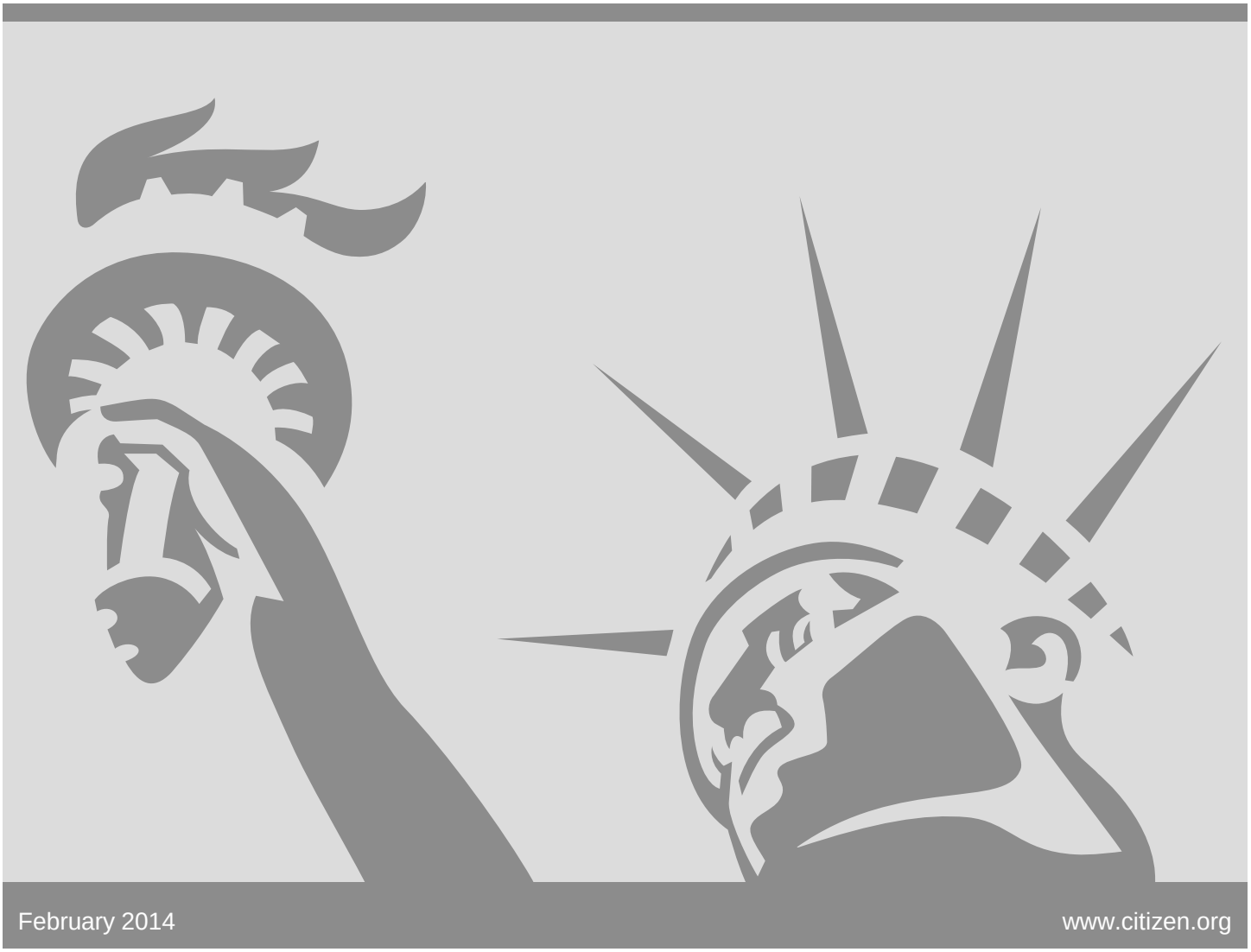

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Injury in the Stream of Commerce

Personal Jurisdiction After *J. McIntyre Co. v. Nicastro*

Acknowledgments

This report was written by Scott L. Nelson, an attorney with Public Citizen Litigation Group, and Allison M. Zieve, director of Public Citizen Litigation Group, with research assistance from Litigation Group attorney Jehan Patterson and Litigation Group fellow Andrew Kaufman.

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Public Citizen
1600 20th Street NW
Washington, DC 20009
202-588-1000
http://www.citizen.org

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Contents

I. Introduction and Overview

When a person decides to bring a lawsuit seeking compensation for injury caused by another person or a company, one of the initial questions he faces is where to sue. The plaintiff's choice about where to sue is guided by the doctrine of "personal jurisdiction." Specifically, a plaintiff can only litigate a case against a defendant in a court that has jurisdiction over that defendant. When both parties reside in the same state, the decision may be easy because a court always has jurisdiction over the forum state's own citizens. But where the defendant is not a citizen of the state, the question whether the courts of that state may exercise jurisdiction over the defendant may be a more complicated inquiry. In such cases, the availability of personal jurisdiction in a reasonably accessible forum may well determine whether the plaintiff has a viable remedy for the harm he suffered.

In *J. McIntyre Machinery Ltd. v. Nicastro*, 564 U.S. __, 131 S. Ct. 2780 (2011), the Supreme Court held that a court in New Jersey could not exercise personal jurisdiction over a foreign defendant whose product, distributed through an American company whose charge was to target the U.S. market as a whole, caused a severe injury in New Jersey. The result reflects a restrictive view of personal jurisdiction. At the same time, the absence of a majority opinion leaves the message of *Nicastro* uncertain. Does *Nicastro* herald a new approach to personal jurisdiction in which plaintiffs will find it increasingly difficult to establish jurisdiction over out-of-state and foreign defendants? Or does it leave the law largely unchanged? With two years of judicial decisions interpreting *Nicastro* now on the books, a substantial body of law exists from which to draw tentative conclusions.

Although the Supreme Court was unable to reach a consensus about the proper jurisdictional test, the cases decided since *Nicastro* show that the Court's fractured opinion has significantly impaired the ability of plaintiffs to obtain personal jurisdiction over foreign or out-of-state defendants that market products through third-party distributors who are tasked to sell the product nationwide as opposed to in particular states. The biggest effect has been in cases where a foreign or out-of-state defendant marketed a product nationally, sold few products in the state where the plaintiff was injured, and did not "target" that state. In such cases, where the facts are similar to those of *Nicastro*, the Supreme Court's decision has damaged plaintiffs' ability to obtain redress for injuries.

In the "best case" scenario for plaintiffs in these cases, they will have to seek redress out of state, potentially in faraway states. In these instances, the burden that the *Nicastro* plurality worries about imposing on a malfeasant defendant is shifted to a plaintiff who has been injured by the defendant's product. In practical terms, this shifting burden will often make it difficult for a plaintiff to bring a case at all. In other cases, plaintiffs may not be able to seek redress in any state, making it highly improbable that they will be able to obtain any compensation.

In just the two years following the decisions, *Nicastro* has worked to block injured parties from obtaining redress in numerous cases. As described in this report, these cases include:

- The family of a delivery driver killed at a loading dock in Utah by a falling dock leveler was prevented from pursuing its lawsuit against the Canadian manufacturer of an allegedly defective control box.

- A case against a Swedish manufacturer whose metal bending machine seriously injured a worker in Pennsylvania was dismissed.

- The family of an Ohio kidney dialysis patient killed by an allegedly faulty dialysis device was unable to bring suit in Ohio against the maker of allegedly defective parts.

- A Kentucky worker was unable to sue in Kentucky the Irish company that made an allegedly defective forklift that smashed his leg.

- A child whose hand was mutilated by an allegedly defective paper shredder was unable to sue in Georgia the Taiwanese company that made the shredder.

Given the number of cases, in only the first two years since *Nicastro* was decided, in which plaintiffs have already found a local forum to be unavailable as a result of *Nicastro*, it is inevitable that many more injured people will face similar obstacles to obtaining relief as time passes. As a result, many companies will reap the benefits of engaging in commerce in U.S. jurisdictions without being accountable for injuries caused by their products.

II. Personal Jurisdiction – A Brief background

Nicastro is the latest in a string of Supreme Court decisions over a period of nearly 75 years concerning the circumstances in which state and federal courts can exercise jurisdiction over cases involving out-of-state defendants. Since the Court's seminal decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), personal jurisdiction in such cases has rested on whether the defendant possesses "minimum contacts" with the forum state—a requirement derived from the Court's construction of the demands of due process.

Constitutionally adequate minimum contacts have long been said to require "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." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Although the standard is easily stated, in practice it has proved difficult to apply in cases involving defendants who engage in interstate or international business transactions or whose conduct has effects in jurisdictions where they are not physically present.

In particular, the Supreme Court and the lower courts have struggled over how to apply the "purposeful availment" concept to circumstances in which the defendant is a business engaged in interstate or international sales of products, directly or through a third party or parties who distribute its products, and the products cause harm in some distant jurisdiction that they have reached through what is often referred to in the case law as the "stream of commerce."

In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Supreme Court held that the unilateral action of a purchaser in taking a product purchased in one jurisdiction into another, where it ultimately causes injury, does not by itself provide a basis for subjecting the seller to jurisdiction in the state where the injury occurred. The Court reached this holding notwithstanding that, given the nature of the product (an automobile), it was predictable that the product could end up causing an injury anywhere in the country. *World-Wide Volkswagen* did not, however, answer a more important question about personal jurisdiction: Can a defendant who deliberately introduces goods into commerce with the understanding, expectation, and even desire that they will ultimately be purchased by consumers or end-users in other jurisdictions be subjected to suit in those jurisdictions when the product causes injuries there?

The Supreme Court took on that question in *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty*., 480 U.S. 102 (1987), but with inconclusive results. In *Asahi*, the Supreme Court considered whether a California court in a products liability action could assert jurisdiction over a Japanese manufacturer of tire valve stems. The Japanese manufacturer sold its products to a Taiwanese company that incorporated the product into tires, which it sold worldwide, including in the United States and, more specifically, California, which accounted for about 20% of the tire company's sales. The valve manufacturer knew that its products were destined for the international market and that substantial numbers of them would end up in California.

The Supreme Court unanimously held that personal jurisdiction was absent, but there the agreement among the Justices ended. Justice O'Connor, joined by three Justices, took the view that the manufacturer's introduction of the product into the stream of commerce with the expectation that it would end up in California was insufficient to establish the minimum contacts that are essential to any exercise of jurisdiction. In her view, something more was required to demonstrate "purposeful availment" of the forum: The defendant must have taken some action "purposefully directed toward the forum State" and reflecting an "intent or purpose to serve the market in the forum State." 480 U.S. at 112 (opinion of O'Connor, J.). Such conduct, she suggested, could include "designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." *Id*.

Justice Brennan, also joined by three Justices, agreed that jurisdiction was lacking because, under the circumstances of the case, it would be unreasonable to assert jurisdiction over the defendant. He insisted, however, that the defendant's forum contacts were sufficient to establish the minimum contacts with the forum that are the prerequisite to the assertion of jurisdiction. According to Justice Brennan's view, the act of introducing a product into commerce, coupled with the awareness that it is being marketed in the forum state as a result of "the regular and anticipated flow of products from manufacture to distribution to retail sale," suffices to permit the assertion of jurisdiction consistent with the due process clause. *Id*. at 117 (Brennan, J., concurring in part and in the judgment).

With eight Justices split four-to-four in *Asahi* over the showing needed to establish minimum contacts, the ninth Justice, Justice Stevens, declined to express a view on the subject, leaving the issue a draw. There matters stood for almost a quarter of a century, and lower courts in "stream of commerce" cases were forced either to apply both tests and hope they yielded the same result in particular cases, to choose one or the other, or to apply something in between.

In 2010, the New Jersey Supreme Court decided *J. McIntyre Co. v. Nicastro*, 987 A.2d 575, and at least arguably reached a result that was sustainable under the test articulated by Justice Brennan but not under the test of Justice O'Connor. That outcome led the United States Supreme Court to grant review of the case, ostensibly to resolve the questions left unsettled in *Asahi*. In the end, however, the Supreme Court's decision in *Nicastro* perpetuated the lack of clarity by failing to resolve those decades-old questions about personal jurisdiction. But the Court's failure to agree on a standard has not prevented the decision from adversely affecting plaintiffs' ability to obtain jurisdiction over foreign and out-of-state manufacturers who seek to avail themselves of the benefits of marketing to the United States as a whole without specifically targeting particular states.

III. *J. McIntyre Co. v. Nicastro*

"[B]ecause of decades-old questions left open in *Asahi*," the Supreme Court took *Nicastro* to consider again when a State has jurisdiction over an out-of-state defendant. 131 S. Ct. at 2785 (plurality opinion). The Supreme Court's plurality described the question before it as "whether a person or entity is subject to the jurisdiction of a state court despite not having been present in the State either at the time of suit or at the time of the alleged injury, and despite not having consented to the exercise of jurisdiction."

J. McIntyre is an English company that manufactures and sells equipment for the metal recycling industry, including shearing machines. To serve the market for its products in the United States, J. McIntyre over time designated a series of exclusive distributors who, with J. McIntyre's assistance, sought to promote sales throughout the country.

At the relevant time, J. McIntyre's U.S. distributor was J. McIntyre Machinery America, Ltd., a company located in Ohio. A buyer in New Jersey ordered one of J. McIntyre's machines, which J. McIntyre shipped to the United States in response to the order as relayed by the distributor. The price of the machine was approximately $25,000, which J. McIntyre received (less the distributor's commission). An employee of the New Jersey customer was seriously injured while using the machine, resulting in the loss of four fingers on his right hand, allegedly because of the machine's defective design.

The injured man, Robert Nicastro, sued J. McIntyre and the Ohio distributor in New Jersey state court. (Unrelated to the lawsuit, the distributor subsequently went into bankruptcy. Nicastro was thus left with no remedy against the distributor.) J. McIntyre moved to dismiss the complaint. It argued that the state court lacked personal jurisdiction over it because the British company had no reason to expect that its products would be sold in New

Jersey. The trial court granted the motion and dismissed the case. Nicastro then appealed to the New Jersey intermediate appellate court, which reversed, holding that jurisdiction was proper. The appellate court explained that J. McIntyre did business in the United States through a single distributor and, therefore, should have expected its products to end up anywhere in the United States, including New Jersey. The case was then further appealed to the New Jersey Supreme Court, which affirmed the decision finding jurisdiction and holding that J. McIntyre had "targeted" the entire United States. J. McIntyre filed a petition for certiorari, which the Supreme Court granted.

The parties' briefs to the Supreme Court took different approaches to the jurisdictional question.[1] J. McIntyre argued, first, that by finding jurisdiction the New Jersey Supreme Court decision was inconsistent with Supreme Court precedent because the company lacked minimum contacts with New Jersey. The company said that, historically, a state's jurisdiction did not extend beyond its physical borders, and that cases extending jurisdiction beyond geographical boundaries are limited to instances in which the defendant's intentional contacts with the state establish a substantial connection. Its brief argued that "purposeful availment" ensures that the defendant has fair warning, required by due process, that it may be subject to the jurisdiction of the state's courts. The brief further argued that, for a state court to have jurisdiction over it, a defendant must direct its conduct toward that state, not toward the United States generally. J. McIntyre argued that neither of the *Asahi* stream-of-commerce tests was met in the case.

Nicastro's brief started with a much more lengthy discussion of the facts underlying the case and his theory on personal jurisdiction. The brief says that J. McIntyre "regularly" marketed its machine at trade shows throughout the United States from 1990-2005, that its employees from England attended the shows, and that it sold the machines directly to customers at the shows. Other than at trade shows, J. McIntyre sold its products in the U.S. through U.S. distributors and, at the time relevant to the case, used the exclusive distributor in Ohio, McIntyre America. According to the brief, J. McIntyre England assured McIntyre America that any losses caused by a defect in one of its products would be covered by J. McIntyre England's insurance policy, not by McIntyre America. When Nicastro's employer bought the machine through McIntyre America, "[a]ffixed to the machine was a metal plate bearing the model and serial numbers for the machine, as well as McIntyre England's address and telephone number." In 2003, "[a]t least four model 640 machines were sold into New Jersey. Consumers in the United States were advised to contact McIntyre England directly for the supply of replacement parts." The brief stated that, although McIntyre England represented that the shearing machine conformed to American safety standards, the particular machine involved "did not meet American National Standard Institute requirements … or the Regulations from the Occupational Safety and Health Administration," nor did it conform to "'the recognized guidelines published by the National Safety Council and the American Society of Mechanical Engineers for protecting machine operators.'" (quoting N.J. S. Ct opinion).

[1] The parties' briefs are available at http://www.americanbar.org/publications/preview_home/publiced_preview_briefs_jan2011.html.

Turning to the legal argument, Nicastro relied on *Asahi* to argue that the New Jersey courts had personal jurisdiction over the company because it had put its products into the stream of commerce, with the expectation that they would be sold in the state. He argued further that "McIntyre England had clear notice, from numerous American judicial decisions, that, on the basis of its conduct, it could be haled into court where its products were sold and caused harm. McIntyre England's worldwide distribution of machines created an expectation that it could be haled into court in any state." Disagreeing with J. McIntyre, Nicastro argued that due process did not prevent the exercise of jurisdiction by a state outside its territory, and that the Supreme Court had done away with that notion its 1945 decision in *International Shoe Co. v. Washington*, 326 U.S. 310.

As in *Asahi*, the Court in *Nicastro* was unable to reach a consensus on the rules for determining when a state may exercise personal jurisdiction over an out-of-state defendant. Nonetheless, a majority of the Court—six Justices—found that J. McIntyre's contacts with New Jersey were not sufficient to support the assertion of jurisdiction.

The lead opinion of the Court, written by Justice Kennedy, commanded only a four-Justice plurality of the Court (Kennedy, Roberts, Scalia and Thomas). The Kennedy opinion adopted a strict version of Justice O'Connor's standard from *Asahi*. Stating that, "as a general matter," "those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts," 131 S. Ct. at 2787, Justice Kennedy announced a version of "purposeful availment" that focused on whether a defendant, through its actions, evinced an "intention to submit" or "consent" to the jurisdiction of a forum. *Id.* at 2787-88. A defendant, Justice Kennedy acknowledged, may do so by "'seek[ing] to serve' a given State's market," *id*. at 2788, by sending goods or agents to that forum. *Id*. But "[t]he defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State." *Id*.

Moreover, in Justice Kennedy's view, the targeting must be quite specific. Thus, Justice Kennedy concluded that it was not enough that the defendant in *Nicastro* indiscriminately targeted the United States, authorized its distributor to sell in all states, and, indeed, encouraged its distributor to sell anywhere in the United States that it could. In Justice Kennedy's view, "personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis," ostensibly to ensure the preservation of "individual liberty." *Id*. at 2789. Because the states and the United States are "distinct sovereign[s]," *id*., conduct that targets the United States as a whole may bring a defendant at least potentially within the authority of the United States, but not any one of its individual component states. *See id*. According to Justice Kennedy, the facts in *Nicastro* "may reveal an intent to serve the U.S. market, but they do not show that J. McIntyre purposefully availed itself of the New Jersey market," *id*. at 2790, because the defendant had not purposefully directed conduct specifically at New Jersey. In Justice Kennedy's view, the only contact specific to New Jersey was that a handful of the defendant's machines had "ended up" there, and that was not enough. *Id*.

In stark contrast, Justice Ginsburg, joined by Justices Sotomayor and Kagan in dissent, would have adopted an approach akin to (or possibly even broader than) that of Justice Brennan in *Asahi* and upheld the assertion of jurisdiction over J. McIntyre. According to Justice Ginsburg, the dispositive fact was that the defendant sought to "develop a market in the United States" and "to sell as much as it can, wherever it can," excluding "no region or State from the market it wishes to reach." *Id*. at 2795 (Ginsburg, J., dissenting). Under such circumstances, it was "fair and reasonable … to require the international seller to defend at the place its products cause injury." *Id*. at 2800. J. McIntyre, in Justice Ginsburg's view, "'purposefully availed itself' of the United States market nationwide," and "thereby availed itself of the market of all States in which its products were sold by its exclusive distributor." *Id*. at 2801. That availment, Justice Ginsburg would have held, created the requisite minimum contacts with any such state.

