (except for brand new subscribers).

### Q: I just passed the bar and haven't used

### the library before. How do I sign up?

A: Congratulations! Just complete our [Subscriber Application](#) and mail or bring it in.

### Q: Times are tough. Can I get a break on the fee?

A: Sorry, but we haven't raised the fee in recent years and our costs have increased, too, while revenue has fallen. Sigh. The annual fee is an incredible deal when you think about the savings to your office as a result of this subscription.

### Q: Why do you charge fees, anyway?

A: The Law Library is open to the public. We don't charge a daily use fee. However, we offer an array of enhanced services to our subscribers that wouldn't be possible without a fee.

### Q: I have more questions!

A: Contact Mary Ann Sweeney at 513.946.5300 or [masweeney@cms.hamilton-co.org](mailto:masweeney@cms.hamilton-co.org).



*(Continued from page 1)*

subsidiaries were not registered to do business in North Carolina; have no place of business, employees, or bank accounts in North Carolina; do not design, manufacture, or advertise their products in North Carolina; and do not solicit business in North Carolina or sell or ship tires to North Carolina customers. The type of tire involved in the accident was never distributed in North Carolina.

The lower court asserted jurisdiction over the foreign subsidiaries based on the “stream of commerce” doctrine. The Supreme Court, however, ruled that the subsidiaries were not subject to general jurisdiction because their connections to the State did not constitute continuous and systematic business contacts that would subject them to jurisdiction on claims unrelated to any activity that connected them to the State. The Court held that foreign subsidiaries of a United States parent corporation are not amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum state.

In *McIntyre*, the Court reversed the Supreme Court of New Jersey’s holding under the “stream of commerce” doctrine that the Fourteenth Amendment’s Due Process Clause was not violated by the New Jersey court’s exercise of jurisdiction over a foreign manufacturer. This products liability action was filed in New Jersey state court and involved an accident, which injured Robert Nicasastro’s hand while he was using a metal shearing machine manufactured by J. McIntyre Machinery, Ltd. The accident occurred in New Jersey, but the machine was manufactured in England, where McIntyre is incorporated and operates. The question was whether the New Jersey courts had jurisdiction over McIntyre, notwithstanding the fact that McIntyre did not have an office in New Jersey and it did not pay taxes, own any property, advertise in, or send employees there. McIntyre’s only contact with New Jersey was the metal shearing machine. McIntyre, a British manufacturer, sought dismissal for lack of personal jurisdiction based primarily on the fact that an inde-

pendent distributor sold the machine to Nicasastro’s employer.

The New Jersey court ruled in favor of Nicasastro based on the “stream of commerce” doctrine. That court reasoned that jurisdiction was proper because (1) the injury occurred in New Jersey, (2) the petitioner knew or reasonably should have known that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states, and (3) the petitioner failed to take some reasonable step to prevent the distribution of its products in New Jersey. The United States Supreme Court, however, reversed and found that McIntyre did not “engage in any activity in New Jersey that reveal[ed] an intent to invoke or benefit from the protection of its laws.” As such, New Jersey’s exercise of jurisdiction over McIntyre violated due process. In rejecting the “stream of commerce” doctrine, the Supreme Court announced that “the defendant’s purposeful availment” is the important factor to consider and that “[n]o ‘stream of commerce’ doctrine can displace that general rule for products-liability cases.” As Justice Kennedy wrote, “[I]t is the defendant’s actions, not his expectations, that empower a State’s courts to subject him to judgment.” The Supreme Court made clear that the stream of commerce argument cannot supersede either the mandate of the Due Process Clause or the limits on judicial authority that Clause ensures. Because petitioner never engaged in any activity in New Jersey that revealed an intent to invoke or benefit from the protection of its laws, exercising jurisdiction would violate due process. Although states have strong policy interests in protecting its citizens from defective products, those interests cannot survive Constitutional scrutiny as the Supreme Court will not discard “liberty in the name of expediency.”

Although the Supreme Court rejected the “stream of commerce” theory of personal jurisdiction in these products liability cases, both cases underscore that personal jurisdic-

tion is a highly fact-specific inquiry best done on a case-by-case basis. While the decisions are noteworthy for product manufacturers, personal jurisdiction remains a highly fact-specific test.

In light of these two recent Supreme Court decisions, foreign manufacturers now have additional weapons in their arsenal for fighting lawsuits. If you or your business place products into the stream of commerce, which results in the products being located in jurisdictions that your business is not incorporated, does not pay taxes, does not own property, and has few contacts, then the Goodyear and McIntyre cases seem to strengthen arguments to dismiss a lawsuit based on the lack of personal jurisdiction. However, if you purposefully avail yourself to foreign jurisdictions, then you most likely will not prevail on dismissing a case for lack of jurisdiction. So, keep track of your products and know your distributors. Ask yourself important questions like: Where do my products end up? To whom are my distributors selling my products? Do my products have a global impact? What contacts do I have in other jurisdictions? Simply put, understanding the pipeline of your product distribution, not only in the first instance but also (where feasible) in the aftermarkets, may help reduce product liability.

