J. McIntyre Machinery and *Goodyear Dunlop*: the U.S. Supreme Court Gives Renewed Vitality to the "No Personal Jurisdiction" Defense

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A. Introduction.

Two cases decided by the United States Supreme Court on June 27, 2011 suggest renewed vitality for the time-honored defense of lack of personal (or *in personam*) jurisdiction. The law in this area has been in flux since the Court's confusing, multi-opinion decision in *Asahi Metal Industry, Ltd. v. Superior Court of California,* 480 U.S. 102 (1987). In *J. McIntyre Machinery, Ltd. v. Nicastro*, yet another fractured 6-3 decision, a plurality of the Court re-focused the personal jurisdiction analysis onto the manifested intent of the defendant to subject itself to the jurisdiction of the state court. Ultimately, the Court overturned the New Jersey Supreme Court's finding of personal jurisdiction over a British manufacturer whose goods were sold through an independent distributor in the United States.

In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, a 9-0 Supreme Court determined that the "stream of commerce" test is not applicable to the "general jurisdiction" personal jurisdiction analysis. The Court found that foreign subsidiaries of an American parent corporation were not amenable to suit in a state court on claims unrelated to the activity of the subsidiary in the forum. The case, which sought damages for a bus crash occurring in France, was filed in North Carolina. The Court overruled the North Carolina Court of Appeals' decision which found that the state had general personal jurisdiction over the foreign subsidiary because some of the tires that were manufactured abroad, by a foreign subsidiary of the defendant, found their way to North Carolina through the "stream of commerce." In doing so, the Court refused to accept a

"stream of commerce" theory of general jurisdiction - limiting that analysis solely to the specific jurisdiction inquiry.

As a result of both of these cases, and particularly the unanimous *Goodyear Dunlop* decision, the defense of "no personal jurisdiction" has been strengthened and given new vitality. In addition, as a result of these cases, the sufficient minimum contacts constitutional analysis has been further defined and delineated. In some situations, especially where the applicable statute of limitations has run, winning the personal jurisdiction argument may mean complete dismissal of the case for the defendant.

Both of these cases are important to Iowa defense practitioners because the analysis for determining the existence "sufficient minimum contacts," in both federal and state court cases, is based on U.S. Supreme Court interpretations of Due Process. This article will review the *J. McIntyre* and *Goodyear Dunlop* decisions and then apply this new precedent to recent Iowa precedent and established law. Our purpose is to provide defense lawyers with a roadmap to use when confronted with a case involving personal jurisdiction issues implicating a plaintiff's failure to meet the sufficient minimum contacts test.

A. *J. McIntyre Machinery Co. v. Nicastro*, __U.S. __, 131 S. Ct. 2780, 180 L.Ed.2d 765 (2011).

In *J. McIntyre Machinery*, a British manufacturer of a metal shearing machine moved to dismiss a consumer's product liability suit, arguing lack of personal jurisdiction. The worker, Nicastro, injured his hand in the machine. Nicastro filed suit in New Jersey where the accident occurred. Using a "stream of commerce" theory, the New Jersey Supreme Court held that the Fourteenth Amendment's Due Process Clause was not violated by the state court's exercise of jurisdiction. In a 6-3 decision with one concurring opinion and one dissent, the U.S. Supreme

Court reversed the state court's exercise of jurisdiction over the foreign manufacturer. As a factual matter, the manufacturer did not have a single contact with the state of New Jersey except that the industrial shearing machine ended up in New Jersey. The Court found that, under *International Shoe Company v. Washington*, 326 U.S. 310 (1945), a defendant's "purposeful availment" makes the exercise of jurisdiction consistent with "traditional notions of fair play and substantial justice." The transmission of goods into a state permits the exercise of jurisdiction only where the defendant has targeted the forum – generally, it is not enough that a defendant might have predicted its goods would reach the forum state. As a result, it is clear that a defendant must affirmatively and intentionally direct its conduct at a state in order to be amenable to suit in that jurisdiction.

In *J. McIntyre Machinery*, the separate concurrence by Justice Kennedy, joined by Chief Justice Roberts and Justices Scalia and Thomas, concluded that the New Jersey court did not have the power to adjudge the company's rights and liabilities and that the New Jersey court's exercise of jurisdiction would violate due process since the defendant never engaged in any activities in New Jersey that revealed an intent to invoke or benefit from the protection of the State's laws.

