

[Products Liability Law Daily Wrap Up, JURISDICTION—SPORTS AND RECREATIONAL EQUIPMENT—Colo. Sup. Ct.: Personal jurisdiction proper in radio-controlled helicopter injury case, \(Nov. 15, 2017\)](#)

Products Liability Law Daily Wrap Up

[Click to open document in a browser](#)

By Sheryl Allenson, J.D.

Applying the stream of commerce doctrine set forth by the U.S. Supreme Court in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Colorado Supreme Court affirmed a state appellate panel's decision finding that a Colorado trial court properly denied a manufacturer's motion to dismiss a consumer's action stemming from injuries he had sustained due to an allegedly defective replacement part for a radio-controlled helicopter. The state high court rejected the manufacturer's argument that selling its products through a distributor turned the distribution and sale of its products into the unilateral activity of a third party that could not properly be considered in the minimum-contacts analysis. Adopting this position would make foreign manufacturers immune from suit in the U.S. as long as they sold their products in the U.S. through separately incorporated U.S.-based distributorships, the court held, adding that the consequences of this would be inequitable by allowing foreign manufacturers to receive substantial economic benefit from sales to the U.S. market without incurring resulting liabilities and costs ([Align Corp. Ltd. v. Boustred](#), November 13, 2017, Rice, N.).

A Colorado resident (consumer) purchased a replacement main rotor holder for his radio-controlled helicopter from a local retailer. Allegedly, the main rotor holder was manufactured by Align Corporation Limited, a Taiwanese corporation, and was distributed by Horizon Hobby, Inc., a Delaware-based distributorship. Overall, the manufacturer had contracted with four U.S.-based distributorships that sold its products to retailers who, in turn, sold them to consumers. In this instance, the consumer installed the main rotor holder and was injured when the blades released improperly.

He filed suit in Colorado against both the manufacturer and the distributor. The manufacturer moved to dismiss, asserting that the Colorado courts lacked personal jurisdiction over the company. The trial court disagreed, ruling that the consumer made a prima facie showing that the court had personal jurisdiction over the manufacturer. Specifically, the lower court determined that the consumer's "allegations and supporting documents showed that Align injected a substantial number of products into the stream of commerce knowing that those products would reach Colorado." The court also opined that the manufacturer took steps to market its products in Colorado.

On appeal. On an interlocutory appeal, the appellate court sided with the trial court, after finding that two U.S. Supreme Court plurality decisions—*J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011) and *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987)—were not binding on Colorado courts. Thereafter, the Colorado Supreme Court granted certiorari, noting that the case was its first opportunity to examine the impact of those two U.S. Supreme Court plurality opinion on personal jurisdiction, in light of *World-Wide*, the U.S. Supreme Court's seminal case on stream-of-commerce jurisprudence.

The Colorado Supreme Court analyzed the fundamental principles of personal jurisdiction, noting that in this instance, only specific jurisdiction was in play. In order to reach that determination, the court had to look at whether the injury to the consumer arose out of and was related to "activities that are significant and purposely directed by the defendant at residents of the forum." To do this, the court had to consider whether the manufacturer had sufficient minimum contacts with Colorado by assessing whether the manufacturer had purposely availed itself of the privilege of conducting business in the state and whether the claims arose from the manufacturer's forum-related contacts.

In *World-Wide*, the High Court held that "a forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state," Under this test, there must be more than simply foreseeability alone, the Colorado Supreme Court observed. Rather, the manufacturer reasonably should anticipate being hailed into court in the forum.

Stream of commerce plus. The manufacturer argued that *Asahi* and *J. McIntyre* raised the bar by making a more strenuous test for specific jurisdiction: the stream of commerce "plus" test. This would require that the manufacturer was more "purposefully directed at the forum state" than simply "placing a product in the stream of commerce." The plurality in *Asahi* found that under the stream of commerce plus test, the consumer could not establish personal jurisdiction even if the manufacturer knew its product would end up in the forum state, where the manufacturer did not have offices, advertise, "create, control or employ" the distribution system, or design its product with sales in the forum state in mind. The Colorado Supreme Court looked to a concurrence from Justice Brennan, which suggested that the *World-Wide* stream of commerce test was sufficient, without any additional showing.