For more information contact Andrew J. Reitz at [areitz@ficlaw.com](mailto:areitz@ficlaw.com)

### Law Library Director Search

The Director and Law Librarian position has been advertised for candidates through several library related web boards and through Hamilton County. We expect that the Hamilton County Law Library Resources Board will meet with candidates in mid-December, with a goal to have the new Director in place no later than Feb. 1, 2012.

## Upcoming CLEs

### Westlaw CLE (Two Sessions) Thursday, December 1

Session 1: 12:30-1:30– Jury Verdicts and Formfinder

Session 2: 1:45-2:45– Secondary Sources, Focus on Treatises

Each session is approved for 1.0 hour of general credit in Ohio.

Free to law library subscribers; \$35 per session for nonsubscribers.

To register for any of these CLE events, contact Mary Ann Sweeney at 513.946.5300 or via email at [masweeney@cms.hamilton-co.org](mailto:masweeney@cms.hamilton-co.org)

### CLE 2012

We have tentative plans to offer a number of CLEs throughout 2012. We'll announce the schedule and details once approvals are received. Some suggested topics include:

- Background Checks
- Company Research
- Debt Collection
- Estate Planning for Special Needs
- Foreclosure
- Landlord Tenant law
- Medicare/Medicaid
- Sentencing

If anyone would be willing to present on any of these topics, please contact Laura Dixon-Caldwell at 946-5302 or [ldixoncaldwell@cms.hamilton-co.org](mailto:ldixoncaldwell@cms.hamilton-co.org).

## Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

## You and the Legal System: 2012 Topics

We have plans to continue the *You and the Legal System* series in 2012. Below are the upcoming topics.

February 17: Domestic Law-speaker: Susan Ahlrichs

March 16: Same Sex Legal Issues- speaker: Scott Knox

April 20: Taxes - speaker: Lance Cox

May 18: Veterans' Issues - speaker: Rob Jensen

All programs start at noon and last until 1pm. Please note that these are not CLE events; they are intended for the general public.

*You and the Legal System* is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service. For more information, contact Laura Dixon-Caldwell at 946-5300.

### Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on January 5, 2012 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>

## Product Liability Resources

Law Library patrons have access to many good books and online materials on product liability law. We offer jury verdicts via Westlaw and several other online resources. If you would like to use one of the books listed, just call and we'll hold it for you. If you have questions about access to the Law Library's online resources, just ask a librarian for guidance.

### Books:

Consumer product safety regulation : impact of the 2008 amendments / by James T. O'Reilly  
 KF3945.A328 A2  
 2009

Designing an Effective Product Liability Compliance Program/by Michael J. Keating and Thomas H. Case  
 KF1414.A2 C67  
 2007

Drugs in Litigation  
 KF1297.D7  
 2011

Elements of An Action  
 KFO530.44  
 2011

Kentucky products liability law / by Ronald W. Eades.  
 KFK1397.7 .K47  
 2011

Products Liability for the General Practitioner/by Paul Sherman  
 KF1296 .S45  
 2006

Products Liability Practice Guide /by John F. Vargo  
 KF1296 .V37  
 2011

Understanding Products Liability Law/by Terrence F. Kiely, Bruce L. Otley  
 KF1296.k94  
 2006

Understanding Torts  
 KF1250.D5  
 2007

### Online Resources:

Consumer Product Safety Guide (CCH)  
 Consumer Product Safety Guide Report Letter (CCH)  
 Law of Products Liability (CCH)  
 Managing for Product Liability Avoidance (CCH)  
 Preparation of a Product Liability Case (CCH)  
 Product Liability (Aspen)  
 Product Liability Case Digest (CCH)  
 Product Liability Desk Reference, (CCH)  
 Products Liability News  
 Product Safety and Liability Report (BNA)  
 Products Liability Reporter (CCH)  
 Proving and Defending Damage Claims, (CCH)  
 Tort Law Desk Reference (CCH)

### Blogs:

In addition to the Law Library Resources, Check out the ABA Journal's complete Product Liability Blog list-  
<http://www.abajournal.com/blawgs/topic/product+liability+law/>

## Upcoming Events

December 1: Westlaw CLEs: Jury Verdicts/Formfinder and Treatises

January 5: Hamilton County Law Library Resources Board Meeting

## December Holidays

The Law Library will be closed Monday, December 26 in observance of Christmas and Monday, January 2 in observance of New Year's Day.



## December 2011 Law Library Newsletter

### INSIDE THIS MONTH

- Product Liability Jurisdiction
- Tech Tip: BNA Resources
- Product Liability Resources
- Subscriber Renewals

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