Justice Breyer, joined in concurrence by Justice Alito, supplied the votes necessary to tip the outcome to that favored by the plurality, but he declined to adopt any broad rules of personal jurisdiction or to endorse either the approach of the plurality or the dissent. *See id*. at 2792 (Breyer, J., concurring in the judgment). According to Justice Breyer, determining the outcome of the case "requires no more than adhering to our precedents," which Justice Breyer read as excluding jurisdiction over a nonresident defendant whose product had reached the market in the forum if the sale there was not part of a "regular … flow" or "regular course" of sales in that jurisdiction. *Id*. at 2792. In Justice Breyer's view, a "single isolated sale," even if based on a nationally targeted marketing effort, was insufficient. *Id*. He claimed to find support for his view in the opinions of both Justice O'Connor and Justice Brennan in *Asahi*—and even in the opinion of Justice Stevens, who had disclaimed any opinion on the existence of sufficient contacts in that case. *See id.*

Having said that much, Justice Breyer expressed dissatisfaction both with the majority's requirement that defendant specifically "target" a forum, and with the approach of the New Jersey court (and the dissent), under which it was sufficient that a defendant employed a nationwide distribution system that could lead to sales in any state. *See id*. at 2793-94. Justice Breyer closed by reiterating that he "would not work … a change to the law" in the way advocated by either side in the case. *Id*. at 2794.

At the level of broad theory, *Nicastro* is another inconclusive decision. Nonetheless, its result—a finding of no jurisdiction on facts where a large manufacturer, through a national marketing effort, sells a product to a state where it causes injury—will inevitably result in similarly restrictive results in like cases and may move the law incrementally toward restrictive results in other types of cases as well. The plurality opinion, moreover, provides a wealth of material from which lower courts may draw to take a narrowed view of the scope of personal jurisdiction. Even Justice Breyer's opinion, although it claims not to change the law, suggests a new emphasis on the quantity of a defendant's sales within the forum state that will, at least in some circumstances, lead courts to decline jurisdiction in circumstances where, before *Nicastro*, they would have asserted it. Given both the uncertainties it presents and the possibilities for supporting a contraction of personal jurisdiction, analysis of how *Nicastro* has

been treated in the lower courts is important to understand where the law of personal jurisdiction now stands and where it may be headed.

IV. Personal Jurisdiction Analysis After *Nicastro*

To gather information about the impact of *Nicastro*, we analyzed every federal- and state-court decision reported on Westlaw as of July 29, 2013, that cited the Supreme Court's decision in *Nicastro*. Capsule summaries of 221 cases that are relevant to issues of personal jurisdiction are attached as an appendix to this report. The critical elements we examined in each case were the disposition (for example, whether the decision granted or denied dismissal on personal jurisdiction grounds or took some other action, such as transferring the case, premised on a personal jurisdiction ruling) and the role that the *Nicastro* decision appeared to play in that disposition in light of the facts of the case and the court's discussion of the decision.

Nicastro has been widely cited in a great variety of decisions touching on personal jurisdiction. In some of those decisions, *Nicastro* does not appear to play a determinative role. Our review of the cases shows, however, that *Nicastro* has had a noticeable, negative impact on a category of cases involving facts closely analogous to those in *Nicastro* itself: namely, cases where a plaintiff sues for an injury occurring within the forum resulting from a product manufactured out of state and sold in the forum as the result of the action of a third-party distributor. The impact of *Nicastro* in such cases has not been uniform, as it depends on the particular facts, but in a significant number of cases, application of *Nicastro* has resulted in plaintiffs being left without a remedy against a particular defendant.

A. General Impact of *Nicastro*

Many cases that cite *Nicastro* do not replicate the fact pattern of *Nicastro* itself. Indeed, as is true of many significant Supreme Court decisions, *Nicastro* is often cited for general propositions of law that are not necessarily outcome-determinative in a particular case. Thus, for example, language from the plurality opinion in *Nicastro* is often cited for the principle that the assertion of personal jurisdiction must be consistent with due process, and must be based on contacts with the forum sufficient to ensure that adjudication in that forum comports with traditional notions of fair play and substantial justice. As the most recent Supreme Court case to address specific personal jurisdiction, the *Nicastro* opinion has become a leading citation for such boilerplate propositions.

Of perhaps somewhat greater significance is that the *Nicastro* plurality opinion has become the citation of choice for the proposition that personal jurisdiction must rest on contacts reflecting "purposeful availment of the privilege of doing business" in the forum state. That formulation reflects a narrow conception of the law of personal jurisdiction, but it did not originate in *Nicastro* and is frequently used by courts in opinions that find personal jurisdiction over a defendant, as well as those that deny jurisdiction.

Similarly, the *Nicastro* plurality opinion is often cited for its statements that defendants generally have a "right" not to be subjected to suit in foreign jurisdictions absent contacts that

permit the assertion of jurisdiction; that personal jurisdiction rests on a defendant's actions, not expectations; that those actions must "target" the forum to give rise to jurisdiction; and that personal jurisdiction reflects a defendant's choice to subject itself to the authority of the forum jurisdiction. These generalizations are tendentious and reflective of a restrictive theory of personal jurisdiction. Again, however, they reflect concepts that were present in decisions preceding *Nicastro* and their citation does not necessarily reflect the citing court's view that it lacks jurisdiction.

Nicastro is also frequently cited to illustrate the distinction between specific personal jurisdiction and general personal jurisdiction. Specific jurisdiction is jurisdiction over a defendant limited to claims that arise out of or relate to particular contacts between the defendant and the jurisdiction that satisfy the constitutional demand for minimum contacts. General personal jurisdiction is jurisdiction based on contacts with the forum that are so extensive that the defendant may be viewed as being "at home" in the jurisdiction and subject to suit on claims regardless of whether they have any relationship to the forum. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 749 (2014.) To define or illustrate this distinction, *Nicastro* is often cited along with the Supreme Court's opinion in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011), a case argued to and decided by the Court on the same days that *Nicastro* was argued and decided, to illustrate the concept of general jurisdiction.

Nicastro is also cited on occasion for a boilerplate proposition not directly related to personal jurisdiction and offered in the original opinion as an aside: its observation that under the federal venue statute, venue is proper in a jurisdiction where a substantial part of the events or omissions giving rise to a change occurred.

Aside from quoting it for broad, general statements, courts often devote relatively little analysis to *Nicastro* in applying personal jurisdiction principles in cases where the facts bear little resemblance to those in *Nicastro*. Courts frequently quote language from *Nicastro* about "traditional notions of fair play and substantial justice" or "purposeful availment," and then proceed to apply multi-part tests for determining the existence of personal jurisdiction derived from pre-*Nicastro* precedents—usually circuit precedent in the case of federal courts, and state supreme court precedents in the case of state courts. Pre-*Nicastro* Supreme Court opinions, and in particular *Burger King v. Rudzewicz*, 471 U.S. 462 (1985), *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770 (1984), and *Calder v. Jones*, 465 U.S. 783 (1984), continue to play a major role in lower courts' analysis of personal jurisdiction issues.

Thus, cases involving intentional torts generally turn on application of *Keeton* and *Calder* and the ways courts have sought to determine whether wrongful conduct is "directed at" forum residents within the meaning of those decisions, with *Nicastro* having relatively little direct bearing on the outcome.[2] Similarly, cases involving contractual relationships between

[2] Such cases are likely to be significantly affected by the Supreme Court's forthcoming decision in *Walden v. Fiore*, No. 12-574 (argued Nov. 4, 2013), which concerns the scope of personal jurisdiction based on alleged intentional tortious conduct in one jurisdiction that has effects in another.

forum residents and nonresidents continue to turn on the application of the considerations discussed in such cases as *Burger King* and *McGee v. International Life Insurance Co.,* 355 U.S. 220 (1957), and *Nicastro*'s statements about "purposeful availment" and "actions, not … expectations" forming the basis for jurisdiction have had little impact in such cases.

Personal jurisdiction issues also arise with great frequency in cases involving e-commerce and other forms of internet activity, and the analogies between such cases and the type of "stream of commerce" claim at issue in *Nicastro* were of obvious concern to Justice Breyer in *Nicastro.* In part because of Justice Breyer's own emphatic statement that his vote on the outcome in *Nicastro* did not signify a position on the issue of how to determine jurisdiction over a defendant who "targets the world" through a website, however, *Nicastro* does not appear to have been particularly influential in cases posing issues involving the internet. Rather, courts in such cases have typically followed pre-*Nicastro* precedents specifically applicable to electronic contacts.

B. *Nicastro*'s Negative Impact in "Stream of Commerce" Cases

Despite the failure of *Nicastro* to produce a majority opinion or to articulate a rule commanding majority support, it unequivocally held that the defendant in that case lacked sufficient minimum contacts with the forum to allow assertion of personal jurisdiction consistent with due process. Since the Court's decision, lower courts in a significant number of cases have, predictably, dismissed claims against defendants, like the defendant in *Nicastro*, whose products caused injury in states where they were sold as a result of the efforts of supposedly independent distributors who sought to promote sales nationwide but were not charged by the defendants to target particular states.

Thus, courts have dismissed claims based on sales within a state of such products as dietary supplements, automotive wiring systems, defective fuel tanks for personal watercraft, tarp straps, surgical mesh, bicycles, cigarettes, pavement milling machines, metalworking machinery, travel trailers, dust collection systems, cigarettes, paper shredders, medical equipment, sterilizing washing machines, loading dock levelers, kidney dialysis equipment, paddleboards, table saws, prescription drugs, electric power taps, tractors, speedboats, forklifts, stitching machines, and electronic devices. The common denominator in these cases is that the marketing of the defendant's products was conducted through a third-party distributor whose efforts were directed broadly at the United States rather than at particular states.[3] Such results are most likely where the use of a distributor or distribution network has resulted in a relatively small number of the defendant's products reaching the forum state, sometimes even as a result of the defendant's own action in shipping the product to that state in response to an order.

These decisions tend to characterize the ultimate presence of the product in the state as "fortuitous" or "incidental," or simply as not reflecting, in *Nicastro*'s words, "targeting" of the

[3] Illustrative cases fitting this pattern are summarized in the Appendix at case numbers 3, 7, 8, 9, 12, 15, 16, 28, 36, 42, 48, 52, 71, 72, 76, 89, 91, 94, 102, 105, 119, 129, 133, 138, 152, 182, 183, 198, 200, 206, 218.

forum, "purposeful availment of the privilege" of doing business there, or "consent" to the authority of the forum state. Based on such characterizations, courts have denied jurisdiction not only in cases involving one-off sales of large pieces of industrial equipment, but also products intended for direct use by consumers in instances where the courts concluded that the defendants' conduct and the quantity of sales in a jurisdiction did not reflect targeting of the forum.

Examples of such decisions include:

- *Gardner v. SPX Corp.*, 272 P.3d 175 (Utah 2012) (Appendix No. 94). A falling dock leveler killed a delivery driver at a loading dock in Utah. A Canadian company had manufactured the control box, which was alleged to be defective. Hundreds or thousands of the boxes were installed in dock levelers marketed in the United States. The Utah Supreme Court held that due process precluded assertion of personal jurisdiction over the Canadian company. Although it acknowledged that the sale was not as "isolated" an occurrence as the one at issue in *Nicastro*, the court held that the company lacked minimum contacts with Utah because, among other things, it did not specifically target Utah, design the product for Utah, or specifically task a distributor with sales in Utah.

- *Kingsmill v. Roundo AB*, 2013 WL 3778351 (E.D. Pa. 2013) (Appendix No. 36). A metal bending machine manufactured by a Swedish company injured a worker in Pennsylvania. A domestic corporation marketed the machinery throughout the United States, and the Swedish company's products were available through multiple local distributors in Pennsylvania. Over a 40-year period, 231 of the machines had been sold in Pennsylvania, including 41 during the five years in which the one that injured the plaintiff had been sold. The court held that *Nicastro* precluded assertion of jurisdiction over the manufacturer despite the regular sales of its product in the forum over many years.

- *Huddleston v. Fresenius Medical Care North America*, 2012 WL 996959 (S.D. Ohio 2012) (Appendix No. 105). A kidney dialysis patient in Ohio died, allegedly as a result of defective components in a dialysis device. The components were manufactured by a company in another state, incorporated in dialysis devices, and marketed in states including Ohio. Although the devices were distributed to 32 Ohio dialysis clinics and 143 Ohio patients in 2009 alone, the court held that the manufacturer had not purposefully availed itself of the Ohio forum within the meaning of *Nicastro*.

- *Lindsey v. Cargotec USA, Inc.*, 2011 WL 4587583 (W.D. Ky. 2011) (Appendix No. 198). A forklift crushed a worker's leg in Kentucky. He sued the manufacturer, an Irish company, claiming that the forklift was defectively designed and manufactured. The Irish company marketed its products throughout the United States through a separate company in Indiana. Both the Irish company and the Indiana distributor were subsidiaries of the same Finnish parent company. Although the distributor sold 97 forklifts in Kentucky over a ten-year period, the court held that the manufacturer

had not purposefully availed itself of the market in Kentucky and could not be sued there.

- *Askue v. Aurora Corp. of America*, 2012 WL 843939 (N.D. Ga. 2012) (Appendix No. 71). A paper shredder manufactured by a Taiwanese company mutilated the hand of a child in Georgia. A U.S. corporation in California distributed the Taiwanese company's shredders nationwide, including in Georgia. The court held that *Nicastro* required the conclusion that the manufacturer lacked minimum contacts with Georgia.

- *Dow Chemical Canada ULC v. Superior Court*, 202 Cal. App. 4th 170 (Cal. Ct. App. 2011) (Appendix No. 183), and *Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC*, 216 Cal. App. 4th 591 (Cal. Ct. App. 2013) (Appendix No. 9). Gas tanks manufactured in Canada for personal watercraft exploded and injured users of the watercraft and bystanders in California. The gas tanks were incorporated into the watercraft, which were then marketed throughout the United States by a separate company. Despite sales of thousands of units in California, California courts twice held that the Canadian company had not purposefully availed itself of the California market.

Courts seem particularly unwilling to assert jurisdiction when the foreign manufacturer is a supplier of a component incorporated in a product that is then distributed through means chosen by the manufacturer of the product containing the component, as in the *Gardner*, *Huddleston*, *Dow*, and *Bombardier* cases discussed above. Although the component suppliers may benefit no less than the manufacturers from the targeting of the products at the U.S. market (and, in turn, sales in particular states within that target market), courts have been less willing to assert jurisdiction over them, even when sales in the forum have been quite sizeable. This result appears to be attributable to courts reading *Nicastro* to confirm a narrow reading of the circumstances under which jurisdiction is permissible under *Asahi*.

It is important to emphasize that the cases discussed above in which courts have applied *Nicastro* to deny jurisdiction reflect only two years of case law and only cases that have generated opinions reported on Westlaw. That dozens of reported cases have already found defendants' contacts too attenuated to support jurisdiction portends similar results in thousands of cases as time passes. The fact patterns that lead to such outcomes—involving foreign or out-of-state manufacturers that target the nationwide market without specially targeting individual states—are recurrent, and *Nicastro* itself is likely to exacerbate the problem by leading more foreign companies to avoid conduct that can be characterized as targeting. Numbers of reported decisions, moreover, will inevitably understate the problem, not only because many trial court dismissal orders, particularly in state courts, will go unreported, but also because *Nicastro* will suppress the filing of actions in cases where lawyers believe courts are likely to deny personal jurisdiction. The inevitable result will be a two-tiered system of justice, in which persons who have the misfortune to be injured by companies that have avoided specific "targeting" of the jurisdictions where their products are sold are denied access

to courts where their injuries can be redressed, while others injured by defendants who have derived equal benefit from forum sales but are not shielded from jurisdiction by *Nicastro* continue to have remedies in the states where they suffer injury.

C. The Breyer Approach and Potential Limits on *Nicastro*

To be sure, courts in a number of cases discussing *Nicastro* and *Asahi* have stated that they do not view *Nicastro* as having "changed" the law concerning jurisdiction in "stream of commerce" cases. The absence of a majority opinion in *Nicastro*, coupled with the unwillingness of Justice Breyer's opinion to formulate a general test and its assertion that it is based on existing precedents, has led these courts to assert that the issue of personal jurisdiction in such cases remains where it was after *Asahi*—that is to say, unsettled, with two competing views as expressed in the opinions of Justice O'Connor and Justice Brennan. Courts that view the case this way either choose between the two approaches or seek to reconcile the approaches with the facts before them in some fashion (sometimes by asserting that both approaches yield the same results when applied to the facts).[4]

Statements that *Nicastro* has not changed the law, however, gloss over a difference between Justice Brennan's approach in *Asahi* and that of Justice Breyer in *Nicastro*—a difference that affected the result not only in *Nicastro* itself, but in many cases following *Nicastro*. For Justice Brennan, participation in a marketing network aimed at the United States, coupled with awareness that the predictable result would be that products would reach the forum state in the regular course of commerce, would suffice to establish minimum contacts. *See Asahi*, 480 U.S. at 117 (opinion of Brennan, J.). Although Justice Breyer borrowed some of Justice Brennan's words, he seems to have imposed a more stringent requirement: The "regular flow" of commerce must have produced a sufficient quantum of sales in the forum that the presence of the product there cannot be viewed as "isolated," but reflects purposeful availment of the forum. Absent either a sufficient quantity of sales (though what that might be he does not say) or some other factors indicating a "specific effort" to sell in the forum state, Justice Breyer's *Nicastro* approach indicates that minimum contacts are not present.

[4] Issues involving the application of *Asahi* and *Nicastro* have arisen with great frequency not only in cases where products manufactured by foreign companies cause injury, but also in a category of cases seemingly far afield from the kinds of personal injury and products liability actions that, at first blush, would seem most likely to be affected by *Nicastro*: patent infringement litigation. Patent infringement claims often involve foreign, or at least out of state, defendants, and jurisdiction is frequently sought on the basis of the sale of infringing products within the forum. Pre-*Nicastro* Federal Circuit case law treated the issue posed by such cases as essentially similar to the issue in *Asahi*: whether the actions of the defendant that led to the infringing sale in the jurisdiction reflected sufficient contact with the forum to satisfy due process requirements. The court had refused to take a position on which position in *Asahi*—Justice O'Connor's or Justice Brennan's—was correct until it met a case where they produced different results, which, conveniently, had never happened. After *Nicastro*, the Federal Circuit held that Justice Breyer's concurring opinion, as the narrowest ground for the outcome in *Nicastro*, was controlling, and that because Justice Breyer had said that *Nicastro* did not change the law (without saying exactly what the law was), the Federal Circuit's own prior approach of applying both the Justice O'Connor and Justice Brennan standards—and hoping they yielded the same results—remained appropriate. *AFTG-TG, LLC v. Nuvoton Tech. Corp*., 689 F.3d 1358 (Fed. Cir. 2012) (Appendix No. 61).

Thus, both Justice Breyer's *Nicastro* opinion and subsequent lower courts attempting to apply *Nicastro* to similar circumstances appear to be moving in the direction of an approach somewhere between the O'Connor and Brennan positions in *Asahi*, requiring something more than Justice Brennan's test, but perhaps less in the way of deliberate targeting than Justice O'Connor would have required. Results in the decisions that have addressed stream of commerce questions in personal injury/products liability cases after *Nicastro* suggest a possible convergence toward this mash-up of the Justice O'Connor and Justice Brennan approaches implied by Justice Breyer's *Nicastro* opinion.

One result of the courts' adoption of this approach has been the kinds of decisions discussed above, in which distribution networks not specifically targeted at the forum are found insufficient to support jurisdiction. However, under the Breyer approach, as opposed to that of the plurality, there are possibilities for plaintiffs to prevail on jurisdictional issues if they are able to marshal evidence indicating that a regular and substantial flow of the defendants' products has reached the forum state. Analysis of cases upholding jurisdiction after *Nicastro* thus suggests litigation strategies that may be effective in some cases in mitigating its impact.