There was a similar split in the U.S. Supreme Court decision in *J. McIntyre*, in which Justice Kennedy, writing for a plurality, indicated that "the principal inquiry 'is whether the defendant's activities manifest an intention to submit to the power of a sovereign.'" Thus, the manufacturer would have to target the forum state to establish personal jurisdiction. In *J. McIntyre*, Justice Breyer wrote a concurring opinion, however, declining to adopt the stream of commerce plus standard.

Challenging the plurality. The Colorado Supreme Court noted that until the instant case, it had not had an opportunity to determine whether or how *Asahi* and *J. McIntyre* altered the standard set by *World-Wide* with respect to how stream of commerce jurisprudence affects specific jurisdiction. Citing another U.S. Supreme Court case, the Colorado high court explained that when considering plurality decisions without a clear holding, the holding "may be viewed as the position taken by those Members who concurred in the judgments on the narrowest grounds." With this in mind, the court analyzed both the *Asahi* and *J. McIntyre* cases and determined that, considering the concurring opinions, the narrowest grounds for the judgment still relied on the *World-Wide* stream of commerce test, rejecting the stream of commerce plus test. Thus, the Colorado high court determined that it was bound by the *World-Wide* test in analyzing whether the manufacturer's motion to dismiss should have been granted. As such, the court emphasized that the consumer only had to make a prima facie showing of personal jurisdiction to prevail on the manufacturer's motion to dismiss.

Prima facie showing. To make a prima facie showing under the *World-Wide* standard, the consumer had to allege "sufficient facts to support a reasonable inference that a defendant placed goods into the stream of commerce with the expectation that the products would be purchased in the forum state." As such, the court found that the consumer's complaint and supporting documentary evidence alleged numerous facts supporting an inference that the presence of the rotor blade in Colorado was not the result of random contacts with the state but, rather, it had been placed into the stream of commerce with the expectation that it would be sold to a consumer in Colorado. The court found that the manufacturer placed its product into the stream of commerce by placing it with the four distributorships in the U.S. Further, the manufacturer did not place any limits on where the products could be distributed. Additionally, more than \$350,000 worth of the manufacturer's product was sold in Colorado.

Applying the *World-Wide* standard, the court concluded that the consumer made a sufficient showing that the manufacturer had sufficient minimum contacts with the state, and that because his injuries arose out of those contacts, the consumer had established a prima facie case of specific jurisdiction over the manufacturer. The court was non-plussed by the manufacturer's suggestion that when selling through a distributorship, the manufacturer is taken out of the equation for purposes of considering minimum contacts. This would be inequitable, the court concluded.

The court also ruled that personal jurisdiction over the manufacturer would be reasonable and would not violate the "traditional notions of fair play and substantial justice," citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310

(1945). There would not be any particular burden on the manufacturer to defend suit in Colorado as opposed to any other state it was doing business. Instead, Colorado has "a clear interest in protecting its residents from defective products," the court wrote, "and [the consumer], a Colorado resident, has a great interest in obtaining effective relief in a Colorado court." Thus, the state supreme court affirmed the appellate court's decision upholding the district court's denial of the manufacturer's motion to dismiss on personal jurisdiction grounds.

The case is No. [16SC448](#).

Attorneys: Richard A. Waltz (Waltz Reeves Law) for Align Corp. Ltd. Michael Keating (Keating Wagner Polidori Free, PC) for Allister Mark Boustred. Kenneth H. Lyman (Hall & Evans, LLC) for Horizon Hobby, Inc.

Companies: Align Corp. Ltd.; Horizon Hobby, Inc.

Cases: CourtDecisions JurisdictionNews SportsandRecEquipmentNews ColoradoNews