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MANUFACTURERS FACE INCREASED RISK OF PRODUCTS LIABILITY SUITS IN NEW JERSEY

In what has been described as a “radical departure” from established precedents that form the hallmark of due process, the New Jersey Supreme Court recently upheld jurisdiction in New Jersey over a foreign manufacturer whose only act was to target the United States market for the sale of its product.

In *Nicastro v. McIntyre Machinery America, Ltd.*, the Court concluded that a foreign manufacturer that places a defective product into the stream of commerce in this country, through a distribution scheme that targets a national market, may be sued in a New Jersey court for damages for injuries caused by the product. In its liberal application of the stream-of-commerce doctrine, the Court reasoned that the new reality of the globalization of commerce, coupled with New Jersey’s long-arm rules and the severity of the injury involved, dictated that a British manufacturer should be subject to suit in New Jersey, despite its utter lack of contacts or presence in this state.

Robert Nicastro had sustained the loss of four fingers while operating a recycling machine used to cut metal, which he claimed lacked an essential safety guard. The machine was manufactured by J. McIntyre Machinery, Ltd., incorporated and located in the United Kingdom. Nicastro’s employer purchased the machine from McIntyre’s exclusive United States distributor, located in Ohio, after seeing it at the distributor’s booth at a trade convention in Nevada. McIntyre sold the subject machine to its distributor without knowledge of the ultimate purchaser. McIntyre and its American distributor were distinct corporate entities, without any common ownership, and were independently owned and operated.

While acknowledging that McIntyre had no presence or even minimal contacts in New Jersey, the Court nevertheless determined that stream-of-commerce principles justified the exercise of jurisdiction over it. Specifically, it held that a foreign manufacturer which implements a nationwide distribution scheme that “might lead” to its products being sold in any of the fifty states, must expect to be sued in any state where its products cause injury. Because McIntyre company officials had attended American trade shows in various cities where its products were advertised, and those shows had nationwide attendance, the Court concluded that McIntyre had made a calculated effort to penetrate the American market. Thus, the Court reasoned McIntyre knew or should have known that its products were intended to be sold and distributed to customers located anywhere in the country, including New Jersey.

In strongly worded dissents, two Justices decried the ruling, noting that virtually any effort by a manufacturer to sell its product anywhere in the nation has now become the sole act needed to assert jurisdiction over it in a New Jersey court. They also criticized the majority’s focus on the severity of the plaintiff’s injury as an added basis to justify its ruling. In an extremely rare gesture, Justice Rivera-Soto invited the United States Supreme Court to correct and overturn the majority’s ruling which he characterized as conflicting with settled constitutional principles.



The significance of this ruling for foreign manufacturers and domestic distributors cannot be overemphasized. Indeed, plaintiffs' trial lawyers are already applauding the Court's reasoning as one that will facilitate successful joinder of foreign entities. No longer will a foreign manufacturer be able to shield itself from suit here by employing an out-of-state (and possibly judgment-proof) independent distributor to market its products. Although the Court noted that a manufacturer that did not want to subject itself to the jurisdiction of a New Jersey court should take "some reasonable step" to prevent the distribution of its products in this state, it did not offer guidance on how that could be accomplished. Presumably, the manufacturer could direct its American distributor to refrain from selling products in New Jersey, or it could place a conspicuous label on the product prohibiting its use or sale in New Jersey. Realistically, such actions are unlikely and the manufacturer would be deemed to understand that its products could be used in this state.

New Jersey's Product Liability Act permits a domestic distributor sued in New Jersey to pass through liability for a defective product to the manufacturer, provided it has a presence in this state. The *Nicastro* decision may facilitate a finding that a foreign manufacturer is "present" for jurisdictional purposes, making it easier for domestic distributors to obtain dismissal of claims against them.

In *Hertz Corp. v. Friend*, another ruling expected to impact products liability litigation, the United States Supreme Court recently imposed a simplified test to define a corporation's principal place of business for the purpose of determining federal diversity jurisdiction. Dubbed the "nerve center" test, it defines the principal place of business as that where the officers of a company direct, control, and coordinate its activities. It replaced the cumbersome "business activities" analysis that had focused more heavily on where a company's actual business activities were centered. Companies should benefit from this simpler jurisdiction rule as it will provide more predictability when they seek to remove cases to federal court based on diversity jurisdiction.

We invite our clients and friends to contact us concerning how these cases may affect their potential liability and litigation strategy.

This *Products Liability Alert* was written by Karen Thompson, a Certified Civil Trial Attorney and Member of Norris, McLaughlin & Marcus, P.A. and its Product Liability Group. If you have any questions regarding the information in this alert or any other matter concerning products liability, please feel free to contact her by telephone at (908) 722-0700, Ext. 4218 or by email at mkthompson@nmmlaw.com.

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