In particular, in cases where an out-of-state or foreign manufacturer has, through a domestic distributor, or chain of distribution, sold large amounts or quantities of its product in the forum state, some courts have distinguished the result in *Nicastro* and held that the assertion of jurisdiction is consistent with the general requirement of purposeful availment even in the absence of evidence of the kind of specific targeting that Justice Kennedy's *Nicastro* opinion (or Justice O'Connor's *Asahi* opinion) demands.[5] Thus, for example, Canadian car manufacturers that are affiliates of "big three" companies but are separate, foreign corporations have been held subject to personal jurisdiction in states where their cars are sold through the domestic car companies' distribution networks. The basis of the finding of jurisdiction in these cases is not attribution of the contacts of the domestic affiliates; rather, it is that the very large numbers of sales in individual states support an inference that the foreign manufacturing corporations themselves are availing themselves of the market even though they may not have singled the forum states out for targeting separately from the nation as a whole.[6] Similarly, jurisdiction has been upheld in at least some cases involving pharmaceuticals that are targeted at the national U.S. market and that are known to have large volumes of sales in particular states.[7] Courts have also found jurisdiction appropriate over foreign manufacturers based in large part on the volume of forum sales by domestic distributors in cases involving forklifts, hand trucks, baby seats, lumber, dietary supplements, toys, helicopter parts, hydraulic presses, lighting products, drywall, tortilla chips, tires, windshields, motorcycle components, airplanes and aircraft engines, batteries, and wheelchair battery chargers. Notably, the Supreme Court has on at least three occasions since *Nicastro* declined review in cases where lower courts found personal jurisdiction over foreign manufacturers using independent

[5] Illustrative cases can be found in the Appendix at Nos. 2, 13, 25, 26, 27, 30, 38, 43, 44, 50, 56, 79, 85, 93, 95, 98, 103, 111, 117, 123, 131, 139, 140, 143, 148, 150, 157, 159, 162, 169, 201, 214.

[6] *See* Appendix Nos. 25, 43, 98, 111, 214.

[7] *See* Appendix No. 123.

domestic distributors based in large part on the volume of sales in the forum state.[8] In light of these decisions, it appears that evidence of significant sales in the forum jurisdiction, even in the absence of other evidence of specific targeting of the jurisdiction by the out-of-state or foreign manufacturer, may support the assertion of jurisdiction after *Nicastro*, at least by courts attempting to follow Justice Breyer's concurrence.

In addition to sales volume, courts have also relied on other factors in distinguishing *Nicastro* and finding jurisdiction over foreign or out-of-state manufacturers who serve the market in the forum state indirectly through distributors. For example, courts have asserted jurisdiction over manufacturers whose products are distributed domestically through large national chain stores that are widely known to make significant numbers of sales in the forum states.[9] Courts have also pointed to advertising in the forum as evidence of sufficient targeting, as well as distribution agreements that specifically called for the distributor to serve particular states.[10] In addition, in cases where the out-of-state or foreign entity shipped a product directly to the forum state and injury resulted, courts have held the assertion of jurisdiction to comport with due process.[11]

Importantly, in a few cases since *Nicastro*, courts have held that jurisdiction is present when a foreign or out-of-state manufacturer is sued in the state where its domestic distributor is located. (In *Nicastro*, that would have been Ohio.) Although the manufacturer in *Nicastro* made arguments that suggested that it would not be subject to personal jurisdiction even in Ohio, and although Justice Kennedy's opinion held open the possibility that some defendants who had sufficient contacts with the U.S. as a whole might still not be subject to jurisdiction in any particular state, cases in which a company actually had a distributor in the forum state (and where that distributor had handled the actual product that injured the plaintiff) generally allow the foreign company to be sued in the forum. A number of decisions noted that the presence of a distributor in the state distinguished *Nicastro* and allowed the exercise of jurisdiction.[12]

D. The Inadequacy of Judicial Limits on *Nicastro*

As the cases just discussed illustrate, the post-*Nicastro* decisions allow room for litigation in at least some circumstances over whether a foreign manufacturer that uses a domestic distributor to target the United States as a whole may be subject to jurisdiction in states where its products are sold and used. Unfortunately, however, the possibility that injured parties may prevail in some such cases is not sufficient to overcome the harmful effects of *Nicastro*.

[8] *See Willemsen v. Invacare Corp.*, 282 P.3d 867 (Or. 2012) (Appendix No. 157), *cert. denied*, 133 S. Ct. 568 (2012); *Novo Nordisk A.S. v. Lukas-Werner*, 134 S. Ct. 473 (2013); *Ainsworth v. Moffett Engineering, Ltd*., 716 F.3d 174 (5th Cir. 2013) (Appendix No. 2), *cert. denied*, 134 S. Ct. 644 (2013).

[9] *See* Appendix Nos. 26, 93, 169.

[10] *See* Appendix Nos. 85, 103.

[11] *See* Appendix Nos. 85, 117, 159, 162, 201.

[12] *See* Appendix Nos. 26, 79, 117, 162.

To begin with, the same circumstances that litigants have relied upon to limit *Nicastro* in some cases have been unavailing in others. Although some courts have found that distribution of consumer goods through national retail chains supports jurisdiction in states where products reach the market through such stores,[13] others have refused to do so.[14] Similarly, although some courts have held that a single direct shipment of a product to a jurisdiction supports the assertion of jurisdiction,[15] other decisions appear to indicate that such transactions are too isolated to support the assertion of jurisdiction.[16] More importantly, many of the factors to which courts have pointed in cases finding jurisdiction, such as advertising in the forum, direct shipments, and distributor territories that identify particular jurisdictions, are within the control of manufacturers that can easily structure their relationships with distributors to avoid such circumstances if, like the manufacturer in *Nicastro*, they wish to avoid contact with our judicial system while targeting the United States for sales.

Sales volume in the forum, which has been one of the principal factors that lower courts have used to distinguish *Nicastro* in cases finding jurisdiction, is less subject to manipulation, but still fails to mitigate *Nicastro*'s damaging effects adequately. Courts have not articulated clear standards for when the volume of sales in a jurisdiction is sufficient to establish that there is a regular flow of sales in the jurisdiction sufficient to establish purposeful availment of the market, and some courts have rejected jurisdiction in circumstances involving extremely substantial sales. Cases denying jurisdiction in the face of substantial forum sales include not only the personal watercraft gas tank decisions discussed above,[17] but also decisions holding that a state lacked jurisdiction over a national pharmaceutical manufacturer for sales of prescription drugs in-state, and that sales of over 11 million cigarettes in a state did not suffice.[18] In other cases, courts have reached different results over whether sales of dozens or a few hundred pieces of equipment in the forum over a period of years is sufficient.[19]

A more fundamental problem with the focus on sales volume to assess adequacy of contacts is that it fails adequately to account for cases where, as in Nicastro, the product's presence reflects the defendant's intentional use of a distributor targeting the nationwide market but not any particular state, and the seemingly insubstantial number of products sold in any one state is attributable to the fact that the product is not aimed at a mass market, but a more specialized one. Thus, although the defendant may have, in reality, targeted the jurisdiction no less (and no more) than other defendants such as auto manufacturers or makers of consumer goods sold in chain stores, the result differs because of a factor (overall number of

[13] *See supra* note 9.

[14] *See* Appendix No. 3.

[15] *See supra* note 11.

[16] *See* Appendix Nos. 42, 102.

[17] *See supra* at 14.

[18] *See* Appendix Nos. 133, 52.

[19] *Compare Ainsworth*, 718 F.3d at 179 (App. No. 2) (sales of 203 forklifts in Mississippi over a ten-year period sufficient), *with Lindsey*, 2011 WL 4587583 (App. No. 198) (sales of 97 forklifts in Kentucky over a ten-year period by same distributor for same foreign manufacturer insufficient).

sales) that is arguably merely arbitrary from the standpoint of the interests with which the personal jurisdiction doctrine is concerned.

As the number of cases in which jurisdiction has already been foreclosed by Nicastro illustrates, such cases are likely to continue to arise, and Nicastro is likely to impede plaintiffs' access to remedies significantly. And again, injured victims will be divided into two groups—those with forum access and those denied judicial remedies—although the companies that are responsible for the injuries derived the same benefits of economic activity in the forum state as outside it.

E. Other Issues Posed by *Nicastro*

A few recurring fact patterns in cases citing *Nicastro* point to other, related issues that may have significant impact on personal jurisdiction questions. In many of the cases, there was a relationship between the foreign or out-of-state defendant and a corporate affiliate with more substantial forum contacts. In some instances, the foreign defendant's use of a domestic affiliate to target a forum for distribution of a product or other activity was treated as a sign that the foreign defendant itself was purposefully availing itself of the forum—not because the affiliate's own contacts were attributed to the defendant, but because the pattern of activity revealed the foreign defendant's own intention to serve the relevant market.[20] In other cases, however, courts chose instead to attribute the affiliate's contacts to the foreign defendant on the basis either of veil-piercing or of some pattern of control falling short of that necessary to establish alter ego status.[21] These cases raise issues that overlap to some extent with the question decided in the Supreme Court in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), which held that a foreign corporate parent may not be subjected to general jurisdiction in a forum state based merely on the extent of contacts of a domestic corporate subsidiary that in some sense acts as the foreign corporation's "agent" in carrying out domestic operations.

Bauman involved only general jurisdiction, and Justice Ginsburg's opinion for the Court was careful to differentiate the case from one involving specific jurisdiction. *See id*. at 754–58. Even so, the frequent appearance of similar questions in specific jurisdiction cases suggests a possibility that a *Bauman* and *Nicastro* together could lead to another contraction of personal jurisdiction in cases where the combined actions of foreign manufacturers and related domestic distributors cause injury in a U.S. forum. Defendants in such cases can be expected to argue that if a foreign corporation uses a domestic subsidiary to market products within the United States, and any state-level "targeting" is carried out by the subsidiary, that targeting cannot be attributed to the foreign parent for purposes of determining whether the parent itself has availed itself of the forum within the meaning of *Nicastro*. Although *Bauman* itself provides arguments to support the contrary view, the issue will undoubtedly be the subject of much litigation.

[20] *See, e.g.,* Appendix No. 194.

[21] *See, e.g.,* Appendix No. 177.

NIcastro also crops up in certain federal question cases where, either because of federal statutes or the operation of Federal Rule of Civil Procedure 4(k)(2), national contacts, rather than contacts with individual forum states, determine the presence or absence of personal jurisdiction. These cases generally agree that where either a federal statute authorizing nationwide or global service of process (to the full extent consistent with Fifth Amendment due process) or Rule 4(k)(2) applies, due process is satisfied as long as the defendant has minimum contacts with the United States as a whole. Thus, in these cases, national contacts themselves suffice to permit federal jurisdiction in any state.[22] At least one case, however, has expanded *Nicastro* to find an absence of minimum contacts with the United States as a whole in a case in which foreign manufacturers of wiring systems used in hundreds of thousands of vehicles manufactured in Europe for the U.S. market were charged with antitrust violations.[23] The decisions in that case illustrate the fallacy of the view that foreign manufacturers are not availing themselves of the domestic market when they knowingly manufacture goods intended for sale in this country.

Conclusion

On one level, *Nicastro* illustrates that when the Supreme Court takes a case to resolve an issue, it sometimes succeeds only in perpetuating existing uncertainty. Unfortunately, however, *Nicastro*'s failings go beyond the Court's inability to announce a coherent rule on which a majority of the court agreed. *Nicastro*'s restrictive result has had a negative effect in a recurring category of cases—where a foreign or out-of-state defendant's use of a distribution network for national marketing efforts leads to an injury in a particular state that the defendant did not single out for special targeting. Moreover, the plurality's approach, if it gains more traction and is combined with restrictive approaches to cases involving corporate affiliates, could have more widespread negative effects.

While personal jurisdiction cases necessarily turn on the due process rights of defendants, in practical terms their greatest impact is on the process and substantive rights of plaintiffs injured by foreign or out-of-state corporations. As the two years of case law since *Nicastro* show, the decision will deprive many injured individuals of access to justice when they have been injured by foreign or out-of-state companies. Moreover, the number of instances in which injured individuals have been blocked from litigating in their home states is surely greater than reported here, because of unreported cases and those not filed in the first place because of *Nicastro*.

Nicastro has ushered in a two-tiered system of justice that is arbitrary from the point of view of the person injured by a defective product, as the person's ability to litigate depends not on the nature of their injury or the merits of their claim, but on the foreign manufacturer's marketing strategy. Further, *Nicastro* is likely to incentivize companies to adjust their corporate structure and product distribution models to avail themselves of *Nicastro*'s benefits: the ability

[22] *See* Appendix No. 211.

[23] *See* Appendix Nos. 7, 8.

to market to U.S. jurisdictions while avoiding legal accountability for any injuries caused by their products.

Such a two-tiered justice system is incompatible with American constitutional principles and our norms of fairness. The Justices' recent inability to reach agreement on standards that would provide greater clarity and a more reasonable outcome than did *Nicastro* means that the Court cannot be relied upon to solve the problems it has created. Therefore, a solution most likely depends on the exercise by Congress of the power, acknowledged even by the plurality in *Nicastro*, "to authorize the exercise of jurisdiction in appropriate courts" over defendants who aim their products at the U.S. market, through the exercise of its Article I powers over interstate and foreign commerce. *See* 131 S. Ct. at 2790 (opinion of Kennedy, J.).

Appendix

The following cases have cited the U.S. Supreme Court's decision in *J. McIntyre Co. v. Nicastro* when discussing personal jurisdiction over a defendant. The cases are grouped by year and listed alphabetically. Cases from 2013 include opinions available on Westlaw as of July 29, 2013.

2013

1. *Absolute Activist Master Value Fund, Ltd. v. Ficeto*, 2013 WL 1286170 (S.D.N.Y. 2013).

Outcome

Dismissal denied as to several defendants, granted as to one

Description

Several hedge funds sued their asset management company, principals and officers of the company, a U.S. brokerage firm with which the asset management company worked, and a principal of the brokerage company. The funds alleged that the asset management company and its principals had engaged in a wide-ranging fraudulent scheme involving penny stock transactions, which they manipulated to artificially inflate the stock prices and enrich themselves and the management company. When the scheme collapsed, the funds and their own investors lost huge sums. The funds brought suit in the U.S. district court for the Southern District of New York, and because their suit was based on the federal securities laws, which provide for personal jurisdiction to the limits allowed by Fifth Amendment due process, personal jurisdiction over the defendants turned on minimum contacts with the U.S. as a whole. The asset management company and its principals were all foreign citizens and residents, and some claimed to have fairly limited contact with the U.S. The court held that there was jurisdiction over the asset management company and those of its principals who were personally involved in penny stock trades, because those transactions took place in the U.S., and participation in them provided the requisite forum contacts. The court also found that the minimum contacts requirement was satisfied for a defendant who had covered up the scheme by personally making threats to intimidate a whistleblower in the U.S. The court dismissed for lack of personal jurisdiction only over one defendant, whose contacts with the U.S. were limited to five trips to the U.S. aimed at selling investments in the funds to individual U.S. investors. Because the funds' claims did not arise out of those transactions (which benefited them) but rather out of the fraudulent investments made on behalf of the funds, the court found that the claims did not arise out of these contacts, and they therefore could not serve as a basis for the assertion of specific jurisdiction. The court cited *Nicastro* only for the general proposition that to establish personal jurisdiction, a plaintiff must point to conduct by the defendant "from which it is proper to infer an intention to benefit from and thus an intention to submit to the laws of the forum." The outcome did not turn on this general statement.

2. *Ainsworth v. Moffett Engineering, Ltd.*,
716 F.3d 174 (5th Cir. 2013).
***Ainsworth v. Cargotec USA, Inc.*,**
2011 WL 4443626 (S.D. Miss. 2011).

Outcome

Jurisdiction

Description

Survivors sued an Irish forklift manufacturer that sold its product to an exclusive, but independent, American distributor. The Fifth Circuit had previously adopted Justice Brennan's *Asahi* approach. The court held that Justice Breyer's opinion controlled, but that it was based on Supreme Court precedent and *Nicastro*'s "specific facts." Accordingly, the court held, the circuit's stream-of-commerce analysis remained good law. The district court had applied that test and found jurisdiction because Moffett knew its products were marketed through the U.S. and that 203 of its products had been sold in Mississippi and, therefore, it was foreseeable that the product would be purchased by Mississippi consumers. Agreeing with the district court, the Fifth Circuit held that the Moffett's sales in the state distinguished the case from the single sale in *Nicastro*.

3. *Alphagen Biotech v. Langoost Enterprises, LLC*,
2013 WL 2389792 (D. Utah 2013).

Outcome

Dismissed

Description

Utah LLC brought action against a North Carolina corporation, alleging false advertising and unfair competition. The defendant sold its product to independent distributors, who then sold it in Utah. The two largest distributors sold a combined 134 of the defendant's product in 2012. The court found that the facts of this case were similar to those in *Nicastro* and held that it lacked jurisdiction.

4. *American Guarantee and Liability Insurance Co. v. Birchwood Laboratories, Inc.*,
2013 WL 3802525 (E.D. Mo. 2013).

Outcome

Motion to transfer denied

Description

The court denied one defendant's motion to transfer to D. Minn. because it was not clear that the court in that district had personal jurisdiction over another defendant. The court cited *Nicastro* once in discussing purposeful availment.

5. *Arnett v. Howard*,
2013 WL 3199737 (D. Ariz. 2013).

Outcome

No jurisdiction, case transferred to D. Utah

Description

Plaintiff asserted breach of contract, fraud, and endangerment claims against Utah individual and companies. The court held that it lacked personal jurisdiction over the individual but not the companies. The court cited *Nicastro* once when discussing the

motion to transfer as support for the proposition that the case against the Utah individual could have been filed in Utah.

6. *Atlantis Hydroponics, Inc. v. International Growers Supply, Inc.*, 915 F. Supp. 2d 1365 (N.D. Ga. 2013).

Outcome

Dismissed w/out prejudice

Description

A competitor sought declaratory judgment of invalidity and non-infringement of patents covering indoor greenhouses for growing hydroponics. The patent owner, a California corporation, moved to dismiss for lack of personal jurisdiction or, alternatively, to transfer, and the competitor moved to conduct jurisdictional discovery. The court dismissed the case. It cited *Nicastro* a few times, mostly to explain the stream of commerce theory and *Asahi*, but the case did not seem to affect outcome.

7. *In re Automotive Parts Antitrust Litigation*, 2013 WL 2456610 (E.D. Mich. 2013).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiffs alleged that European wire harness manufacturers colluded in violation of state antitrust, unfair competition, and consumer protection laws. Defendant Leoni AG, a company based in Germany, moved to dismiss for lack of personal jurisdiction. The plaintiffs argued a stream of commerce theory, but the court rejected it. After quoting *Nicastro* at length regarding stream of commerce, the court stated that, "[a]lthough the four justice plurality is not binding law," it was "persuaded that the absence of allegations that Leoni AG targeted customers in the U.S. plays a key role in the personal jurisdiction analysis." The court concluded that the plaintiffs failed to establish a prima facie case of either purposeful availment or alter ego jurisdiction.

8. *In re Automotive Parts Antitrust Litigation*, 2013 WL 2456611 (E.D. Mich. 2013).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiffs alleged that European wire harness manufacturers colluded in violation of state antitrust, unfair competition, and consumer protection laws. Defendant S-Y Europe moved to dismiss for lack of personal jurisdiction. The plaintiffs argued that the defendants sold price-fixed products to distributors who then sold them in the U.S. The court found that this fact "shows at most that [the defendant] could have predicted that its goods would reach the United States." After quoting *Nicastro* at length regarding stream of commerce, the court stated that, although the *Nicastro* plurality opinion "is not binding

law," it was persuaded that the defendant's "lack of targeting consumers in the United States plays a key role in the personal jurisdiction analysis." The court also declined to adopted the argument that personal jurisdiction over one defendant may be based on the acts of a co-conspirator performed in furtherance of the conspiracy.

9. *Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC*,
216 Cal. App. 4th 591 (Cal. Ct. App. 2013).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiff sued a personal watercraft manufacturer, who filed a third-party complaint against a Canadian fuel tank manufacturer. The third-party defendant manufactured the fuel tanks in Canada and sold them to the watercraft manufacturer in Canada. The third-party plaintiff argued that the fuel tank manufacturer had sufficient contacts with California because it knew that the watercraft manufacturer would install the fuel tanks in watercraft and sell them in the U.S.