Moreover, the majority in *J. McIntyre* answered an important question left open by *Asahi Metal Industry* – the seminal 1987 decision in this area. In *Asahi*, Justice Brennan's concurrence (joined by three other justices) "discarded the central concept of sovereign authority in favor of fairness and foreseeability considerations on the theory that the defendant's ability to anticipate suit is the touchstone of jurisdiction." 131 S. Ct. at 2783. But, Justice O'Connor's separate concurring opinion in *Asahi* (also joined by three other justices) stated that "the substantial connection between the defendant and the forum State necessary for a finding of minimum

contacts must come about by an action of the defendant purposefully directed toward the forum State." 107 S. Ct. 1026. Thus, in *Asahi Metal Industry*, Justice Brennan focused on a "foreseeability" test, while Justice O'Connor focused on conduct of a defendant purposefully directed at the forum state. Since *Asahi*, courts (with varying degree of success) have sought to reconcile these two positions. As Justice Kennedy clearly points out in *J.McIntyre Machinery*: "Today's conclusion that the authority to subject a defendant to judgment depends on purposeful availment is consistent with Justice O'Connor's *Asahi* opinion." 131 S. Ct. 2784. One could further argue that *J. McIntyre Machinery's* logic has diminished the viability of (if not completely done away with) the foreseeability analysis that was presented in Justice Brennan's concurring opinion in *Asahi Metal Industry*.

In *J. McIntyre Machinery*, Justices Breyer and Alito agreed that the New Jersey Supreme Court's judgment should be reversed, but concluded that since the case did not present issues arising from recent changes in commerce and communication, it was unwise to announce a rule of broad applicability without fully considering modern-day consequences.

Justices Ginsburg, Sotomayor and Kagan dissented, finding that sufficient minimum contacts existed under applicable precedent, such that the New Jersey courts could exercise jurisdiction over the defendant. The fact that three justices of the Court dissented on this issue underscores how this area of the law continues to be, at least to some extent, in a state of flux.

B. *Goodyear Dunlop Tires Operations v. Brown*, __U.S. __, 131 S. Ct. 2846, 180 L.Ed.2d 796 (2011).

Goodyear Dunlop was a suit that arose out of a bus accident that occurred in France. Two boys were killed in the accident. Blaming the accident on a tire that failed, their parents filed a products liability action in state court in North Carolina, where they lived. The suit

alleged negligence in the design, construction, testing, and inspection of the tire, which was actually manufactured in Turkey. Three of the manufacturer's subsidiaries were incorporated in Turkey, Luxembourg and France, and those companies manufactured tires primarily for sale in Europe and Asia. A small percentage of tires were distributed within North Carolina by other affiliates. The state court relied on the subsidiaries' placement of their tires into the "stream of commerce" to justify the exercise of general jurisdiction over the subsidiaries by the court in North Carolina. The United States Supreme Court determined that the subsidiaries were not amenable to general jurisdiction in North Carolina courts, because their attenuated connections to the State fell far short of the "continuous and systematic" general business contacts necessary for North Carolina to allow a suit against them on claims unrelated to anything that connected them to the state. Further, the Court's unanimous decision found that the sporadic sale of the subsidiaries' tires in North Carolina, through intermediaries, was insufficient to warrant the assertion of general jurisdiction. As a result, the Court reversed the decision of the North Carolina Supreme Court.

C. Noteworthy Iowa Personal Jurisdiction Cases.

A review of recent Iowa appellate cases on the "sufficient minimum contacts" issue is instructive. Many of these cases can be harmonized with *J. McIntyre Machinery* and *Goodyear Dunlop.* And to the extent prior Iowa cases rely on a "foreseeability" test, those authorities may now be called into question. The Iowa Court of Appeals in *Statler v. Faust and Aguirre*, No. 0-632 / 09-1917, 2010 Iowa App. LEXIS 1080 (Iowa Ct. App. 2010), held that a defendant's ability to foresee that a truck trailer he inspects might be traveling in Iowa, is insufficient to find the defendant subject to the jurisdiction of Iowa courts. *Statler* involved a suit against a California business that had safety-inspected an over-the-road trailer for a semi-truck that was

