

**The Expansion of Personal Jurisdiction in Products Liability
Cases: *Nicastro v. McIntyre*: Aberration or Roadmap?**

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For Law360's June 2010 Products Liability Guest Column**

In a case that may be headed to the United States Supreme Court, New Jersey's highest court recently held that New Jersey courts have personal jurisdiction over foreign manufacturers that place their products "in the stream of commerce" anywhere in the United States. In a far reaching opinion that begins "Today, all of the world is a market," the Court found that "due process permits this State to provide a judicial forum for its citizens who are injured by dangerous and defective products" placed in the stream of commerce "through a distribution scheme that targeted a fifty-state market [in which] the product might be purchased by a New Jersey consumer." *Nicastro v. McIntyre Machinery America, LTD.*, 201 N. J. 48, 52-53, 987 A.2d 575, 577 (emphasis supplied). [103]

In *Nicastro*, during the course of his employment the plaintiff severed four fingers when his right hand got caught in the blades of a recycling machine used to cut metal. The recycling machine was manufactured by defendant J. McIntyre Machinery Ltd., ("the foreign manufacturer"), a company incorporated and with its principal place of business in the United Kingdom. The recycling machine was sold to plaintiff's employer by co-defendant McIntyre Machinery America, Ltd., the foreign manufacturer's exclusive United States distributor ("the distributor"). The distributor, an Ohio corporation, and the foreign manufacturer were distinct corporate entities, independently operated and controlled, without any common ownership. The distributor filed for bankruptcy in 2001, the same year as plaintiff's injury, and did not participate in the lawsuit. Plaintiff's principal products liability claim was that the recycling machine did not have a safety guard which would have prevented the accident. [245]

Discovery conducted on the issue of jurisdiction revealed the following: the foreign manufacturer did not have a physical presence in New Jersey; it did not directly sell or solicit business in New Jersey; and the recycling machine at issue was the only one of the foreign manufacturer's machines sold by its distributor to a New Jersey consumer. In fact, the Court admitted in its opinion that the foreign manufacturer did not have any "presence or minimum contacts in this State that would justify a New Jersey court to exercise jurisdiction in this case.....Plaintiff's claim [asserting personal jurisdiction]....must sink or swim with the stream-of-commerce theory of jurisdiction." 201 N.J. 48, 61, 987 A.2d 575, 582. In support of its expansive interpretation of "stream of commerce," the Court pointed to the following "salient" facts: The foreign manufacturer had designated the distributor as its exclusive distributor for the entire United States; consequently, the distributor's territory included New Jersey. The foreign manufacturers' representatives attended trade conventions in cities throughout the United States (although none of those trade conventions were held in New Jersey). Plaintiff's employer attended a trade convention in Las Vegas, Nevada during which he was shown the recycling machine by the distributor; the foreign manufacturer's president attended the same Las Vegas trade convention as the plaintiff's employer, although there was no evidence the plaintiff's employer interacted with anyone at that trade convention other than the distributor in regard to his subsequent purchase of the recycling machine.

However, the Court's analysis is striking for another reason. Instead of focusing, as is typical in a personal jurisdiction case, on the defendant, the defendant's relationship to the forum state, and whether the exercise of personal jurisdiction comports with the traditional notions of fair play and substantial justice for the defendant, the Court in *Nicastro* focuses its analysis on the plaintiff:

“On the other hand, New Jersey has a strong interest in exercising jurisdiction. Plaintiff is a New Jersey resident; the allegedly defective product was purchased by a New Jersey consumer, plaintiff’s employer; the injury occurred in a New Jersey workplace; plaintiff was treated for his injuries in the New Jersey regional area; the evidence - the shear machine - and most of the necessary witnesses are located in New Jersey; and last, the law of this State likely will govern the action.” 201 N.J. 48, 80, 978 A.2d 575, 593.

In addition, the Court seems troubled by the prospect of a “catastrophic injury” without a remedy, noting in particular the plaintiff’s argument that the foreign manufacturer made a “strategic” decision to use a “financially irresponsible distributor with a nearly identical name” and that a failure to find personal jurisdiction would “create a road-map for foreign manufacturers on how to dump their unsafe products in the United States”, leaving New Jersey citizens without legal recourse. 201 N.J. 48, 60, 978 A.2d 575, 581.

In a stinging dissent, two New Jersey justices describe the majority’s holding in *Nicastro* as “cutting all ties with precedent” in its failure to point to any nexus between the defendant and the forum, whether through minimum contacts, through purposeful availment of the forum’s benefits and protections, through actions purposefully directed toward the forum, through awareness of regular and extensive sales of its products by another in the forum, or through actual knowledge that its products will be sold in the forum state. Instead, according to the dissent, the majority equates “the mere placement of a product somewhere with whatever due process would otherwise demand for assertion of jurisdiction anywhere.” 201 N.J. 48, 92, 978 A.2d 575, 600. We may soon learn whether *Nicastro* is an aberration or a road map for other courts to follow. One of the dissents notes that the *Nicastro* decision is ripe for review and correction by the Supreme Court of the United States.

McIntyre Machinery filed its Petition for Certiorari on May, 3, 2010, which can be found at *J. McIntyre Machinery Ltd. V. Nicaastro*, 2010 WL 1789706, No. 09-1343 (May 3, 2010).

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