The court stated that both the plurality and concurring opinions in *Nicastro* agreed that mere foreseeability, at least where products are not sold as part of the regular and anticipated flow of commerce into that state, is not enough for jurisdiction. Applying that rule, the court found that all of the fuel tank manufacturer's contacts were with Canada, not California. The watercraft manufacturer argued that the fuel tank manufacturer engaged in a large volume of sales that ended up in California and that regular sales constitute "purposeful availment," but the court dismissed the argument on evidentiary grounds.

10. *C&K Auto Imports v. Daimler AG*,
2013 WL 3186591 (N.J. App. Div. 2013).

Outcome

Dismissed

Description

The plaintiff purchased a car from the defendant, a Virginia corporation. The plaintiff used a Florida address, and the car was shipped to Florida. Reading the *Nicastro* plurality as overruling the broader version of the stream-of-commerce theory and to require some targeting of New Jersey for jurisdiction to be proper, the court held that it lacked jurisdiction over the defendant.

11. *Campbell v. Ashland Credit Union,*
2011 WL 4597356 (S.D.W. Va. 2011).

Outcome

Transferred because of absence of personal jurisdiction over one defendant.

Description

Plaintiff is a West Virginia resident who, with her now-deceased husband, took out a loan, secured by her house, from a Kentucky credit union. She was told that the loan was insured, and when her husband died she made a claim on the insurance, which was denied. She sued the credit union and the insurance company in West Virginia. The insurance

company, an Florida corporation with its principal place of business in Kentucky, moved to dismiss for lack of personal jurisdiction or transfer to Kentucky. The insurer argued that it had issued no policy to the West Virginia plaintiff, but only a group policy to the credit union in Kentucky; although the policy covered loans to credit union members in West Virginia, the insured, and the payee on any claims, was the credit union itself. The insurer itself had no contacts with West Virginia, and the credit union was not acting as its agent in sending insurance certificates to the plaintiff and others in West Virginia. The court accepted these arguments in a decision that was based principally on which of two West Virginia Supreme Court decisions involving similar circumstances was most closely on point. The court cited *Nicastro* only for the generalization that the assertion of personal jurisdiction must satisfy traditional notions of fair play and substantial justice.

12. *Canatelo, LLC v. AXIS Communications AB*,
__ F. Supp. 2d __, 2013 WL 3476133 (D.P.R. 2013).

Outcome

Dismissal (no general or specific jurisdiction)

Description

This suit was for patent infringement related to a video surveillance system. The court discussed *Nicastro* briefly when it turned to specific jurisdiction. The court said that it was guided by *Asahi* and *Nicastro*, and applied the Federal Circuit's test for specific jurisdiction. It also looked to *Nicastro* to support the point that "it is difficult to apply the traditional stream of commerce theory to internet sales." The court found no purposeful availment.

13. *Catalini v. Gleason Consumer Products Co.*,
2013 WL 322604 (D.N.J. 2013).

Outcome

Jurisdiction

Description

The plaintiff sued a hand truck manufacturer. The manufacturer shipped hand trucks to a Pennsylvania-based distributor whom it knew would ship the trucks to be sold in retail stores in New Jersey and three other states. In the year prior to the suit, the company shipped 35,000 hand trucks to the distributor, but it was unknown how many ended up in New Jersey. The company also directly shipped 330 hand trucks to retail stores in New Jersey. The court rejected the defendant's reliance on *Nicastro* because of the difference in the number of sales.

14. *CitiMortgage, Inc. v. Chicago Bancorp, Inc.,*
2013 WL 3338501 (E.D. Mo. 2013).

Outcome

Jurisdiction

Description

Plaintiff CitiMortgage, Inc. sued Chicago Bancorp, and Illinois bank, for breach of contract in Missouri. There was evidently no issue of personal jurisdiction over Chicago Bancorp. CitiMortgage later sought to amend its complaint to include claims that Chicago Bancorp had fraudulently transferred assets to avoid a possible judgment in the case, and

the amendment would add parties who participated in the fraudulent transfers. Chicago Bancorp objected that the court would lack personal jurisdiction over the new defendants, who were all Illinois residents. The court held that asserting jurisdiction would satisfy both the Missouri long-arm statute and due process. As to the latter, the court held that tortious conduct knowingly aimed at harming someone in the forum constituted a sufficient forum contact to satisfy due process. The court cited *Nicastro* only for the general proposition that due process requires forum constitutes evidencing purposeful availment of the forum. Its holding was based principally on pre-*Nicastro* precedents.

15. *Costa v. Wirtgen International GmbH & Co*.,
2013 WL 1636043 (N.D. Cal. 2013).

Outcome

Dismissal denied, transfer granted

Foreign defendant

Yes

Description

Mr. Costa and a coworker were attempting to load a piece of heavy equipment manufactured by the defendant, when the machine's rear crawler tracks turned outside of the profile of the machine and caught Mr. Costa's leg, causing him *severe injury.* The incident occurred in Alturas, California. Mr. Costa was airlifted to Oregon, where he received emergency medical care. He was eventually transferred to Santa Clara Valley Medical Center. The court applied a 3-part circuit test and cited *Nicastro* when discussing one prong of the test (purposeful availment). The court found that the defendants did not "target" this forum in a way sufficient to establish the first prong of the sufficient contacts test. The court transferred the case to the Eastern District of California.

16. *Desmond v. Township of Parsippany-Troy Hills*,
2013 WL 791184 (N.J. App. Div. 2013).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiff, injured when an allegedly defective tarp strap broke, sued (among others) the Sri Lankan manufacturer of the tarp straps used by garbage trucks. The defendant sold the tarp strap to a Canadian company, which sold it to an Oregon company, which sold it to an Alabama company, which sold it to the plaintiff's employer. The defendant sold other tarp straps to a Pennsylvania company, which distributed the straps in New Jersey. The Sri Lankan defendant moved to dismiss for lack of personal jurisdiction. The court held that these facts failed to support jurisdiction in New Jersey under either *Nicastro* opinion.

17. *Digitech Image Technologies, LLC v. Mamiya Digital Imaging Co*.,
2013 WL 1415121 (C.D. Cal. 2013).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

Plaintiff Digitech sued Leaf, an Israeli company, for patent infringement. Leaf has an established distribution relationship with a United States-based company and a website that specifically lists seven California retail locations at which consumers may purchase Leaf products—all indicating that Leaf contemplated that its products would reach California through the stream of commerce. The court held that under Federal Circuit case law, Leaf's contacts with California are sufficient to subject it to personal jurisdiction in this state. The court stated that the Supreme Court attempted to jettison the foreseeability test in *Nicastro*, but split again. The Federal Circuit then held that the case left personal jurisdiction law the same, and so the stream-of-commerce test remains intact.

18. *Dodd v. Uni-Mart, Inc.*,
2013 WL 132499 (N.J. App. Div. 2013).

Outcome

Dismissed

Description

New Jersey plaintiffs sued a Pennsylvania gas station, alleging that the stream of commerce theory supported jurisdiction because many of the gas station's clients were from New Jersey. The court read *Nicastro* to hold that the "question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." Without much discussion, the court held that these facts were not enough for jurisdiction.

19. *Downing v. Goldman Phipps PLLC*,
2012 WL 1991531 (E.D. Mo. 2013).

Outcome

Dismissed w/out prejudice

Description

This case was a fight among various plaintiffs' lawyers over attorney fees. The plaintiffs sought to recover fees arising out of their representation of plaintiffs in a multidistrict litigation case handled in this district. The plaintiffs brought claims of unjust enrichment and quantum meruit against a group of attorneys who represented plaintiffs from other states in some of the MDL cases and similar state-court cases. The court held that it lacks personal jurisdiction over these lawyer-defendants. It cited *Nicastro* among other cases when describing the standards for evaluating personal jurisdiction, then applied a pre-existing Eighth Circuit test.

20. *Eternal Asia Supply Chain Management (USA) Corp. v. Chen*, 2013 WL 1775440 (S.D.N.Y. 2013).

Outcome

Dismissed

Description

The plaintiff alleged that it was the assignee of claims maintained by EA Display Ltd. against a California resident relating to the defendant's acts as President and a director of Amergence Technology, Inc. Specifically, the plaintiff alleged that in June 2010, Amergence—acting by and through the defendant—enticed, cajoled, and solicited EAD to enter into a purported joint venture agreement forming a corporation in the State of California for the purported purposes of developing a company with product, channel, marketing, operations, service and financial return. The plaintiff alleged causes of action for fraud and conversion. The defendant had no contacts with New York. The court applied the *Nicastro* discussion of minimum contacts to hold no jurisdiction. The court also found no jurisdiction on due process grounds, without citing to *Nicastro*. The court discussed the relevance of the defendant's website, also without citing *Nicastro*.

21. *Filtrexx International, LLC v. Truelsen,* 2013 WL 587582 (N.D. Ohio 2013).

Outcome

Dismissed

Description

An Ohio company brought suit in Ohio against an Iowa company and its president asserting various claims all based on the alleged use by the Iowa company of the Ohio company's trade secrets and trademarks. The Iowa company had been the exclusive dealer of the Ohio company's products in Iowa, and the Ohio company claimed that after that relationship terminated, the Iowa company continued to market products in violation of its agreement to respect the Ohio company's proprietary rights and trade secrets. The Iowa company had never marketed any products in Ohio; its sole forum contacts were its having entered into an agreement with the Ohio company to handle that company's products in Iowa. The court held that it lacked personal jurisdiction. It rejected an argument that a contract between the companies provided consent to jurisdiction in Ohio, and it further held that it lacked general jurisdiction over either the Iowa company or its president. In the course of that discussion, it quoted *Nicastro*'s observation that jurisdiction may be based on domicile, consent, or personal service in the forum state; none of these, the court noted, were applicable to the individual defendant. The court then held that specific jurisdiction was lacking because, in agreeing to market the plaintiff's products in Iowa, the defendants had not purposely availed themselves of the protection of the Ohio forum. This discussion was based on pre-*Nicastro* precedent, in particular a Sixth Circuit decision from 2000 that considered similar circumstances.

22. *Fleischli v. North Pole US LLC*,
2013 WL 1954120 (E.D. Mo. 2013).

Outcome

Jurisdiction

Description

The former CEO of outdoor equipment manufacturer North Pole Limited sued his former employer and two other entities for breach of contract and six related claims. All the defendants moved to dismiss for lack of personal jurisdiction. The court denied the motion against the employer company because it had a Missouri office and hired plaintiff to use that office as his primary workplace. The court also denied the motion as to the out-of-state company that allegedly tortuously interfered with plaintiff's employment contract because, if the allegations were true, jurisdiction was satisfied. *Nicastro* is cited along with other cases for boilerplate. The court primarily relies on pre-existing Eighth Circuit test.

23. *Foreign Candy Co., Inc. v. Tropical Paradise, Inc.,*
__ F. Supp. 2d __, 2013 WL 3155960 (N.D. Iowa 2013).

Outcome

Dismissed

Description

An Iowa company that imports and sells candy brought suit for trademark infringement in Iowa against a company incorporated in New York and with its principal place of business in Massachusetts. The Iowa company had trademarks for various phrases including the word "Rip" that it used to market candy, and it alleged that the defendant was marketing fruit drinks using infringing phrases (such as "Let it rip"). The Massachusetts company did no business in Iowa and had sold no products in Iowa in at least ten years. It had a non-interactive website that was visible in Iowa, but it did not sell products through that website. The website did have a link to a site operated by a retailer unaffiliated with the defendant that sold some of the defendant's products, and it was possible to order the products from that site for delivery to Iowa. The plaintiff's counsel succeeded in doing so, but that was the only evidence of any sale of the defendant's product in Iowa. The court, applying pre-*Nicastro* Eighth Circuit law as well as precedents on the specific topic of websites, held that these facts were insufficient to support a finding of sufficient contacts to satisfy due process. The court stated that its research generally indicated that cases involving a single sale in the forum to the plaintiff's counsel held that such sales were not sufficient to support jurisdiction, and a footnote citing some decisions addressing that issue had parenthetical references to Justice Breyer's concurrence in *Nicastro* stating that a single sale in a jurisdiction would not suffice.

24. *Hamilton Memorial Hospital District v. Toelle,*
2013 WL 1130888 (S.D. Ill. 2013).

Outcome

Jurisdiction

Description

A hospital in Illinois brought suit in Illinois against a doctor it formerly employed and a hospital in Indiana that had induced the doctor to breach her employment agreement with the Illinois hospital and come to work for it in Indiana. The Indiana hospital moved to

dismiss for lack of personal jurisdiction or to transfer venue, claiming that it had done nothing in Illinois and hence lacked sufficient contacts to support jurisdiction. The court held that an out-of-state defendant that knowingly negotiated with an Illinois resident to induce her to breach a contract with another Illinois resident had directed its actions at the Illinois forum sufficiently to support specific jurisdiction. The court relied on *Calder v. Jones* and on a Seventh Circuit decision finding jurisdiction over an out-of-state defendant that had used the internet to tortiously interfere with business relationships in Illinois. The court cited *Nicastro* only for the general proposition that personal jurisdiction must comport with fair play and substantial justice.

25. *Hatton v. Chrysler Canada, Inc.*,
2013 WL 1296081 (M.D. Fla. 2013).

Outcome
Jurisdiction

Foreign defendant
Yes

Description
A restrained rear-seat passenger filed suit against a Canadian vehicle assembler, asserting claims under Florida law for negligence and strict products liability after she sustained serious injuries in an accident during which several component parts of the vehicle failed. The court held that the "stream of commerce" test remained good law after *Nicastro*. Applying that theory, the court found jurisdiction because the defendant assembled the car for a national distributor.

26. *Hess v. Bumbo International Trust*,
__ F. Supp. 2d __, 2013 WL 3157917 (S.D. Tex. 2013).

Outcome
Jurisdiction

Foreign defendant
Yes

Description
Plaintiffs, residents of Arizona, brought suit in Texas against Bumbo, a South African company that manufactured the baby seat that malfunctioned, flipping their infant son onto the floor and fracturing his skull. The seat was bought by the mother's sister at a Target store in Arizona and given to the plaintiffs as a gift. Bumbo had an extensive relationship with a distributor in Texas that imported and resold its baby seats; of 3.85 million units sold in the U.S., 1 million had come through the Texas distributor, which for a number of years was the exclusive distributor. Bumbo's relationship with the distributor was particularly close, with the distributor acting as Bumbo's representative in dealing with the CPSC (among other things). The court held that Bumbo's ties with the distributor were so extensive that, together with other Texas contacts including the filing of litigation, they justified the assertion of general jurisdiction over Bumbo. The court cited *Nicastro* only to illustrate the distinction between general jurisdiction and specific jurisdiction.

27. *Hills v. Whitecap Investment Corp.*, 2013 WL 3185559 (D.V.I. 2013).

Outcome

Jurisdiction

Description

Virgin Islands plaintiffs sued Alabama lumber wholesaler, alleging defects in wood products used in their home. The defendant sold lumber to a distributor, knowing that some of the lumber would be resold to the Virgin Islands. The defendant also advertised in the Virgin Islands and offered limited customer support there. Without deciding which theory controlled after *Nicastro*, the court held that the defendant's conduct satisfied both Justice Brennan's and Justice O'Connor's theories. The court found the "something more" in the defendant's continuing sales to the distributor after knowing that the lumber would be resold in the Virgin Islands and separately contracting for sale of wood with a Virgin Islands corporation.

28. *Holizna v. Boston Scientific Corp.*, 2013 WL 1411656 (S.D. W. Va. 2013).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiff brought suit in a Georgia federal court against Boston Scientific, the manufacturer of a medical device that was implanted in her in Georgia and that she claimed injured her, as well as Proxy Ltd., an Irish company that manufactured bulk mesh that was later incorporated into the Boston Scientific product at a facility in Indiana. That facility was itself operated by a contractor for Boston Scientific. Proxy was thus a supplier of a material used to manufacture the Boston Scientific product whose implantation was the cause of the injury. The case was transferred by the Panel on Multidistrict Litigation to the Southern District of West Virginia, and Proxy moved to dismiss for lack of personal jurisdiction. Although the case was at that point being decided by a court in West Virginia, the issue was whether a Georgia court possessed personal jurisdiction. The court held that Proxy lacked sufficient contacts with Georgia to permit exercise of jurisdiction. Although Proxy had some contacts with Georgia involving different products, and might also have been said to target Georgia for the sale of a different mesh product through a marketing agreement with Boston Scientific, the court found that the claims did not arise out of those contacts, and they therefore could not serve as a basis for personal jurisdiction. With respect to the bulk mesh that was used to make the Boston Scientific product in question, Proxy had no relevant contacts with Georgia. It did not sell or promote the product there. That a product incorporating Proxy's mesh showed up in Georgia through the stream of commerce did no indicate targeting of Georgia. The court cited the *Nicastro* plurality for this proposition, though it seems doubtful that, even absent *Nicastro*, the court would have found personal jurisdiction on these facts.

29. *Indoor Billboard Northwest Inc. v. M2 Systems Corp.*,
922 F. Supp. 2d 1154 (D. Or. 2013).

Outcome

Dismissed

Description

The defendants entered into a promissory note with a third party, who later assigned it to another third party, who then assigned it to the plaintiffs. Even assuming that a promissory note could enter the stream of commerce, the court held that the defendant's conduct did not satisfy any of the *Asahi* or *Nicastro* tests because the record did not show that the defendants knew that the promissory note would be sold to a third party and then again to the plaintiffs.

30. *Innovation Ventures, LLC v. Custom Nutrition Laboratories, LLC*,
2013 WL 2198542 (E.D. Mich. 2013).

Outcome

Jurisdiction

Description

The manufacturer of a liquid dietary supplement brought action against its former packager, packager's chief executive officer and successor to packager under an asset purchase agreement, alleging that the defendants violated the settlement agreement between the manufacturer and the packager by producing a product containing an ingredient prohibited by the agreement. The court held that *Nicastro* lacked precedential authority because it did not resolve the *Asahi* dispute. The court instead applied Sixth Circuit "stream of commerce plus" precedent that held that a national distribution agreement that resulted in sales in the forum state was enough for jurisdiction.

31. *J.G. v. C.M.*,
2013 WL 1792479 (D.N.J. 2013).

Outcome

Jurisdiction

Description

The plaintiff, a California resident, sued the defendant, a New Jersey resident, alleging that the defendant had sexually abused him when he was a child. The defendant moved to dismiss for lack of specific personal jurisdiction. The court cited *Nicastro* once in a footnote when explaining that courts may also exercise general jurisdiction but that general jurisdiction is not at issue in the case.

32. *Jacobsen v. Asbestos Corp.*,
2013 WL 2350442 (La. Ct. App. 2013).

Outcome

Dismissed

Description

The plaintiff sued a New York corporation that had acted as a disclosed commissioned agent in the transaction of raw asbestos; he sought for damages arising from personal injury as result of asbestos exposure. The court of appeal explained that Justice Breyer's controlling opinion did not change the law and that the court would apply the

"stream of commerce" test. The court held that it lacked jurisdiction over the defendant because the commissioned agent merely brokered the transfer of asbestos from its African manufacturer to an American distributor and had no other connection to Louisiana.

33. *Johnson v. Artemis*,
2013 WL 3771281 (D. Colo. 2013).

Outcome

Jurisdiction (magistrate's recommendation later accepted by district court)

Description

The plaintiff claimed to have written two screenplays, and cast actors to play roles in movies based on them. The plaintiff alleged that the actors, in violation of nondisclosure agreements as well as his copyright, then stole the movies and tried to produce them themselves. The plaintiff brought suit in Colorado against individual defendants who were both Colorado residents and nonresidents. All moved to dismiss the suit for lack of personal jurisdiction (as well as for lack of subject-matter jurisdiction and failure to state a claim). The magistrate judge recommended denial of the personal jurisdiction motion. The Colorado residents, without actually denying residency, claimed that the plaintiff's allegation that they were "located" in Colorado was "conclusory," and the magistrate judge, citing *Nicastro* for the proposition that domicile, as well as consent and minimum contacts, is a sufficient basis for personal jurisdiction, held that the allegation was sufficient. As to the nonresidents, the magistrate found that the plaintiff alleged sufficiently that they had contractually consented to personal jurisdiction in Colorado. The magistrate judge also recommended that the motion to dismiss for failure to state a claim be granted, and the district court later accepted the recommendations (subject to correction of a typographical error about the recommended disposition of each of the motions).

