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## U.S. Court Extends Long-Arm Jurisdiction to Foreign Manufacturers

On February 2, 2010, the Supreme Court of New Jersey, in *Nicastro v. McIntyre Mach. Am., Ltd.*(1), held that foreign manufacturers, including generic drug manufacturers, are subject to lawsuits filed in New Jersey if its products are manufactured for distribution and sale in the United States. “Today, all the world is a market,” the court said, noting the rapid integration of the American economy into the global marketplace and the need to alter traditional notions of judicial jurisdiction over foreign companies doing business in America.

The Court’s decision has broad implications for manufacturers based outside of New Jersey -- both in the U.S. and in other nations -- that sell products for distribution in the United States. Irrespective of a foreign manufacturer’s own involvement, or the absence of its direct involvement, in the distribution system for its products in the U.S., any foreign company knowing that its products are distributed through a system that might result in sales in any U.S. state “must expect”, the court stated, that it will be subject to the jurisdiction of the New Jersey courts if its products are claimed to have injured a New Jersey resident. A foreign manufacturer’s awareness and use of a distribution system by which it receives economic benefit from sales in New Jersey, the court found, will support the exercise of the court’s jurisdiction in products liability lawsuits against the foreign company.

This broad view of jurisdiction may influence courts in other states in the U.S. to reach a similar result.

The underlying facts of the *Nicastro* case are uncomplicated. The plaintiff filed a products liability lawsuit in New Jersey state court alleging that he lost four fingers due to the lack of a safety guard on a recycling machine used to cut metal. Defendant J. McIntyre Machinery, Ltd. designed and manufactured the machine at its headquarters in the United Kingdom, and sold the recycling machine to its exclusive U.S. distributor located in Ohio, which then sold and shipped the machine to *Nicastro*’s employer located in New Jersey.

The British manufacturer and its American distributor were independently owned and operated but the foreign company directed much of its distributor’s advertising and sales efforts. The machine was labeled and came with instructions listing the British manufacturer’s name, address, telephone number and fax number, and referencing both the U.S. and U.K. safety regulations. The British company’s executives attended exhibitions, trade conventions and conferences around the United States between 1990 and 2005, although none were in New Jersey. The New Jersey Court found that these facts demonstrated “calculated efforts to penetrate the overall

American market,” and that the British company “clearly knew or should have known that [its] products were intended for sale and distribution to customers located anywhere in the United States.”

The “preeminent issue” for the court was whether the Due Process Clause of the United States Constitution, properly applied, rendered a U.S. state powerless to provide relief to its citizen sustaining a serious injury from a product sold and marketed by a foreign manufacturer through an independent U.S. distributor, knowing that its product’s final destination might be New Jersey. After reviewing the case law, the court concluded that “a foreign manufacturer that places a defective product in the stream of commerce through a distribution scheme that targets a national market, which includes New Jersey, may be subject to the ... jurisdiction of a New Jersey court in a product-liability action.” This finding ensures that manufacturers who participate in “a wide geographic market that includes New Jersey will not be immune from suit” in New Jersey.

While the court’s decision may be reviewed by the U.S. Supreme Court in the future, for now, it subjects many foreign manufacturers to New Jersey products liability suits, including companies abroad making generic pharmaceuticals for the American market.

A few weeks after the Nicastro decision, a bill was introduced in the U.S. Congress — the Foreign Manufacturers Legal Accountability Act — to make it easier to hold foreign manufacturers accountable in U.S. courts. Similar legislation was proposed last year; and both bills are gathering support from members of Congress with varied political philosophies.

Foreign manufacturers should consult their legal counsel to determine the potential effect of these developments on their international business operations and vulnerability to suit in U.S. federal and state courts.

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1. Nicastro v. McIntyre Mach. Am., Ltd., 2010 N.J. LEXIS 19 (N.J. Feb. 2, 2010).

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