later involved in an accident in Iowa. After the accident, a suit was filed alleging that the defendant was negligent in its inspection of the trailer and that this was a cause of the accident. Denying the defendant's motion to dismiss, the trial court found that it had personal jurisdiction since the defendant could have anticipated that the trailer would be used in Iowa. The trial court's analysis could be viewed as analogous to the "foreseeability" analysis used by Justice Brennan in his concurrence in *Asahi Metal Industry*. However, on an interlocutory appeal, the appellate court in *Statler* reversed the trial court and dismissed the defendant based on lack of *in personam* jurisdiction. In doing so, the court emphasized two elements of the sufficient minimum contacts analysis:

> Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, [due process] is satisfied if the defendant has "purposefully directed" his activities at residents of the forum and the litigation results from alleged injuries that "arise out of or relate to" those activities.

2010 Iowa App. LEXIS 1080, at *8 (citations omitted). Thus, *Statler* is consistent with both *Goodyear-Dunlop* and *J. McIntyre Machinery* in that: 1) the mere fact that a product is placed into the "stream of commerce" is not enough to establish personal jurisdiction; and 2) that the mere fact that it is "foreseeable" that a product (or in *Statler's* case, a truck that had been serviced or maintained in another state) may end up in the forum state is not enough.

In *Pro Edge, L.P. v. Gue*, 374 F.Supp.2d 711, *motion to amend denied*, 377 F.Supp.2d 694, *modified* 411 F.Supp.2d 1080 (N.D. Iowa 2005), a federal district court sitting in Iowa noted that, in establishing personal jurisdiction, it is essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.

In *Wells Dairy, Inc. v. Food Movers Intern., Inc.*, 566 F.Supp.2d 933 (N. D. Iowa 2008), *affirmed* 607 F.3d 515, *rehearing and rehearing en banc denied, certiorari denied* 131 S. Ct. 472, 178 L.Ed.2d 289 (2010), the court held that exercising jurisdiction over a California buyer of an Iowa seller's products in Iowa would not offend traditional notions of fair play and substantial justice under due process, notwithstanding the buyer's lack of physical presence in the state. In *Wells Dairy*, the defendant had initiated a business relationship with the Iowa seller, with knowledge that the products it ordered would be manufactured in Iowa, delivered in Iowa, and resold in Iowa to its own customers who picked up the products at the seller's plant in Iowa. The initiation of a series of contacts with an Iowa resident by an out of state party could certainly be viewed as "purposeful availment" or at least intentional conduct directed towards the forum state. In any case where *in personam* jurisdiction is in issue, the specific facts of the case will be critical, especially where aspects of the defendant's conduct tie it to the forum state in some significant respect.

In *Brown v. Kerkhoff*, 504 F. Supp. 2d 464 (S.D. Iowa 2007), the court found that business contacts between individual non-resident defendants and Iowa were insufficient to support the existence of specific personal jurisdiction under the Iowa long-arm statute. *Brown* was a civil conspiracy action where there was no connection alleged between those defendant's contacts with Iowa and the claims being made in the case. Each individual defendant in *Brown* visited Iowa between 4-12 times over the past decade to deliver speeches to promote a New York-based organization. This organization was allegedly involved in a nationwide conspiracy designed to induce patients to pay for unneeded or unnecessary chiropractic care. Each individual defendant authored materials directed into Iowa either through the mail or through the organization's websites.

In *Addison Ins. Co. v. Knight, Hoppe, Kurnik & Knight, LLC*, 734 N.W.2d 473 (Iowa 2007), the Iowa Supreme Court found that an Illinois law firm had sufficient minimum contacts with Iowa so as to give the district court personal jurisdiction over the firm in a malpractice action brought by a corporate client located in Iowa. The court in *Addison Ins. Co.* so held regardless of the small number of personal visits by the firm's representatives to the client's Iowa headquarters. The law firm's attorneys had extensive contact with the client over the years and handled the client's Illinois claims. The court in *Addison Ins. Co.* concluded that the nature and quality of the firm's communications to Iowa were such that the law firm should have reasonably anticipated being haled into state court, and the malpractice action arose out of or was related to those contacts.