34. *Kason Indus., Inc. v. Dent Design Hardware, Ltd.*,
__ F. Supp. 2d __, 2013 WL 3333103 (N.D. Ga. 2013).

Outcome

Dismissed

Description

In this patent infringement action, the defendant moved to dismiss for lack of personal jurisdiction. The patentee filed a motion for jurisdictional discovery. The court held that the defendant's contacts did not rise to the level of "continuous and systematic" activity to warrant general jurisdiction, and that defendant had not directed any activities related to the accused device to Georgia such that court could exercise specific jurisdiction over defendant. The court cited *Nicastro* to introduce the stream of commerce theory. The court said that there were two approaches and that *Nicastro* did not resolve which to use. *Nicastro* was not significant to the outcome of the case.

35. *Kinekt Design, LLC v. One Moment in Time, LLC*,
2013 WL 3828508 (D.N.J. 2013).

Outcome

Dismissed

Description

This case involved allegations of infringement through sales of rings with Plaintiff's gear ring design. Plaintiff argued that defendant made 18 shipments into state. The court said that it lacked jurisdiction where the claim did not arise out of or relate to the eighteen shipments. The court only cited once to *Nicastro* and noted in dicta that "[i]t is not clear that, in the absence of a sales transaction, a shipment alone can be said to have targeted the forum."

36. *Kingsmill v. Roundo AB*,
2013 WL 3778351 (E.D. Pa. 2013).

Outcome

Dismissed as to foreign defendant

Foreign defendant

Yes

Description

Roundo is a Swedish corporation that manufacturers machines for the metal industry. Roundo had never made a direct sale or delivery to anyone in the United States. Instead, Comeq purchased the machines from Roundo, which Roundo delivers to Comeq. Comeq then sold and delivered the machines throughout the United States. The focus of this case was a Roundo machine that injured the plaintiff in Pennsylvania. Roundo moved to dismiss for lack of personal jurisdiction. The court granted the motion.

The court noted that the Third Circuit had yet to issue an opinion addressing the impact of *Nicastro* on stream of commerce jurisprudence, but that other circuit courts that had reviewed the question have held that *Nicastro* made no change in the law. The court held that sales by the foreign company's U.S. national distributor of 231 machines in Pennsylvania over a 40-year period, of which the foreign company claimed to be unaware, did not suffice for jurisdiction.

37. *Maui Elec. Co. v. Chromalloy Gas Turbine, LLC*,
__ F. Supp. 2d __, 2013 WL 1768686 (D. Haw. 2013).

Outcome

Jurisdiction

Description

Plaintiff, an electric utility in Hawaii, sued the manufacturer of a blade used in one of the gas turbines of a generating station after the blade broke and destroyed the turbine. The manufacturer, Chromalloy, is a Delaware corporation with principal place of business in Florida and facilities in Nevada. Chromalloy sells its blades to distributors, who then sell them to end users, whose identity it does not generally know. In this case, Chromalloy knew that Maui Electric was using its blades as early as 2003, four years before the accident. At its Nevada facility, Chromalloy inspected some of Maui's blades that had developed cracks (and that had been provided to it by a Canadian company that was servicing Maui's turbines). Chromalloy communicated directly to Maui about the results of

its inspections, and made recommendations directly to Maui about replacing some of its blades, and also had marketing personnel who made direct visits to Maui. The court found that these contacts were sufficient to constitute a purposeful availment of the forum state (Hawaii) because they were intentional act directed at the state and known to be likely to cause harm there. The court cited *Nicastro* once for the proposition that a majority of the Supreme Court has not agreed on the proper test for when jurisdiction may be established via the "stream of commerce," and stated that under the plurality's test (deliberately directing conduct at the forum state) jurisdiction was proper.

38. *Monje v. Spin Master Inc.*,
2013 WL 2369888 (D. Ariz. 2013).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiff sued an Australian toy company that sold toys to American distributors. The court read Justice Breyer's concurrence to require "something more than merely placing a product into the stream of commerce," but noted that a "regular flow" of sales might be enough. In this case, the court held, the defendant did not "passively launch its product into the stream of commerce." The defendant was in "fairly constant contact" with the Chinese manufacturer and was involved in the choice of material—the choice that drove the plaintiff's lawsuit—and the design of the product. Once the product was transmitted to the distributor, the defendant retained control over the distribution process and responded to retailers' and customers' concerns.

The defendant pointed out that its contacts were with the United States as a whole, and not with Arizona specifically. The court applied the Ninth Circuit's pre-*Nicastro* authority that when a defendant directs a product to the U.S. with reason to know that it will be marketed in a forum state, jurisdiction is proper.

39. *Papa Berg, Inc. v. World Wrestling Entertainment*,
2013 WL 2090547 (N.D. Tex. 2013).

Outcome

Jurisdiction

Description

Plaintiffs alleged that defendants used the plaintiffs' songs without authorization. The court held that "the precedential value of [*Nicastro*] is not immediately apparent," but that the opinion did not overrule Fifth Circuit precedent adopting the broad view of stream of commerce jurisdiction. The defendant admitted that it broadcast its programming and sold its products nationwide, including in Texas. The fact that the plaintiff bought the product at a large chain store suggested that "such sales are part of the regular flow or course of sales in Texas and not an isolated incident."

40. *Parillo v. Ranes*,
2013 WL 357617 (D.R.I. 2013).

Outcome

Dismissed

Description

Plaintiff asserted breach of contract claims against two California residents; one was not served. The other moved to dismiss for lack of personal jurisdiction. Evidence adduced on jurisdictional issue showed that plaintiff's contacts were with the defendant who was not served. The court cited *Nicastro* once for the proposition that a defendant must purposefully direct his conduct at the state.

41. *Ribustello v. Wilson Sporting Goods Co.*,
2013 WL 140096 (D.N.J. 2013).

Outcome

Dismissed

Description

The complaint alleged that Wilson developed a pattern and practice of terminating its oldest employees when those employees were approaching their late 50's and early 60's. The plaintiff was an account manager for Wilson, and the nature of the job allowed him to live anywhere. Two individual defendants were citizens of Illinois, and one was the President of Wilson, the other the Vice President of Sales and Service at Wilson, whose duties included hiring, promoting, and firing employees. The two individuals moved to dismiss, and the court granted the motion. *Nicastro* was cited once for boilerplate about two types of personal jurisdiction.

42. *Richardson v. Bates Show Sales Staff, Inc.,*
2013 WL 865547 (Tenn. Ct. App. 2013).

Outcome

Dismissal affirmed on appeal

Description

Tennessee residents sued Florida corporation in Tennessee state court on claims arising from their purchase of a travel trailer from the corporation. The corporation maintained no presence in Tennessee. It did have a passive website viewable in Tennessee and about 2 percent of its total sales were to Tennessee residents. Plaintiffs learned of the company through the website, called it, and received information about the product. The company emailed them a form for making an order and charging their credit card, which they filled out and sent back. Their credit card was charged accordingly, and they wired the remainder of the payment. The company used an independent contractor to deliver the trailer to them in Tennessee. The appellate court relied principally on precedents predating *Nicastro*, but at a critical point in its analysis quoted *Nicastro* for the proposition that entering a product into the stream of commerce with the predictable result that some specimens would end up in a particular jurisdiction was not enough for personal jurisdiction if the company does not "target" the jurisdiction. The court appears to have extended the stream of commerce analysis to a case where the company knowingly did business to fulfill an order from residents of a jurisdiction. Although the court recognized that Tennessee had significant interests in asserting jurisdiction, it held that it could not do

so because the company had not purposefully availed itself of the protection of Tennessee law by targeting Tennessee for sales. The court did not reach the alternative argument that there was a valid Florida forum selection clause. Florida was clearly available as an alternative U.S. forum.

43. *Rowland v. General Motors of Canada Ltd.*,
2013 WL 3381512 (N.D. Miss. 2013).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiffs sued defendant car manufacturer that sold 10 million cars to its American distributor, who distributed the cars throughout the United States. The court followed the Fifth Circuit's holding that *Nicastro* did not overrule the circuit's broad stream of commerce rule. Accordingly, the court held, the sale of millions of cars into the national market, enough of which were sold in Mississippi to support 41 dealerships, was enough for jurisdiction.

44. *Russell v. SNFA*,
987 N.E.2d 778 (Ill. 2013).
***Russell v. SNFA*,**
965 N.E.2d 1 (Ill. App. 2011).

Outcome

Jurisdiction

Description

An executor of a helicopter pilot's estate brought products liability action against a French manufacturer of a custom tail-rotor bearing for the helicopter involved in the crash. The Illinois Supreme Court, substantially agreeing with the intermediate appellate court, held that *Nicastro* did not require the court to change its pre-existing stream-of-commerce doctrine, which looked to whether the defendant at a minimum knew that the final product was marketed in Illinois. It explained that where the product is brought into the state solely by the unilateral act of a third party, the court would lack jurisdiction. The court held that the bearing-manufacturer could be sued in Illinois because its American distributor was not independent, but instead effectively acted as the defendant's partner in manufacturing, marketing, and distributing the product. The court relied on the fact that the defendant custom-made the part for the distributor and that five helicopters containing the defendant's bearings were sold in Illinois. But, the court held, even if *Nicastro* had adopted Justice O'Connor's approach, jurisdiction would be proper here because the defendant sold other products directly to an Illinois company.

45. *Securities and Exchange Comm'n v. Sharef*,
__ F. Supp. 2d __, 2013 WL 603135 (S.D.N.Y. 2013).

Outcome

Dismissed

Foreign defendant

Yes

Description

The Securities and Exchange Commission filed suit against former senior executives of a German manufacturing conglomerate alleging that they had bribed Argentine officials and then covered up the bribes with falsified financial documents, in violation of the Exchange Act. The Argentine defendant moved to dismiss, and the court granted the motion. On minimum contacts, the court explained that "Absent any alleged role in the cover ups themselves, let alone any role in preparing false financial statements, the exercise of jurisdiction here exceeds the limits of due process." The court also found that exercising jurisdiction would not be reasonable because of the lack of geographic ties to the United States, his age, his poor proficiency in English, and the forum's diminished interest in adjudicating the matter. The court cited *Nicastro* twice but did not discuss the case.

46. *Securities and Exchange Comm'n v. Straub,*
__ F. Supp. 2d __, 2013 WL 466600 (S.D.N.Y. 2013).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The SEC brought suit in New York against executives of a Hungarian telecommunications firm alleging that they violated the Foreign Corrupt Practices Act by bribing Macedonian government officials to prevent competition in telecommunications services. The Hungarian telecommunications firm had securities that were traded on American exchanges, and the SEC alleged that the executives had falsified various reports to the SEC to cover up the bribes. The defendants moved to dismiss for lack of personal jurisdiction. The court denied the motion. Because the securities laws provide for worldwide service of process and personal jurisdiction to the full extent allowed by the Fifth Amendment, the court held that the relevant issue was the sufficiency of contacts with the U.S. as a whole rather than to particular jurisdictions. It recognized, however, that the minimum contacts analysis applied in 14th Amendment cases provided guidance in determining the sufficiency of a defendants contacts with the U.S. The court cited *Nicastro* for the proposition that a defendant's actions, as opposed to his intentions, are what count, and the issue is whether the actions are directed toward the forum in a way that subjects the defendant to the authority of the forum. The court cited lower court authority for the proposition that effects within the forum of conduct elsewhere may provide sufficient contacts, though foreseeability of such effects is not, by itself, enough. The court also noted that *Nicastro* had suggested that conduct aimed at obstructing the forum's laws could give rise to jurisdiction. Here, the defendants had engaged in such conduct aimed at the U.S. by their alleged false statements in their U.S. securities filings. That conduct sufficed to allow exercise of jurisdiction.

47. *Sage Products, Inc. v. Primo, Inc.*,
2013 WL 812319 (N.D. Ill. 2013).

Outcome

Dismissed

Description

In this trade dress infringement action, the court found no jurisdiction because the defendant did not solicit sales in Illinois or regularly sell its products to Illinois customers, and its website was passive. The court briefly described *Nicastro*, but the case did not seem to affect the outcome.

48. *Sebring v. Air Equipment & Engineering, Inc.*,
988 N.E.2d 272 (Ct. App. Ind. 2013).

Outcome

Dismissed

Description

The plaintiffs sued the Texas manufacturer of a component of a dust collector that injured him in Indiana. The defendant's role in the process took place entirely within Texas and the manufacturer of the final product unilaterally decided to ship it to Indiana. The court read Justice Breyer's concurrence to require "something more than simply placing a product into the stream of commerce." Because the Texas defendant did nothing more, jurisdiction was improper.

49. *Scott v. Conley*,
__ F. Supp. 2d __, 2013 WL 1409310 (D.D.C. 2013).

Outcome

Dismissed

Description

This case is a combined *Bivens* action and Privacy Act suit by a former federal prisoner who had continued to operate fraudulent schemes using the mails while in prison and was therefore transferred to a "communications management unit," where he alleged that the defendants violated various constitutional rights by interfering with his mail and also maintained information in a system of records in violation of the Privacy Act. The violations took place at the federal prison in Terre Haute, Indiana. The plaintiff sued in federal court in the District of Columbia, naming as defendants certain Bureau of Prisons employees at Terre Haute, as well as two officials at BOP's headquarters in DC. The court dismissed the claims against the defendants who were employed outside DC, finding that the plaintiff had alleged no contacts between them and the DC forum at all (employment by a federal agency headquartered in DC not counting as a contact with DC). However, the court held that it had general jurisdiction over the defendants who worked in DC. The court cited *Nicastro* only for the general proposition that personal jurisdiction must be based on sufficient forum contacts to make the exercise of jurisdiction consistent with principles of fair play and substantial justice.

50. *Simons v. Arcan, Inc.*,
2013 WL 1285489 (E.D. Pa. 2013).

Outcome

Jurisdiction

Description

In a case with facts reminiscent of *Nicastro*, the plaintiff was injured when a hydraulic press manufactured by the defendant malfunctioned. The plaintiff was a citizen of Pennsylvania and was injured in his place of work in that state. He sued the defendant, a South Carolina company, in a Pennsylvania state court, and the defendant removed to federal court and moved to dismiss for lack of personal jurisdiction. The defendant's records showed that it had made 300 shipments directly to end-users in Pennsylvania in a five-year period (though it had no record of selling or shipping to the plaintiff's employer); it also had ongoing relationships with retailers in Pennsylvania and with a national chain that did a large amount of business in Pennsylvania, and it had an agent whose goals included developing sales in Pennsylvania. The court held that under either the Brennan or O'Connor approach to stream of commerce in *Asahi*, the defendant had sufficient minimum contacts with Pennsylvania to allow personal jurisdiction, because the defendant was aware that its products were ending up in Pennsylvania (Brennan test) and because it purposefully directed its products to Pennsylvania (O'Connor). To bolster the latter point, the court used a "see" cite to both the plurality and concurrence in *Nicastro* for the proposition that under the circumstances of this case, sales to national chains that operated in Pennsylvania were purposefully directed at the Pennsylvania market.

51. *Solomon v. Bristol-Myers Squibb Co.*,
916 F. Supp. 2d 556 (D.N.J. 2013).

Outcome

No ruling on personal jurisdiction

Description

This opinion is one of several opinions by Judge Wolfson granting summary judgment on the merits to Bristol-Myers Squibb in a products liability case involving failure-to-warn and manufacturing-defect claims concerning the prescription drug Plavix. It mentions *Nicastro* only as part of a citation indicating that a Sixth Circuit decision cited for a proposition of products liability law also contained a personal jurisdiction holding that was abrogated by *Nicastro*.

52. *State v. NV Sumatra Tobacco Trading Co.*,
403 S.W.3d 726 (Tenn. 2013).
***State ex rel. Cooper v. NV Sumatra Tobacco Trading Co.*,**
2011 WL 2571851 (Tenn. Ct. App. 2011).

Outcome

Dismissed

Description

The state brought action against a foreign tobacco product manufacturer for allegedly failing to make payments into the Tobacco Manufacturers' Escrow Fund for cigarettes sold in Tennessee by an American distributor. The intermediate appellate court

held that *Nicastro* was distinguishable because Sumatra sales of over 11 million cigarettes constituted more than the "isolated event" in *Nicastro*.

The Tennessee Supreme Court reversed. The court first noted that Tennessee's pre-*Nicastro* personal jurisdiction cases tended to follow Justice O'Connor's "stream of commerce plus" approach from *Asahi*. The court found that this approach was consistent with the *Nicastro* plurality. The court also held that Justice Breyer's opinion, although it disagreed with the plurality, did not adopt Justice Brennan's *Asahi* approach and instead "merely preserve[d] the doctrinal status quo."

The court first held that the cigarette company's "contacts at the national level," although not "completely irrelevant" to the minimum contacts analysis, were insufficient for jurisdiction because they did "not add up to much." Namely, the company filed a trademark application, submitted an ingredient list, and conformed its packages to federal standards. The court then held that the sales, even though large in number, to Tennessee were too "attenuated" to establish meaningful contacts. Merely placing products in commerce without later ownership or control was not enough.

53. *St. Ventures, LLC v. KBA Assets and Aquisitions, LLC*, 2013 WL 1749901 (E.D. Cal. 2013).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiff brought suit in the U.S. District Court for the Eastern District of California against a British company that had arranged a complicated transaction in which a third party would, for a payment, use a bond owned by the plaintiff as security in a transaction. The British company never passed on the payment to the plaintiff. The third party was a company with a principal place of business in California, and the British company located it, reached out to it, and communicated to set up the transaction. Relying on pre-*Nicastro* caselaw, the court held that there was personal jurisdiction in California because the British company purposefully availed itself of the privilege of conducting business in California. The court further held that there was specific jurisdiction because the claims arose out of the forum contacts, and it was reasonable to require the British company to defend the suit in California. The court cited *Nicastro* only for a statement of the statutory standard for venue (and it miscited the case, citing the dissent but not saying that it was the dissent).

54. *Symantec Corp. v. Acronis, Inc.*, 2013 WL 496290 (N.D. Cal. 2013).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

Symantec, a U.S. corporation, brought suit in federal district court in California against three affiliated companies for patent infringement arising out of their sales of

software. Two of the corporations, a Delaware and a Swiss company, did not contest personal jurisdiction, but the Russian company that actually developed the software did, contending that it did not make any sales in the U.S. or have any other contacts. Symantec countered with evidence that the Russian company made sales over the internet directed to California citizens (because its website referred to collection of sales tax from California residents), that it provided technical support to California software purchasers, and solicited U.S. companies to enter into strategic partnerships with it. Applying Federal Circuit personal jurisdiction precedents, the court (Susan Illston, J.) found that the minimum contacts test was satisfied because the defendant had deliberately targeted the California market and the claims related to those contacts. The court cited *Nicastro* only in a footnote saying that the Federal Circuit had said *Nicastro* did not change applicable personal jurisdiction principles.

55. *Thomas v. Brown*,
2012 WL 987760 (S.D. Fla. 2012), *aff'd*, 504 F. App'x 845 (11th Cir. 2013).

Outcome

Dismissed

Description

In this dispute over funds disbursed after an asset sale, the plaintiffs were minority shareholders of Apex Radiology Inc., a Florida corporation. The defendants had no offices, telephone, bank account, or property of any kind in the state of Florida and no ongoing contacts with Florida. On the other hand, the few contacts with Florida in this action—telephone and electronic communications with the plaintiffs to prepare for the arbitration—were related to plaintiff's cause of action and did not show purposeful availment because the arbitration and the underlying litigation for which the defendants were hired to represent Apex were not conducted in Florida. Although the defendants were representing a Florida corporation at the time, a non-resident attorney who represents a Florida entity in another state and never comes to Florida for anything to do with the action would not reasonably anticipate being sued in Florida for those activities. Therefore, the Court concluded that these contacts did not lead to the finding that the defendants should have reasonably anticipated being haled into court in Florida.

Nicastro is cited once for the point that the Supreme Court recently reiterated the importance of purposeful availment.

56. *Trustees of Boston University v. Everlight Electronics Co.*,
2013 WL 2367809 (D. Mass. 2013).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

Plaintiff Boston University, owner of a patent on LED lights, brought suit in Massachusetts for patent infringement against a Taiwanese company, Everlight, and its American subsidiary, Everlight Americas. Everlight manufactured allegedly infringing products in Taiwan and marketed them worldwide. In the U.S., Everlight did all of its distribution through its U.S. subsidiary. The subsidiary in turn promoted sales nationwide,

including in Massachusetts. Everlight's own website directs potential buyers to retailers from whom its products may be purchased, including some in Massachusetts, and it advertised the availability of its product in a magazine that has about 1000 Massachusetts subscribers. The district court found the facts supported the exercise of jurisdiction. It rejected the argument that Everlight Americas' contacts with Massachusetts should be attributed to its parent on an alter ego theory, but held that Everlight itself had sufficient contacts to justify specific jurisdiction. The court noted that this was a "stream of commerce" case, and cited *Nicastro* for the proposition that the Supreme Court had not adopted a majority position on the extent of contacts necessary for such jurisdiction. The court thus analyzed the issue under the Brennan and O'Connor opinions in *Asahi*. The court held that Brennan's test was satisfied, because Everlight was clearly aware that its products were being supplied by its American subsidiary to the Massachusetts market. The court found the application of O'Connor's standard to pose a more difficult question, but found that the facts were sufficient to establish that Everlight had engaged in activities with an intent to serve the Massachusetts market.

57. *Unspam Technologies, Inc. v. Chernuk*, 716 F.3d 322 (4th Cir. 2013).

Outcome

Dismissal affirmed on appeal

Foreign defendant

Yes

Description

Plaintiffs brought suit in Virginia against two Russian pharmacists that they claimed were behind an international effort to sell or offer to prescription drugs illegally over the internet using spam emails, as well as several foreign banks that processed debt card payments to the pharmacists through the Visa network. Those banks did not have U.S. account holders whose accounts were debited; rather they made payments and then sought to collect from the accountholders banks. (In this case, the individual plaintiff who alleged that he had sought to purchase drugs online from the defendants ultimately had his funds restored by his own bank when he did not receive the product.) The Fourth Circuit applied the standard it has developed to determine whether business activities conducted over the internet give rise to personal jurisdiction, and held that under that standard the defendants lacked sufficient forum contacts because they had no interactive websites marketing to Virginia residents, did not issue cards to any Virginia or U.S. residents, did not engage in any business in the U.S., did not act as merchant banks for any Virginia or U.S. companies that accept Visa cards, and did not interact directly with any customers of any of the foreign merchants they do serve. The court noted that there was no evidence that any of the banks processed payments for the transaction involving the individual plaintiff or any other drug transaction involving Virginia residents, but even if they had, the connection of the banks' own activities to Virginia would be too remote to allow jurisdiction. The court cited *Nicastro* only for the point that personal jurisdiction analysis depends on the defendant's activities.

58. *Virts v. Prudential Life Insurance Co. of America*,
__ F. Supp. 2d __, 2013 WL 2994872 (D.D.C. 2013).

Outcome

Transferred to New Jersey

Description

North Carolina resident sued Prudential, a New Jersey company, in the District of Columbia on an ERISA claim based on a denial of benefits to her under a plan administered by Prudential. The events surrounding the denial occurred in New York. The district court noted that under ERISA's nationwide-service-of-process provision, personal jurisdiction is permitted in any federal district court if the defendant has minimum contacts with the United States as a whole. The court transferred venue to New Jersey, however, because the case had no relationship with D.C. and various factors pointed to New Jersey as a more appropriate venue. In observing that the New Jersey venue was proper, the court quoted *Nicastro*'s statement that a corporation submits generally to the power of the state where it is incorporated or has its principal place of business.

59. *Wanzek v. Allstate Tower, Inc.,*
2013 WL 3229904 (D.N.D. June 25, 2013).

Outcome

No ruling on personal jurisdiction

Description

A North Dakota company that owned a crane brought suit in North Dakota over damage to the crane resulting from its use to dismantle a cell-phone tower in Minnesota. The defendant was a Kentucky company that was the general contractor for the project; a subcontractor incorporated in Tennessee had rented the crane for use in the project. The parties disagreed about whether North Dakota or Minnesota law applied to the plaintiff's tort claims. The court concluded under North Dakota's multi-factor choice of law analysis that Minnesota law applied, largely because Minnesota, the place of the tort, had the most significant contact with the claim. The court cited *Nicastro* once, for its dictum that "location of injury continues to hold sway in choice-of-law analysis in tort cases."

60. *Woodhurst v. Manny's Inc.*,
832 NW 2d 384 (Iowa Ct. App. 2013).

Outcome

Dismissed

Description

The plaintiffs sued several defendants including Manny's, a restaurant in Illinois. They alleged that David Zabransky consumed alcohol at Manny's, encountered plaintiff at a tavern in Iowa, and shot him at close range. Plaintiffs alleged that the alcohol provided by the establishment was the proximate cause of the injuries. Manny's moved to dismiss, claiming lack of personal jurisdiction, and the district court granted the motion. Most of the points were discussed without citation to *Nicastro*, which was mentioned only toward the end of the opinion for the point that transmission of goods alone and foreseeability alone were not alone sufficient to permit the exercise of jurisdiction. "Jurisdiction may be exercised 'only where the defendant can be said to have targeted the forum.'"

2012

61. *AFTG-TG, LLC v. Nuvoton Tech. Corp.*,
689 F.3d 1358 (Fed. Cir. 2012).

Outcome
Dismissed

Foreign defendants
Yes

Description
The plaintiff sued several defendants for patent and trademark infringement. The court held that *Nicastro* did not change the law and so the court applied its longstanding stream-of-commerce precedent that requires analysis of both *Asahi* approaches. The court found jurisdiction improper under any theory because the defendants' shipments to Wyoming were "isolated" and "sporadic" and did not give rise to the claims in this case.

62. *Abelesz v. OTP Bank*,
692 F.3d 638 (7th Cir. 2012).

Outcome
No jurisdiction

Foreign defendant
Yes

Description
Hungarian Jews who were victims of the Holocaust sued privately owned Hungarian banks alleging a wealth expropriation scheme involving withholding of assets and funds from the plaintiffs. The district court had denied the banks' motion to dismiss. The court of appeals held that the allegations in the case did not come close to meeting the jurisdictional standard and that the plaintiffs' could not proceed against these defendants "in United States federal courts."

The court did not discuss *Nicastro* to reach the holding, but the court discussed it to reject the plaintiff's argument that the case was "limited to analyzing whether the 'stream-of-commerce' doctrine that can bolster a *state* court's exercise of *specific* jurisdiction over a foreign corporation would be enough by itself to also establish general jurisdiction." The court cited *Nicastro* with parentheticals addressing the due process aspect of personal jurisdiction.

63. *Ace Investors, LLC v. Rubin*,
494 Fed. App'x 856 (10th Cir. 2012).

Outcome
Reversed and vacated order of restraint against trustee

Description
This case was a garnishment action brought by a judgment creditor against a judgment debtor's property held in trusts. The district court entered an order restraining the trustee from disposing, transferring, canceling, or interfering with trust property. The Tenth Circuit reversed, finding that the district court improperly applied trusts law in exercising specific personal jurisdiction over the trustee in her personal capacity and in the trustee in her representative capacity over certain trusts that were not subject to district

court's jurisdiction. The decision focuses on application of trusts law. The court cites *Nicastro* once for a boilerplate proposition.

64. *Ackerman v. Global Vehicles USA, Inc.*,
2012 WL 694834 (E.D. Mo. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiffs entered into dealership franchises with defendant Global Vehicles U.S.A. to sell vehicles distributed by Global and manufactured by another defendant, an Indian company. When the vehicles manufactured by the Indian company were not imported into the United States and not distributed by Global, the plaintiffs sued, seeking return of the money they paid when the parties entered into the agreements. The plaintiffs argued that the court had specific personal jurisdiction over Mahindra by virtue of actions taken in Missouri by Global while allegedly acting as Mahindra's agent. The court held that Global had not acted as Mahinda's agent under Missouri law. The court cited *Nicastro* only for general propositions.

65. *Acxiom Corp. v. Briggs,*
2012 WL 5185870 (E.D. Ark. 2012).

Outcome

Dismissed

Description

An Arkansas company brought suit in Arkansas against two former employees of an Ohio subsidiary. The employees had entered into stock ownership and bonus agreements under which the benefits were contingent on an agreement not to compete with the Arkansas company after they left its employment. Shortly before the Arkansas company was to sell the Ohio unit to another company, the two employees resigned and then allegedly went to work for another company in violation of their noncompete agreements. The company sued in Arkansas for a declaration that they had forfeited their rights under the stock ownership and noncompete agreements. The court held that it had neither general nor specific jurisdiction over the employees. Although the agreements in question had been entered into through communications between Ohio and Arkansas, and those counted as contacts, the court found them insufficient in the circumstances of this case to make the assertion of jurisdiction proper under the 8th Circuit's multifactor test (predating *Nicastro*) for assessing the sufficiency of forum contacts. Nor did the fact that one of the agreements involved ownership interests in an Arkansas company suffice: Merely having stock in a company does not subject someone to jurisdiction in the company's state of incorporation. The court further held that the few visits by the employees to Arkansas, and the fact that during their employment they undertook their tasks in Ohio with a reporting relationship to superiors in Arkansas, were not relevant contacts because the claims did not arise out of those visits or the reporting relationship. The court cited *Nicastro* only in a parenthetical of a cite to an 8th Circuit case, which was itself cited only for the proposition

that specific jurisdiction exists where the claims in the case arise out of or relate to contacts with the forum.

66. *Afremov v. Jarayan*,
2012 WL 1049739 (D. Minn. 2012).

Outcome

Jurisdiction

Foreign defendant

Not clear from opinion

Description

The plaintiff, Afremov, a Minnesota resident, brought suit in Minnesota against Jarayan, a businessman of Armenian origin (current residence unspecified in the decision) with whom he had had two different sets of transactions: one involving numerous purchases of Russian antiques, and the other involving investments in real estate in Armenia, ostensibly to build a casino. Jarayan impleaded another antiques dealer, Atzbach, a dealer in Russian artifacts based in Redmond, Washington. Atzbach had been involved in many of the antiques transactions between Afremov and Jarayan, initially as the source from which Jarayan purchased items and resold them to Afremov, but then in transactions in which he worked directly with both Jarayan and Afremov to purchase items and resell and ship them to Afremov. Atzbach moved to dismiss for lack of personal jurisdiction, arguing that he did not do business in Minnesota. Jarayan contended that the court had both general and specific jurisdiction, but the court brushed the former assertion aside, finding that Atzbach's business was in no sense "at home" in Minnesota. But the court found it had specific jurisdiction. Although the first transactions between Atzbach and Jarayan had simply been sales of items as to which Atzbach knew only that they were intended for resale to an unknown person, he later learned who the ultimate buyer was and where he was located, and began to communicate with him directly, receive payment directly from him, and ship items to him in Minnesota; on at least one occasion he visited Minnesota in connection with the antiques transactions. The court found that these contacts went far beyond merely placing items into the stream of commerce and having them end up in Minnesota. The court cited *Nicastro* only in explaining the distinction between general and specific jurisdiction and stating the general principle that the latter requires that the claim relate to some act by which the defendant purposefully avails himself of the forum.

67. *Akerblom v. Ezra Holdings Ltd.*,
848 F. Supp. 2d 673 (S.D. Tex. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

This case arose out of the breakdown of a business relationship between the plaintiff, an individual who resided in Texas at the time the case was brought, and several Singapore corporations. The relationship had been formed at a time the plaintiff resided in Singapore, and it involved offshore support and marine services for oil operations in Africa.

After the relationship broke down, there was one meeting in Texas in an effort to settle it. The plaintiff sued in a Texas state court, and the action was removed to federal court. The Singapore companies moved to dismiss for lack of personal jurisdiction. The plaintiff's principal theory was that there was general jurisdiction in Texas because the family of corporations was run from a Texas office. The companies countered that the Texas office was that of a single subsidiary, and that they themselves did no business of any kind in Texas. The court held that the companies lacked sufficient continuous, substantial or systematic contacts with Texas to support general jurisdiction; it declined to attribute the subsidiary's contacts to the other corporations because the plaintiff had shown nothing more than an ordinary corporate subsidiary structure, and it also found no basis for attributing the contacts on the basis of agency. The court relied principally on pre-*Nicastro* decisions, and mentioned *Nicastro* only in a passage illustrating the difference between general and specific jurisdiction, where it cited Justice Breyer's concurrence for the proposition that specific jurisdiction could be found when claims arose out of contacts such as a regular flow of sales or a specific effort to sell in the state.

68. *Alltec Lifting Systems, LLC v. Arkansas Oregon Pneumatics, Inc.*, 2012 WL 5832295 (D.S.D. Tex. 2012).

Outcome

Jurisdiction

Description

Plaintiff sued an Arkansas defendant after a device that the defendant made for the plaintiff failed to perform. The plaintiff alleged personal jurisdiction because the defendant participated in a conference call with the plaintiff's staff, knew the product would be used in Texas, traveled twice into Texas to retrieve and return the product, and emailed seven bids on other contracts. The court held that jurisdiction was proper. The court deemed *Nicastro* irrelevant because it was unnecessary to resort to stream of commerce analysis where the defendant had "actual knowledge" that its products would be used in the forum state. In any event, the court noted, the defendant's customization of the product satisfied even Justice O'Connor's more stringent approach.

69. *Arnold v. AT&T, Inc.*, 874 F. Supp. 2d 825 (E.D. Mo. 2012).

Outcome

Dismissed w/out prejudice as to 2 defendants

Description

Landline telephone customers brought a putative nationwide class action against telephone service providers and holding companies, asserting claims arising out of and relating to charges they were allegedly billed for, and paid for, products or services from third parties that they did not order or authorize. The companies moved to dismiss for lack of personal jurisdiction. The court held that nonresident companies were not subject to personal jurisdiction under Missouri's long arm statute and that the customers failed to establish that exercising personal jurisdiction over companies comported with due process. The court cites *Nicastro* along with various other cases in describing minimum contacts requirement, and also mentions *Nicastro* when introducing purposeful availment

requirement. *Nicastro* is not discussed or cited when the court analyzes the specific facts before it.

70. *Ashbury International Group, Inc. v. Cadex Defence, Inc.,*
2012 WL 4325183 (W.D. Va. 2012).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiff, a Virginia company with patents on a "precision rifle platform," brought a patent infringement action in federal court in Virginia against a Canadian company that it claimed was infringing those patents. The Canadian company had no facilities in Virginia and was not registered to do business there, but 75% of its U.S. sales, and 57% of its worldwide sales were to Virginia, and its largest customer was the U.S Marine Corps facility in Quantico, Virginia. However, there were no Virginia sales of the accused infringing products. The defendant moved to dismiss for lack of personal jurisdiction. The plaintiff argued not for specific jurisdiction, as the claims did not arise from any forum contacts, but for general jurisdiction on the basis of the defendant's systematic and continuous general business contacts. The court cited *Nicastro* for the proposition that personal jurisdiction, whether specific or general, must be based on conduct from which an intention to benefit from and submit to the authority of the forum can be inferred. The court held that the contacts in this case were so extensive that general jurisdiction was justified, although it recognized that a flow of products into a jurisdiction is often insufficient to support general jurisdiction. The court characterized the issue as a close one. It further held that exercising jurisdiction would not be unreasonable. The court's decision rested primarily on Supreme Court decisions concerning general jurisdiction, and on Federal Circuit decisions concerning when the exercise of jurisdiction may be found to be unreasonable notwithstanding the existence of minimum contacts.

71. *Askue v. Aurora Corp. of America*,
2012 WL 843939 (N.D. Ga. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

Plaintiffs sued a Taiwanese manufacturer of paper shredders. The defendant sold its products to a California distributor, one of which was sold in Georgia. The plaintiffs relied on the stream of commerce theory, arguing that it was enough that the defendant should have anticipated the sale would occur. Although the court read the Breyer concurrence to limit *Nicastro* to its facts, it could not ignore that the facts of this case were materially similar to those in *Nicastro*.

72. *Baker v. Patterson Medical Supply, Inc.*,
2012 WL 380109 (E.D. Va. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

A defendant in a products liability case filed third-party complaints against foreign manufacturers of a folding shower chair. The court held that the third-party plaintiff waived its argument for specific jurisdiction, but even if the argument had not been waived, jurisdiction would be improper. The court cited to the *Nicastro* plurality for the rejection of the broad stream-of-commerce theory and noted that the facts here were similar to the facts that Justice Breyer found insufficient in his concurrence. The defendant sold only one chair in the United States and denied any marketing or advertising directed at Virginia. The court further held that even if the third-party plaintiff could show a nationwide distribution network, there was no evidence of purposeful availment.

73. *Barnhart v. Covenant Care Midwest, Inc.*,
2012 WL 1107799 (S.D. Ill. 2012).

Outcome

Jurisdiction

Description

The plaintiff brought a survival and wrongful death action against an individual defendant following her husband's death from complications following treatment at a rehabilitation center. The court found that the individual defendant was subject to specific jurisdiction in Illinois because his activities in managing the rehabilitation center showed that he had purposefully established minimum contacts with this forum. *Nicastro* is cited as part of a string cite on purposeful availment.

74. *Blume v. International Services, Inc.*,
2012 WL 1957419 (E.D. Mo. 2012).

Outcome

Jurisdiction

Description

The plaintiff, a citizen of Missouri, worked for an Illinois consulting company; his job required him to fly from his home airport in Missouri to locations nationwide to perform consulting services. Most of the company's consultants worked from Illinois, but a few others were based in Missouri as well as in other states. The plaintiff brought a collective action under the FLSA in the Eastern District of Missouri, alleging that the company did not properly pay consultants for all hours spent working (including time the company required consultants to spend waiting at their home airports on Sunday afternoons for an assignment) and did not pay overtime. The company moved alternatively for a change of venue to the Northern District of Illinois, where it was headquartered, or for dismissal for lack of personal jurisdiction. Noting that it could transfer venue without determining personal jurisdiction, the court first considered whether to transfer, but held that the company had not made a showing that convenience to parties, witnesses, etc. strongly

enough outweighed the plaintiff's forum choice to require transfer. Turning to personal jurisdiction, the court found that it possess specific jurisdiction because the defendant had minimum contacts with Missouri out of which the claims arose: It employed the plaintiff there, and some of the work for which he sought compensation was performed there. The court cited *Nicastro* for the proposition that assertion of due process must be consistent with traditional notions of fair play and substantial justice, but proceeded to apply Eighth Circuit case law concerning personal jurisdiction that predated *Nicastro*. Notably, the court observed that the defendant had registered with the Missouri Secretary of State and appointed an agent for service of process in Missouri, but did not decide whether this in itself constituted consent to the exercise of personal jurisdiction.

75. *Boyd v. Arizona*,
469 Fed. App'x 92 (3d Cir. 2012).

Outcome
Jurisdiction

Description
A prisoner filed a section 1983 action against prison officials. The court cited *Nicastro* once for a general proposition about due process.

76. *Brem v. Weinstein Co.*,
2012 WL 1130207 (Cal. Ct. App. 2012).

Outcome
Dismissal affirmed on appeal

Foreign defendant
Yes

Description
In this unpublished opinion, the court held that it lacked jurisdiction over a Japanese bicycle manufacturer on a "stream of commerce theory." The plaintiff claimed she was injured in California by a bicycle manufactured in Japan by Bridgestone Japan (a subsidiary of Bridgestone Corporation, which is also a Japanese company). She contended that she bought the bicycle in California, where it was distributed by a Bridgestone subsidiary, Bridgestone USA, a California corporation which during the relevant time period distributed Bridgestone Japan's bicycles in the US. Bridgestone Japan, presented evidence claiming it sold bicycles exclusively in Japan and had no contacts with California or the US. If the bicycle in question was in fact manufactured by Bridgestone Japan, the company professed ignorance as to how it could have gotten to California. The court of appeals addressed both the issue of service of process and personal jurisdiction/minimum contacts. On the latter subject, its principal focus was the unauthenticated and sketchy nature of the plaintiff's evidence; it found that there was essentially no probative evidence (other than the presence of a bicycle that said "Bridgestone" on it) as to contacts between Bridgestone Japan and California. The court cited *Nicastro* for the proposition that the mere fact that a manufacturer's product ended up in a state through channels of commerce was not sufficient to support jurisdiction.