D. Do *J.McIntyre Machinery* and *Goodyear Dunlop* change Iowa law?

J. McIntyre Machinery and *Goodyear Dunlop* are important legal precedent in this area of the law. A fundamental aspect of the *in personam* jurisdictional inquiry is the constitutional, due-process inquiry of "sufficient minimum contacts." This is true whether a case is filed in state or federal court, as the Fourteenth Amendment to the U.S. Constitution renders the due process requirements equally applicable to the states, as well as the federal government.

The authors submit that *J. McIntyre Machinery* and *Goodyear Dunlop* did not necessarily change existing Iowa law, but rather re-emphasized, especially in a products liability setting, that the mere placement of a product into the stream of commerce, without more, is not enough for a state court to exercise jurisdiction over a non-resident manufacturer or supplier. This emphasis is welcome given Justice Brennan's concurring opinion in *Asahi Metal Industry*, which argued that if it was foreseeable that a product might end up in the forum state, then sufficient minimum

contacts (and thus personal jurisdiction) were established. Even older Iowa cases support the view that the *sine qua non* is "stream of commerce" *plus* "purposeful availment." For example, in *Smalley v. Dewberry*, 379 N.W.2d 922 (Iowa 1986), the court found that an operator of an automotive parts business in Tennessee, who sold a steering wheel to an Iowa resident who was stationed in the military in nearby Kentucky, did not have sufficient minimum contacts with Iowa to justify *in personam* jurisdiction over an action for injuries sustained in a truck accident allegedly resulting from defects in the steering wheel. In *Smalley* there was no evidence of any other relationship that the defendant had with Iowa. In *Smalley*, there was certainly no "purposeful availment" of the Iowa courts by the defendant. Because this element was absent, personal jurisdiction over the defendant was lacking.

The other significant take away in jurisdictional law from *J. McIntyre Machinery* is its watering down (if not downright elimination) of the foreseeability analysis. Now, if a defendant-manufacturer can merely "foresee" that its products will end up in Iowa, then sufficient minimum contacts have not been established. This could dictate a different result in a given case. For example, in *Svendsen v. Questor Corp.*, 304 N.W.2d 428 (Iowa 1981), the court held that when a manufacturer voluntarily places its product in the stream of commerce, that the constitutional requirement of minimum contacts will be satisfied in all states where the manufacturer can foresee that the product will be marketed. After *J. McIntyre Machinery*, the emphasis should be on "purposeful availment" or intentional conduct directed at the forum state, instead of mere foreseeability. Justice Brennan's "foreseeability" test has now been rejected by at least a majority of the Court in *J. McIntyre Machinery*. Although there were three votes in dissent, a strong argument can be made that any Iowa precedent that relied on mere foreseeability is no longer good law.

Further, even though both *J. McIntyre Machinery* and *Goodyear Dunlop* were products liability cases, the sufficient minimum contacts test of personal jurisdiction applies to all cases and not just products liability cases. The same is true of the purposeful availment element of the test. For example, contract and other commercial litigation matters involving out of state parties or transactions are often grist for the mill of the law of personal jurisdiction, especially when a contract's or transaction's connections to the forum state are attenuated. *See, e.g., Capital Promotions, LLC v. Don King Productions, Inc.,* 756 N.W.2d 828 (Iowa 2008) (phone calls from Iowa to out-of-state defendant initiated by party in Iowa would not be considered in determining sufficient minimum contacts with Iowa; only the out-of-state party's purposeful forum state contacts matter); *Nebraska Beef Ltd. v. KBK Financial*, 288 F.Supp.2d 985 (S.D. Iowa 2003) (Iowa had no jurisdiction over a Texas lender under the long-arm statute; Nebraska party brought a suit alleging tortuous interference and conversion with its contract with an Iowa business; Iowa did not have any interest in providing a forum for the suit, the forum was not convenient for either party, and the claims in suit were unrelated to the lender's contacts with Iowa); and *Ross v. Thousand Adventures of Iowa, Inc.,* 723 N.W.2d 449 (Iowa App. 2006)(FTC rule preserving borrower's causes of action did not grant Iowa personal jurisdiction over a non-resident mutual savings bank, which had merely been assigned campground membership purchaser's installment contracts; fact that contracts were assigned to the Bank was merely one factor in analyzing minimum contacts with Iowa, and was not a per se grant of jurisdiction). From this point of view *J. McIntyre Machinery* and *Goodyear Dunlop* merit close attention from any defense lawyer representing parties located outside of Iowa, but who are sued in Iowa.

E. A personal jurisdiction "checklist" for defense practitioners.

1. Has the method of service of process been properly effected?

a. In state court:

   i. Have the requirements of Iowa R. Civ. P. 1.305 been met? *Webster Industries, Inc. v. Northwood Doors, Inc.*, 244 F.Supp.2d 998 (N. D. Iowa 2003) (personal service upon an individual did not satisfy the requirements of Iowa rule governing service upon a corporation); *Yellow Book Sales & Dist. Co. v. Walker*, No. 0-614 / 09-1308, 2010 Iowa App. LEXIS 1156 (Iowa Ct. App. Oct. 6, 2010) (discussing the requirements for "personal" service); *Plymat v. Anderson*, No. 05-554 / 09-1743, 2010 Iowa App. LEXIS 894 (Iowa Ct. App. Aug. 25, 2010) (delivery by ordinary mail is not a sufficient means of personal service); *Stockbauer v. Schake*, No. 0-405 / 09-1720, 2010 Iowa App. LEXIS 841 (Iowa Ct. App. Aug. 11, 2010) (default judgment void for lack of notice where substituted service on an agent was not proper).

   ii. Have the requirements of Iowa R. Civ. P. 1.306 (formerly Iowa R. Civ. P. 56.2) been met? The rule provides, among other things, that every corporation, individual, personal representative, partnership, or association that has the necessary minimum contact with Iowa is subject to the jurisdiction in Iowa courts and expands Iowa's jurisdictional reach to the widest due process parameters allowed by the United States Constitution. *Hammond v. Florida Asset*

Financing Corp., 695 N.W.2d 1 (Iowa 2005); *Accord Capital Promotions, L.L.C. v. Don King Prods*., 756 N.W.2d 828 (Iowa 2008).

iii. Have the requirements of Iowa Code § 617.3 (the long-arm statute) been met? Iowa's long-arm statute confers jurisdiction to the full extent permitted by the Constitution. *Principal Financial Services, Inc. v. Big Finance and Ins. Services, Inc.,* 426 F.Supp. 2d 976, *subsequent determination* 451 F.Supp. 2d 1046 (S. D. Iowa 2006). The long-arm statute provides an extraordinary method for securing jurisdiction; therefore, clear and complete compliance with its provisions is required. *Barrett v. Bryant*, 290 N.W.2d 917 (Iowa 1980).

1. Is there a contract to be performed in whole or in part in the state of Iowa? *Frontier Leasing Corp. v. Singh*, CV065002885S, 2009 Conn. Super. LEXIS 2104 (Conn. Super. July 30, 2009) (Iowa court had personal jurisdiction over defendant in a suit by an equipment lease holder, as: (1) defendant made its lease payments in Iowa and the choice of forum clause in the lease gave jurisdiction to Iowa Courts; (2) it did not make any forum non conveniens objections to the Iowa action; (3) it was put on notice, and (4) there was no testimony of fraud); *Omnilingua, Inc. v. Great Golf Resorts of*

World, Inc., 500 N.W.2d 721, 723 (Iowa 1993) ("[Iowa Code section] 617.3 authorizes personal jurisdiction over a nonresident who has entered into a contract 'to be performed in whole or in party by either party in Iowa.'").

2. Has there been a tort committed in whole or in part in the state of Iowa? *Universal Coop., Inc. v. Tasco, Inc*., 300 N.W. 2d 139 (Iowa 1981).