77. *Bristol West Insurance Co. v. Clark*,
2012 WL 845649 (S.D. Ind. 2012).

Outcome

Jurisdiction

Description

An Ohio insurance company brought suit in Indiana against an Indiana resident seeking a declaratory judgment concerning coverage, under an insurance policy issued in Indiana, for claims arising an automobile accident in Kentucky. The defendant moved to dismiss for lack of personal jurisdiction based not on absence of forum contacts, but on insufficient service of process. The court held that process had been properly served and that, in any event, the defendant's conduct, through his attorney, evinced consent to submit to the court's jurisdiction. The court cited *Nicastro* for the general proposition that personal jurisdiction ultimately turns on whether a defendant's conduct manifests consent to submit to the authority of a jurisdiction.

78. *Cecarelli v. CSX Transportation, Inc.*,
2012 WL 3599536 (D. Conn. 2012).

Outcome

Dismissed

Description

A door fell off a railroad boxcar sitting in Connecticut, striking and injuring plaintiff Cecarelli. Claims and cross-claims were filed against and between the First Union Rail Corp., CSX Transportation, Inc., and the Albany & Eastern Railroad Co. AERC, an Oregon company that was the original source of the boxcar, moved to dismiss for lack of personal jurisdiction. The court granted the motion and dismissed the case. The court found that the record does not show purposeful availment. The bill of lading indicated that the boxcar's destination was Chicago, and the choice to move it on to Connecticut was made after AERC no longer controlled the boxcar, The court characterized AERC's activity as limited to moving railcars up and down 67 miles of track entirely within Oregon. The court mentioned *Nicastro* only to say that AERC made an argument based on Kennedy's concurrence and that the court does not need to discuss the argument.

79. *In re Chinese Manufactured Drywall Products Liability Litigation*,
2012 WL 3815669 (E.D. La. 2012).

Outcome

Jurisdiction

Description

Homeowners brought class actions against manufacturers of Chinese drywall, among others, alleging negligence, negligence per se, breach of express and implied warranties, and violation of various consumer protection acts, among other claims, after defective drywall was installed in their homes. The MDL court analyzed whether a defendant who manufactured the drywall in China and sold it to a Virginia distributor could be sued in Virginia. The court found personal jurisdiction proper because the manufacturer entered into contracts for the sale of 150,000 sheets of drywall in Virginia and engaged in communications in support and furtherance of the business relationship. The court noted that the Fifth Circuit had adopted Justice Brennan's approach before *Nicastro*, but found

jurisdiction proper even under the *Asahi* and *Nicastro* pluralities' views. The "something else" requirement was met by the defendant's conforming the drywall to meet U.S. standards, placing the name of a Virginia company on the drywall, and facilitating in shipping this drywall to Virginia for use in Virginia.

80. *Chyba v. TXU Energy*,
2012 WL 6608618 (S.D. Cal. 2012).

Outcome

Dismissed w/out prejudice

Description

A pro se plaintiff sued TXU Energy1 under the Fair Credit Reporting Act, alleging that TXU, a Texas-based residential electricity provider, was responsible for an "erroneous and inaccurate" debt entry on her credit report. She also alleges that the company failed to properly notify credit bureaus that she disputed the entry. The court found that the plaintiff had not satisfied her burden of establishing a prima facie case of personal jurisdiction. The court cited *Nicastro* once for boilerplate.

81. *In re Countrywide Financial Corp. Mortgage-Backed Securities Litigation*,
2012 WL 1322884 (C.D. Cal. 2012).

Outcome

Dismissed

Description

The plaintiff, Massachusetts Mutual Life Insurance Company, a Massachusetts-based financial services company, purchased a number of residential mortgage-backed security certificates. In this case, it alleged that the sale of those certificates violated the Massachusetts Uniform Securities Act because the Offering Documents contained untrue statements and omitted material facts. The defendants were several individuals who were allegedly "control persons" liable under Massachusetts law.

Because the case was transferred from Massachusetts as part of an MDL, the court stated that it could exercise jurisdiction only to the same extent that the Massachusetts district could have done. The court found that nothing in the complaint indicated that the individual defendants purposefully directed their actions toward Massachusetts. The most that could be inferred was that they knew that another defendant sold certificates to institutional investors nationwide and that Massachusetts investors were therefore likely to end up with some certificates. The court held that these facts do not suffice to show express aiming, purposeful direction, or even purposeful availment.

The court cited *Nicastro* only to note that the Ninth Circuit had held that the "purposeful direction," or *Calder* effects, test applies to tort cases, even after *Nicastro*.

82. *DSB Kollective Co. v. Bourne*,
897 F. Supp. 2d 871 (N.D. Cal. 2012).

Outcome

Magistrate judge recommended denying plaintiffs' motion for default judgment for lack of personal jurisdiction.

Foreign defendant

Yes

Description

The plaintiffs asserted copyright infringement claims against the Australian owner of a website that facilitated illegal downloading of the plaintiffs' music. They cited *Nicastro* to argue that purposeful direction is not the only analysis for personal jurisdiction in tort cases. The court relied on a Ninth Circuit case that addressed *Nicastro* to hold that the purposeful direction test should be used in cases involving intentional torts, including copyright infringement.

83. *In re Darvocet, Darvon and Propoxyphene Products Liability Litigation*,
2012 WL 3842271 (E.D. Ky. 2012).

Outcome

Jurisdiction

Description

Defendant Xanodyne Pharmaceuticals, Inc. filed a motion to dismiss the complaints in an MDL based on lack of personal jurisdiction. Xanodyne asserted that "Xanodyne did no business and derived no revenue in California from sales of any propoxyphene-containing product to plaintiffs." The court held that the test is whether the suit arises from Xanodyne's "forum-related activities." The court found that Xanodyne engaged in a pattern of behavior, directed at California, that resulted in injuries because Xanodyne markets its products in California, including providing drug samples to healthcare professionals intended for free distribution to patients and making payments for consulting or market research services in the state. The defendant had cited *Nicastro* for the proposition that "'those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter.'" The court agreed but noted that the rule has exceptions, as *Nicastro* itself noted.

84. *Davis v. Simon*,
963 N.E.2d 46 (Ct. App. Ind. 2012).

Outcome

No jurisdiction, reverses trial-court order denying motion to dismiss

Description

A sports team owner and his wife brought a defamation and false light publicity action against a California attorney who had sued the owner and his wife in California. The defendant moved to dismiss. The state court of appeals held that personal jurisdiction could not be exercised over the attorney under the *Calder* express aiming test, where alleged defamatory remarks were made in response to a television reporter's unsolicited questions. The question on appeal was whether an attorney, answering a reporter's unsolicited questions, in which the attorney made comments regarding the allegations of a lawsuit and represented that the allegations were truthful, without more, constitutes

expressly aiming one's conduct at the forum state. The court held no and granted the motion to dismiss.

The plaintiffs had cited *Nicastro* in support of their argument that the defendant was is "trying to obstruct Indiana's laws by forcing [the Simons] to bring their claims in a forum state that he believes (correctly) would treat his defamation more leniently." The court responded that the part of *Nicastro* on which the plaintiffs relied was not a new statement of the law and was instead a statement grounded in the express aiming test.

85. *Dierig v. Lees Leisure Industries, Ltd.*, 2012 WL 669968 (E.D. Ky. 2012).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiff sued a Canadian motorcycle tent trailer (to be pulled behind a motorcycle) manufacturer. The manufacturer sold its tent trailer to a distributor in South Carolina, but placed an advertisement, featuring the testimonial of a Kentucky resident, in a magazine available in Kentucky. Moreover, the distributor was the exclusive distributor for this product. The court held that jurisdiction was proper under the stream of commerce plus theory adopted by the Sixth Circuit because the defendant "manufactured an allegedly defective product and placed it into the stream of commerce, supported by various forms of marketing targeted, in part, at residents of Kentucky." The court found *Nicastro* distinguishable because the defendant "advertised in, sent goods to, and targeted [Kentucky] in efforts to market and sell its products."

86. *Dis-Tran Wood Products, LLC v. Brooks Mfg. Co.*, 2012 WL 5988770 (W.D. La. 2012).

Outcome

Dismissed

Description

The plaintiff, a Louisiana company that made wooden cross bars, sued the defendant, a Washington company that made wooden cross bars and held a patent that it claimed the plaintiff's products infringed. The plaintiff filed a declaratory judgment action in Louisiana seeking to have the patent declared invalid. The court held that the defendant's handful of sales in Louisiana did not suffice to confer general jurisdiction over it. As for specific jurisdiction, the only relevant contacts were a telephone call from Washington to Louisiana asking the plaintiff to cease and desist, and the mailing of a press release. The court cited *Nicastro* only for the point that the stream of commerce theory remains unsettled.

87. *ESAB Group, Inc. v. Zurich Insurance PLC*, 685 F.3d 376 (4th Cir. 2012).

Outcome

Finding of jurisdiction affirmed on appeal

Description

A South Carolina manufacturer of welding products, which was owned by a family of non-U.S. corporations, sued a Swiss insurance company in South Carolina state court for coverage of products liability claims brought against it in South Carolina and other U.S. jurisdictions. The liability insurance policies at issue had originally been issued by a Swedish insurance company to the plaintiff's European parent company, but they covered its subsidiaries worldwide. They also contained arbitration clauses, so the defendant removed the case to federal court under the Convention on Recognition of Foreign Arbitral Awards, and moved either to compel arbitration or to dismiss for lack of personal jurisdiction. The district court refused to dismiss, compelled arbitration of certain claims, and declined to exercise supplemental jurisdiction over nonarbitrable claims. There were cross-appeals, and the Fourth Circuit affirmed. With respect to personal jurisdiction, the court rejected the insurer's argument that South Carolina lacked personal jurisdiction. The court found the requisite minimum contacts in the issuance of insurance policies that covered the operations in South Carolina and contemplated defending lawsuits against the insured in the U.S., including South Carolina. Citing its own prior opinions, the court stated that minimum contacts were present when a defendant purposefully availed itself of doing business in the forum, but not when contacts are random, fortuitous, or attenuated. The court cited *Nicastro* to illustrate this concept, noting that the Court had held personal jurisdiction lacking where the defendant's product simply ended up in the forum (albeit foreseeably), but present when the defendant had targeted the forum state. Here, the court found targeting and purposeful availment, and held that the claims also arose out of the relevant contacts and that exercise of jurisdiction would comport with basic principles of fairness.

88. *Englert v. Alibaba.com Hong Kong Ltd.*, 2012 WL 162495 (E.D. Mo. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiffs purchased products found on a website, alibaba.com, that were allegedly counterfeit and seized by United States customs officials before being delivered. The products were sold by unidentified third-party suppliers. Defendant Alibaba.Com Hong Kong Limited, a Hong Kong corporation, is a subsidiary of Alibaba Group Holding Limited, a Cayman Islands corporation. Alibaba Hong Kong maintained websites in the United States and elsewhere that allow a variety of third party sellers to display products for sale to consumers in one central internet location, and the company had numerous third party suppliers located in Missouri.

Alibaba Group Holding Limited, a Cayman Islands corporation with its principal place of business in Hong Kong, is a holding company that owns a number of internet

businesses, including Alibaba Hong Kong. Alibaba Holding owns the domain name "alibaba.com" and owns the marks "Alibaba" and "Aliexpress." Alibaba Holding is the majority shareholder of Alibaba Hong Kong. Additionally, Alibaba Hong Kong and Alibaba Holding share the same chairman of their separate boards of directors. Alibaba Holding maintains no presence of any kind in Missouri.

The holding company moved to dismiss for lack of personal jurisdiction, and the court granted the motion. The court cited *Nicastro* for general propositions.

89. *Eskridge v. Pacific Cycle, Inc.*,
2012 WL 1036826 (S.D. W. Va. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiff sued the Taiwanese manufacturer of a component of the plaintiff's bicycle. Concluding that *Nicastro* did not produce a rule, the court applied the Fourth Circuit's pre-*Nicastro* cases that, like Justice O'Connor in *Asahi*, looked for more than merely entering the stream-of-commerce. In this case, the defendant sold its products to California importers and did not target West Virginia. Under the Fourth Circuit's rule, it was not enough that large numbers of bikes containing the defendant's components were later sold in West Virginia.

90. *Etagz, Inc. v. Cheri Magazine*,
2012 WL 5844915 (D. Utah 2012).

Outcome

Plaintiffs granted leave to conduct jurisdictional discovery

Description

In this suit for patent infringement, the defendants moved to dismiss for lack of personal jurisdiction. The court found that the plaintiffs had alleged at least some basis to believe that there may be specific jurisdiction, and granted the plaintiffs leave to conduct limited jurisdictional discovery. The court advised the plaintiff to focus on its alter ego allegations and on its stream of commerce theory. The court cited *Nicastro*, *Asahi*, and other cases for the proposition that, even under a general stream of commerce argument, there must be a finding that the defendant purposefully directed its activities at the forum state.

91. *Federal Insurance Co. v. Steris Corp.*,
2012 WL 5187790 (D. Minn. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiff insurance company sued a Canadian manufacturer of electrical components incorporated into a sterilizing washer manufactured by a third company, also Canadian. The component manufacturer separately sold a different product 13 times to

companies in Minnesota. The court found that *Nicastro* did not change the law of personal jurisdiction and, accordingly, applied pre-*Nicastro* Eighth Circuit precedent that required purposeful availment beyond mere participation in the stream of commerce. Because the Canadian company did not have even Minnesota distributors, there was no evidence that it knew or should have known that its part would end up in Minnesota. Accordingly, there was no jurisdiction.

92. *Finley v. Zimmerman*,
2012 WL 996598 (N.J. Super. Ct. App. Div. 2012).

Outcome

Dismissed w/out prejudice

Description

This case involved defendant Moore's representation of New Jersey plaintiffs Donald and Shirley Finley in the acquisition of a fifty percent interest in Florida realty. The court found insufficient minimum contacts with New Jersey to justify the fair exercise of jurisdiction over Moore and his law firm. The court therefore reversed the lower court and dismissed the complaint without prejudice.

In a footnote, the court said (incorrectly) that it was not addressing *Nicastro* because the case is mostly about general jurisdiction, but here the issue was about specific jurisdiction.

93. *Frito-Lay North America, Inc. v. Medallion Foods, Inc.*,
867 F. Supp. 2d 859 (E.D. Tex. 2012).

Outcome

Jurisdiction

Description

A name-brand snack food manufacturer brought an action against the manufacturer of private-label food products and its parent company, alleging defendants' bowl-shaped tortilla chip product infringed its patent and trade dress rights in similar-shaped tortilla chip product. The court viewed Breyer's concurrence as the controlling *Nicastro* opinion. The court concluded that it was enough for jurisdiction that the defendant "has fulfilled and continues to fulfill repeated purchase orders for the allegedly infringing tortilla chips for Wal-Mart, a 'major customer'" of the defendant. Because the defendant knew that Wal-Mart would then sell the chips in Texas, the defendant continued to "reap the benefit of the sales" in Texas.

94. *Gardner v. SPX Corp.*,
272 P.3d 175 (Ct. App. Utah 2012).

Outcome

Dismissed

Description

The widow of a delivery driver killed when a dock leveler fell brought products liability action against Canadian manufacturer of the control box, the control box distributor, and the installer of dock leveler. The state trial court dismissed the manufacturer for lack of personal jurisdiction. The Utah Court of Appeals affirmed. The court found no jurisdiction because the plaintiff could only show efforts to target the U.S.

market and perhaps Texas, but not Utah. The court held so even though "this was not as isolated a sale as occurred in" *Nicastro*, explaining that there was no "special state-related design, advertising, advice, marketing … or specific effort … to sell in Utah."

95. *Garrard v. Pirelli Tire LLC*,
2012 WL 2357406 (S.D. Ill. 2012).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

This case was a products liability action about a tire. The court cited *Nicastro* once to state the stream of commerce basis for personal jurisdiction. The court found that Pirelli DG placed the tire into the stream of commerce through a sophisticated global distribution system and that Pirelli DG expected its tires to be purchased in the American market. "Accordingly, Pirelli DG must expect its Metzeler tires will be purchased in Illinois, one of the five largest states in the Nation."

96. *Genetic Technologies Ltd. v. Agilent Technologies, Inc.*,
2012 WL 1060040 (D. Colo. 2012).

Outcome

Transferred

Description

Australian corporation brought suit in federal district court in Colorado against several unrelated U.S. corporations for patent infringement. One, a Delaware corporation with a principal place of business in Connecticut, moved to dismiss for lack of personal jurisdiction or to sever and transfer venue. The defendant conceded there would be personal jurisdiction in Connecticut. Accordingly, the court addressed the motion to sever and transfer first, found that the case was not properly joined with the claims against the other defendants and that the relevant factors strongly favored the Connecticut forum, and granted the motion to server and transfer to federal district court in Connecticut. The court cited *Nicastro* only for the proposition that the plaintiff's choice of forum was afforded little weight under the circumstances of this case. Holding of *Nicastro* did not determine outcome.

97. *Gilbarco Inc. v. Tronitec, Inc.,*
2012 WL 1020244 (M.D.N.C. 2012).

Outcome

Jurisdiction

Description

The plaintiff, a company with its principal place of business in North Carolina, owns the copyright on software used in gas station pumps. The defendant, a Georgia company, sells reconditioned circuit boards for gas station pumps, including chips containing the software, which the defendant is not licensed to sell. The plaintiff sued the defendant for copyright infringement in North Carolina, and the defendant moved to dismiss for lack of subject matter jurisdiction. The court held that it did not have general jurisdiction over the

defendant, but that there were sufficient contacts for specific jurisdiction. These contacts included regular sales to North Carolina, albeit constituting a fairly small percentage of the defendant's overall business; a website accessible in North Carolina that allowed customers to order products from the defendant and that states that the plaintiff's product is available; a sale of an infringing product directly to North Carolina. Relying on pre-*Nicastro* precedents, the court held these contacts sufficient, and cited precedents holding that the sale of an infringing product in a forum generally supports jurisdiction. In a footnote, the court stated that in light of the nature and extent of the contacts in the case, it need not consider the effect of *Nicastro* on the stream of commerce theory adopted by the federal circuit in precedents involving patent infringement claims.

98. *Graham v. Hamilton*,
2012 WL 893748 (W.D. La. 2012).

Outcome

Jurisdiction (rejecting magistrate's recommendation to the contrary)

Foreign defendant

Yes

Description

The plaintiffs allege that GM Canada manufactured a defective 2002 Chevrolet Camaro and transferred the vehicle to GM Corporation through Waller–Singer Chevrolet in Louisiana. Mrs. Hamilton purchased the vehicle from the dealership. On January 20, 2007, her vehicle struck a tractor trailer and subsequently collided with the concrete wall between the lanes. The vehicle also caught fire, resulting in the deaths of two children in the vehicle. The Magistrate Judge found that the court lacked specific jurisdiction because the plaintiffs failed to demonstrate that GM Canada had sufficient minimum contacts with Louisiana. In his general discussion of the law governing specific jurisdiction, the Magistrate Judge cited *Nicastro*'s plurality opinion as controlling precedent and found that the Court does not have specific jurisdiction over GM Canada. In making this determination, he noted the absence of evidence that GM Canada targeted Louisiana, and that GM Canada transferred ownership of the vehicle to GM Corporation before the vehicle entered the United States.

The district court said that because *Nicastro* was only a plurality opinion, the Magistrate Judge required a more demanding showing than necessary, specifically that GM Canada target Louisiana. The court explained that, under Fifth Circuit precedent, the plaintiffs are required only to demonstrate that GM Canada should have foreseen that its product would be marketed in the forum state, and that the plaintiffs have satisfied this burden.