3. Has service properly been made on the Iowa Secretary of State's office ("substituted service")? *McCormick v. Meyer*, 582 N.W.2d 141 (Iowa 1998); *Eagle Leasing v. Amandus*, 476 N.W.2d 35 (Iowa 1991).

iv. Has the defendant been served in a timely fashion? *See* Iowa R. Civ. P. 1.302(5) (within 90 days of filing). *Palmer v. Hofman,* 745 N.W.2d 745 (Iowa App. 2008) (when there is no service within 90 days after filing the petition, and no order extending the time for service, the delay is presumptively abusive under the rule providing for timely service).

v. Has the defendant been properly named in the suit?

vi. If not, has the plaintiff effected service of process on the correct and correctly-named defendant within the applicable statute of limitations? *See* Iowa R. Civ. P. 1.402(5). If not,

then any later amendment to "add" the correct party, even in cases of a "misnomer," will not relate back to the filing date of the original petition, for statute of limitations purposes. *Richardson v. Walgreens, Inc.,* 680 N.W.2d 379 (Iowa App. 2004) (Misnomer situation; amended complaint did not "relate back" because proper party was not served with notice of the suit within the applicable statute of limitations).

b. In federal court:

   i. Have the requirements of Fed. R. Civ. P. 4 been met?

2. Regardless of whether the case is filed in state or federal court, has the due process, constitutional requirement of "sufficient minimum contacts" test been met? When a plaintiff asserts that the court has jurisdiction over the defendant, the plaintiff has the burden of proof to show that the defendant had the necessary minimum contacts with the state. *Curtis v. NID PTY, Ltd.*, 248 F.Supp.2d 836 (S. D. Iowa 2003);

   a. Is there general jurisdiction? *See e.g. Goodyear Dunlop Tires Operations v. Brown*, 131 S. Ct. 2846 (2011) (a court may assert general jurisdiction over foreign (sister state or foreign country) corporations to hear any and all claims against them when their affiliation with the state are so "continuous and systematic" as to render them essentially at home in the foreign state).

b. Is there specific jurisdiction? *Id.* (specific jurisdiction depends upon an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation).

c. Has the putative defendant "purposefully availed" themselves of the protections of the forum state? *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958).

d. Has the putative defendant placed a product "into the stream of commerce?" *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).

e. If a product is involved, did the product end up in the forum state by chance, or did the defendant have an organized, deliberate distribution chain which targeted consumers in that state for potential sales or use?

f. Is there a claim that a specific act unrelated to the claim in question gives the Court specific jurisdiction? If so, keep in mind that such acts will not support an exercise of general jurisdiction over the defendant. *See Goodyear Dunlop*; *see also Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408, 416, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984).

g. In determining whether there are sufficient minimum contacts, the following factors should be considered:

i. The quantity of the contacts;

ii. The nature and quality of the contacts;

iii. The source and connection of the cause of action with those contacts;

iv. The interest of the forum state; and

v. The convenience of the parties.

Hammond v. Florida Asset Financing Corp., 695 N.W.2d 1 (Iowa 2005).

h. Is the case a putative class action? If so, does the court have jurisdiction over each individual claim of the plaintiffs versus the defendant? The claims of all potential class members in a proposed class action against a Florida corporation could not be considered in determining whether the court has personal jurisdiction; if the court lacks jurisdiction over the individual claims, it also lacks jurisdiction over the defendant for purposes of certifying a class action. *Hammond v. Florida Asset Financing Corp.,* 695 N.W.2d 1 (Iowa 2005).

i. Even if there is personal jurisdiction, should the case be transferred to another venue based on *forum non conveniens*? *Nebraska Beef Ltd. v. KBK Financial*, 288 F.Supp.2d 985 (S. D. Iowa 2003) (fact that forum was not convenient for either party factored into decision to decline to exercise personal jurisdiction).

F. Conclusion.

In any case where the absence of personal jurisdiction due to lack of sufficient minimum contacts may be play, a close examination of the recent U. S. Supreme Court cases of *J. McIntyre Machinery* and *Goodyear Dunlop* should be made. Even if general jurisdiction exists, this alone will not support the exercise of specific jurisdiction under the authority of *Goodyear Dunlop* for actions or conduct wholly unrelated to those general activities. Although *J. McIntyre Machinery* dismissed the case against the defendant, it unfortunately continues the tradition of divided courts weighing in on personal jurisdiction in the product liability context, which began in 1981 with *Asahi Metal Industry*. For further clarification in this area we must await future decisions by the Court. "Purposeful availment" has become more important as a consideration, and the mere foreseeability that a product might ultimately end up in the forum state is not enough. The authors would expect further clarification of the law in this area to appear much sooner than the more-than one quarter of a century it took the Court to build upon and refine *Asahi Metal Industry*.