The district court also stated that Justice Breyer's concurrence is binding on the court, but that this case is factually distinguishable from *Nicastro*. There, the British defendant likely sold only a single machine that ended up in New Jersey. Here, Plaintiffs have offered evidence demonstrating that GM Canada places over 800,000 vehicles into the U.S. market each year, indicating that many of GM Canada's vehicles would likely be sold in Louisiana.

99. *Grober v. Mako Products, Inc.*,
686 F.3d 1335 (Fed. Cir. 2012).

Outcome

Dismissal affirmed on appeal

Description

The plaintiff, inventor of a patented platform that stabilizes cameras for use on moving vehicles, sued a number of alleged infringers in a federal district court in California. The court of appeals overturned the district court's grant of summary judgment on the merits to several defendants, but affirmed its dismissal of claims against other defendants for lack of personal jurisdiction. The dismissed defendants were two individual corporate officers whom the courts concluded were entitled to the protection of the fiduciary shield doctrine, and a Washington equipment rental company whose rental products included the accused infringing device. The Washington company had very limited contacts with California. It had rented some items to California renters, but there was no evidence that it ever rented the accused device to anyone in California. It advertised the availability of the item in one national publication that was available in California, but the court held that neither that ad nor any of the defendant's other activities established that it had targeted the California market. The court cited *Nicastro* only for a general statement about "purposeful availment" and "invoking the benefits and protections" of the forum state.

100. *Grynberg v. Ivanhoe Energy, Inc.*,
490 Fed. App'x 86 (10th Cir. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiffs asserted claims for fraud and interference with property interests against Ecuadorian defendants in federal court in Colorado. The court cited *Nicastro* for general propositions about due process and general and specific jurisdiction, but it was not a significant factor in its analysis.

101. *Harter v. Disney Enterprises, Inc.*,
2012 WL 2565024 (E.D. Mo. 2012).

Outcome

Dismissed

Description

Writers sued their agency for negligence and breach of fiduciary duty. They alleged only one contact with Missouri, a letter sent in 1996. The court cited *Nicastro* for general personal jurisdiction concepts.

102. *Hawaii Airboards, LLC v. Northwest River Supplies, Inc.*, 887 F. Supp. 2d 1068 (D. Haw. 2012).

Outcome

Dismissed

Description

This case was a patent infringement action brought in federal district court in Hawaii. The plaintiff was a Hawaiian company with a patent on an inflatable standup paddleboard. The defendant was an Idaho corporation that manufactured a variety of paddle-sport equipment, including a stand-up inflatable paddleboard called the "Big Earl" that the plaintiff claimed infringed its patent. The defendant sold its products through dealers and directly over the internet. It had no direct presence in Hawaii and did not deliberately market the Big Earl there, as it was primarily designed for cold-water use. Three stores in Hawaii were dealers for the company, but they did not sell the Big Earl, and their total sales of its products were not very substantial (about $45,000, accounting for .01% of the company's sales). The court first held that the company's relationship with the three Hawaiian dealers and its sales in Hawaii did not suffice for general jurisdiction. Turning to specific jurisdiction, the court focused solely on the infringing product and not the defendant's targeting of Hawaii for marketing of other products. Discovery had shown that only one Big Earl board had been sent to Hawaii, when one of the defendant's California dealers asked that it be shipped there. The court held that this fleeting contact was insufficient to give rise to personal jurisdiction. In rejecting the argument that specific jurisdiction could be based on a stream of commerce theory (i.e., the defendant had placed the Big Earl in the stream of commerce, and at least one specimen had reached Hawaii), the court cited *Nicastro* solely for the proposition that a majority of the Supreme Court had not settled on a particular iteration of the stream of commerce theory. The court then relied on Federal Circuit precedent applying the opinions in *Asahi*, and held that it was not foreseeable to the defendant that its products would reach Hawaii (even though it had sent one there itself!) and that it had not deliberately targeted the Hawaii market. *Nicastro* does not seem to have significantly influenced the outcome, which otherwise rested entirely on pre-*Nicastro* precedents. The court did not address the significance of the defendant's interactive website, probably because there was no evidence that anyone in Hawaii had ever used it to order a Big Earl.

103. *Honeywell v. Venstar, Inc.*, 287 F.R.D. 478 (D. Minn. 2012).

Outcome

Jurisdiction

Description

Owners of patents relating to programmable thermostats brought an infringement action against a California competitor. The district court noted that the Federal Circuit had held that *Nicastro* did not change the circuit's stream-of-commerce analysis, but the district court held that jurisdiction would be proper even if Justice Kennedy's opinion were controlling. Unlike in *Nicastro*, the defendant had a written distribution agreement with an Illinois-based distributor that sold the product in stores in Minnesota. In the court's view, a written agreement was materially different than merely following a manufacturer's "general direction and guidance," as was the case in *Nicastro*. Moreover, the manufacturer

targeted Minnesota by defining certain counties in the state as part of the distributor's territory and requiring it to exercise best efforts to promote the manufacturer's products in those counties.

104. *Houle v. Bert R. Huncilman & Son, Inc.*,
2012 WL 1676662 (E.D. Mich. 2012).

Outcome

Dismissed

Description

In this contract case, the plaintiff, who worked as a commissioned sales representative for the defendant, alleged that the defendant owed him commissions earned under the terms of their contract. *Nicastro* was cited once for a general proposition about minimum contacts.

105. *Huddleston v. Fresenius Medical Care North America*,
2012 WL 996959 (S.D. Ohio 2012).

Outcome

Dismissal w/out prejudice

Description

The claims in this case arose from the use of two recalled dialysis devices that allegedly caused the death of the decedent. One of these devices was manufactured by defendant Fresenius, a Massachusetts company. The plaintiff alleged that defendant Magnum, a Colorado corporation, manufactured the defective components in either in its United States facility or its Mexican facility. Magnum was a contract manufacturing company, meaning it does not sell its products to the general public. Magnum did not have any customers located in Ohio, and no representative or employee of Magnum had ever traveled to Ohio on business. To show purposeful availment, the plaintiff explained that in 2009, Magnum's Liberty cassettes were distributed to thirty-two dialysis clinics and 143 patients in Ohio. Plaintiff explained further that in 2009, Magnum invoiced Fresenius $731,862.80 for the manufacture and supply of cassettes.

The court looked to *Nicastro* and said that Justice Breyer's concurrence controls. The court stated that Justice Breyer rejected the plurality's holding that mere foreseeability that goods could wind up in a particular state could never form a constitutionally sufficient basis for the exercise of personal jurisdiction under the stream-of-commerce theory. But the Court concluded that the facts do not support a finding of purposeful availment.

106. *Ingeniador, LLC v. Interwoven*,
874 F. Supp. 2d 56 (D.P.R. 2012).

Outcome

Dismissed

Description

The plaintiff asserted patent infringement claims against multiple defendants. The court held that the mere presence of a website did not demonstrate that the defendant had purposefully availed itself of the laws of the jurisdiction. The court cited *Nicastro* for a general proposition regarding purposeful availment. In a footnote, the court wrote that Justice. Breyer's concurrence controls and did not alter the existing analysis.

107. *Intersport, Inc. v. T-Town Tickets LLC*,
896 F. Supp. 2d 1106 (N.D. Ala. 2012).

Outcome

Jurisdiction

Description

Sports and entertainment marketing companies sued a ticket broker alleging breach of contract, unjust enrichment, and tortious interference with business relations. The broker moved to dismiss. Because the defendant is an Alabama citizen, the court finds general jurisdiction. *Nicastro* is cited once for a basic point.

108. *Intrust Financial Corp. v. Entrust Financial Credit Union*,
2012 WL 2993893 (D. Kan. 2012).

Outcome

No jurisdiction, case transferred

Description

This case involved a claim for trademark infringement. The court cited numerous cases, including *Nicastro*, for, among other things, the point that "[t]he Supreme Court's precedents make clear that "it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment." The court found that it lack personal jurisdiction over the defendant, denied the defendant's motion to dismiss, and granted the plaintiff's motion to transfer.

109. *Jayroe v. Transport Designs, Inc.*,
2012 WL 5473567 (S.D. Tex. 2012).

Outcome

Dismissed

Description

The plaintiff, a truckdriver, was injured in an accident in Wyoming involving another truck. He sued the employer of the other truckdriver, a Minnesota company, in state court in Texas. The defendant removed to federal court and moved to dismiss for lack of personal jurisdiction. The plaintiff did not argue that there was specific jurisdiction, as the claim did not arise out of any contacts with Texas, but solely out of an accident in Wyoming. Instead, he argued that there was general jurisdiction over the defendant in Texas because it had 13 (of 179) drivers who were Texas residents, conducted some recruiting of drivers in Texas, included Texas within its service area and hauled loads through Texas, and had an arrangement for short-term storage of trucks in Dallas. Aside from that, it did no business in Texas and had not customers or facilities there, and Texas hauling accounted for only a very small percentage of its driving. The court, applying Supreme Court precedents on general jurisdiction, held that these contacts were insufficient to establish that the defendant had a "home" in Texas. The court cited *Nicastro* only to illustrate the distinction between general and specific jurisdiction.

110. *Jonesfilm v. Hoffman*,
2012 WL 4325461 (E.D. La. 2012).

Outcome
Jurisdiction

Description
Jonesfilm, a U.S. company, obtained California judgments against Peter Hoffman, a film producer, and his production companies, including Seven Arts Filmed Entertainment (SAFE), as a result of arbitration and court proceedings. Jonesfilm registered the judgments in Louisiana, where Hoffman and other defendants had assets, and then filed suit against Hoffman, his wife, and various affiliated companies, among them SAFE, apparently to set aside asset transfers intended to evade the judgments. Hoffman and SAFE, a British corporation, moved to dismiss for lack of personal jurisdiction. The court found that Hoffman was subject to general jurisdiction in Louisiana because he was a resident of Louisiana. The court also found general jurisdiction over SAFE, based, it said, not only on its own extensive contacts, but also those of a U.S. affiliate that acted as its agent and Hoffman, who controlled it. The court cited *Nicastro* only for the general proposition that citizenship or domicile generally subjects someone to a state's powers. (Some of the court's reasoning implicates issues now before the Supreme Court in the Bauman case, but *Nicastro* had no real bearing on the outcome.)

111. *King v. General Motors Corp.*,
2012 WL 1340066 (N.D. Ala. 2012).

Outcome
Jurisdiction

Foreign defendant
Yes

Description
The plaintiff sued a Canadian car manufacturer that manufactured cars and distributed them in the United States through its parent corporation. The court, noting that both *Nicastro* opinions focused on the "contemporary commercial circumstances" and the "economic realities of the market," held that the facts here were materially different than those in *Nicastro*. Specifically, the defendant used its parent corporation rather than an independent distributor to distribute hundreds or thousands of vehicles to Alabama.

112. *Lianyungang FirstDart Tackle Co. v. DSM Dyneema BV*,
871 F. Supp. 2d 482 (E.D.N.C. 2012).

Outcome
Dismissed

Foreign defendant
Yes

Description
A manufacturer and seller of fishing tackle filed suit claiming false advertising and unfair competition in violation of Lanham Act, unfair and deceptive trade practices, common law unfair competition, common law defamation, and libel per se against two sister corporations that manufactured and sold fiber, one of which was located in North Carolina and organized under Delaware law, and the other corporation that issued

allegedly false and defamatory press release on website was located in Netherlands. The Netherlands defendant moved to dismiss for lack of jurisdiction. The court held that it lacked both general and specific jurisdiction. The court denied plaintiff's motion for jurisdictional discovery.

The court based its holding that there was no specific jurisdiction on the absence of any targeting of its website, containing the allegedly actionable statements, at North Carolina. The cited *Nicastro* in its discussion of *general* jurisdiction for the point that "absent any indication that DSM Dyneema B.V. targeted North Carolina with its products, the mere availability for sale of those products is insufficient to support personal jurisdiction in the state."

113. *Logan Intern. Inc. v. 1556311 Alberta Ltd.*,
__ F. Supp. 2d __, 2012 WL 7683299 (S.D. Tex. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

The plaintiff, a Canadian corporation with its principal place of business in Texas, owned proprietary technology for use in fracking operations. The plaintiff alleged that one of its employees, who worked in Canada, stole his technology and created Canadian companies to exploit it. The plaintiff sued in federal court in Texas and brought a parallel suit in Canada. The court dismissed the action for lack of personal jurisdiction over the employee and certain of the Canadian companies, finding that there was no evidence that they had any contacts with Texas whatsoever. It held, however, that it had jurisdiction over two corporations because they had offices in Texas and at least one of them had distributed literature marketing the stolen technology in Texas. The court then dismissed the action in its entirety on forum non conveniens grounds because of the availability of a superior forum in Canada. The court cited *Nicastro* solely for the general proposition that personal jurisdiction exists only if a defendant has purposefully availed itself of the benefits and protections of the forum state by establishing minimum contacts there such that it could reasonably anticipate being haled into court in the forum state, and if the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

114. *Lyons v. Rienzi & Sons, Inc.*,
856 F. Supp. 2d 501 (E.D.N.Y. 2012),
***as amended* 2012 WL 1393020 (E.D.N.Y. 2012).**

Outcome

Dismissed

Foreign defendant

Yes

Description

Lyons alleged that he was employed by defendant Rienzi & Sons, Inc. as the captain of the defendant's yacht the Brianna and that he was injured after slipping and falling while working aboard the vessel. He claimed that his injuries were caused by Rienzi's negligence in providing a slippery deck surface. Rienzi brought a third-party complaint against the

manufacturer of the Brianna, an intermediate seller, and the designer of the yacht. The designer, an Italian company, moved to dismiss, and the court granted the motion. The court held that due process barred the exercise of personal jurisdiction yacht designer since it did not take advantage of benefits provided by the State of New York when it provided design advice to a manufacturer located in Wisconsin, nor was it contemplated that it would do so. The court cited *Nicastro* twice but did not discuss it.

115. *Mathews v. SBA, Inc.*,
2012 WL 3194464 (Super. Ct. Conn. 2012).

Outcome

Dismissed on several grounds, including lack of jurisdiction

Description

Two individual plaintiffs sued a company and employees with whom plaintiffs did business. The court cited *Nicastro* twice, but it was not significant to the outcome.

116. *McCoy v. Norfolk Southern Railway Co.*,
2012 WL 2192226 (S.D. W. Va. 2012).

Outcome

Motion stayed to allow for discovery on jurisdiction

Description

The case arose from a long dispute between plaintiff's family and defendant Norfolk Southern Railway Company. Defendant Norfolk Southern Railway is a Virginia corporation with its principal place of business in Virginia. Defendant Norfolk Southern Corporation is also a Virginia corporation with its principal place of business in Virginia and is the parent company of Norfolk Southern Railway. Norfolk Southern Corporation moved to dismiss for lack of personal jurisdiction. The court cited *Nicastro* for some basic points but gave it no particular attention.

117. *McFadden v. Fuyao North America, Inc.*,
2012 WL 1230046 (E.D. Mich. 2012).

Outcome

Jurisdiction

Description

The plaintiff brought a negligence action against a manufacturer of glass windshields that caused injury. The manufacturer entered into a contract with General Motors, a Michigan company, to supply windshields to GM's Michigan subsidiary. The court found it had general personal jurisdiction. The defendant relied on *Nicastro*, and the court distinguished the case on its facts, saying that "In contrast, Fuyao Glass has contracted with a Michigan corporation to furnish materials within the state."

118. *Mendel v. Williams*,
53 A.3d 810 (Pa. Super. Ct. 2012).

Outcome

Dismissal affirmed on appeal

Description

The plaintiff, a New Jersey citizen, brought a malpractice action in a Pennsylvania state court against both Pennsylvania and New Jersey doctors and hospitals for allegedly negligent care she had received both in Pennsylvania and New Jersey. The plaintiff had had spinal surgery at a Philadelphia hospital, performed by a Pennsylvania physician, and then returned home to New Jersey. Upon experiencing pain, she contacted her Pennsylvania doctors, whose office advised that she go to an emergency room. She went to the emergency room of a New Jersey hospital, where she was seen by a New Jersey doctor, who diagnosed a postsurgical infection. Because she could not immediately be readmitted to the Philadelphia hospital, she spent the night at the hospital in New Jersey before being transported to Philadelphia. The New Jersey doctor failed to recognize the extent of the infection, and when the plaintiff arrived at the Philadelphia hospital, her condition required additional surgery, which left her paralyzed from the waist down. She sued all concerned, and the New Jersey doctor and hospital moved for dismissal for lack of personal jurisdiction.

The court held that the hospital had no continuous and systematic ties to Pennsylvania sufficient to support general jurisdiction, and that neither the hospital nor the doctor were subject to specific jurisdiction. On the latter point, the court held as a matter of Pennsylvania law that the case did not satisfy a provision of the long-arm statute providing Pennsylvania courts with jurisdiction over foreign defendants who performed out-of-state acts that caused harm in Pennsylvania, because the direct harm suffered here was in New Jersey. The court further held that, even if the statute did apply, due process would not permit jurisdiction because the defendants lacked the requisite minimum contacts. The court noted that most courts have rejected personal jurisdiction over doctors who commit malpractice out of state unless they provide some ongoing care in state, which did not occur here. That the injury "continued" in Pennsylvania and that the New Jersey defendants permitted the patient to be transported to Pennsylvania did not suffice, the court concluded. The court cited *Nicastro* only for a general proposition about the distinction between specific and general jurisdiction.

119. *Micheli v. Techtronic Industries Co.*,
2012 WL 6087383 (D. Mass. 2012).

Outcome

MJ recommends that the motion to dismiss be granted

Foreign defendant

Yes

Description

This suit was about a defective table saw. Defendant TTI is a Hong Kong corporation that neither owned nor leased real property located in Massachusetts and had no Massachusetts telephone number, mailing address, bank account, employees, or agents in Massachusetts. The court cited *Nicastro* when discussing the stream-of-commerce theory of personal jurisdiction and purposeful availment. It concluded that the defendant merely

placed the table saws into the stream of commerce that a third party distributor (the store) ultimately sold to consumers in Massachusetts.

120. *Miller v. AXA Winterthur Insurance Co.,*
694 F.3d 675 (6th Cir. 2012).

Outcome

Dismissal affirmed on appeal

Foreign defendant

Yes

Description

Plaintiff Miller, a former professional hockey player living in Michigan, brought suit in federal court in Michigan against a Swiss insurance company seeking coverage for judgments entered against him in Switzerland based on an incident in a hockey game in Switzerland where he injured another player. Miller had left Switzerland before the termination of legal proceedings against him, informing the insurer that he could not afford to defend himself, and had returned to his permanent home in Michigan. Later, while living in Michigan, he received a letter agreement from the insurer stating that claims arising from the incident would be covered. The insurance company moved to dismiss the case for lack of personal jurisdiction. The district court granted the motion and the Sixth Circuit affirmed. The court considered only whether specific jurisdiction could be based on the sole alleged contact between the insurer and Michigan, namely, the sending of the letter agreement to an insured in Michigan. The court cited *Nicastro* solely for the proposition that specific jurisdiction may exist where claims arise out of contact with and activity directed at the forum. It then relied on pre-*Nicastro* circuit and Supreme Court authority (including *Burger King*) to hold that merely communicating with someone in a forum concerning a contractual relationship, the subject matter of which does not relate to the forum, is insufficient to constitute purposeful availment of the forum. The court cited *Burger King* for the proposition that a contract with a forum resident cannot alone establish sufficient contacts for jurisdiction, and it also noted that the "agreement" here did not actually establish a new contract, but merely made statements about rights that already existed under a Swiss contract concerning events in Switzerland. The court further stated that in light of the interests of the parties and the forum, it would be unreasonable to assert jurisdiction in Michigan, though it acknowledged authority indicating a forum has an interest in enforcing insurance contracts covering residents.

121. *Miller v. Butler*,
2012 WL 5868962 (D.N.J. 2012).

Outcome

Jurisdiction

Description

The plaintiff, through his limited liability company, Miller Energy, entered into an agreement with the defendant to purchase and resell investments at a profit, forming Miller/Butler, LLC. At the time, the plaintiff's business was located in Colorado, and the defendant's business was located in New Jersey. The plaintiff filed suit, alleging breach of contract, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty, accounting, fraudulent concealment by a fiduciary, equitable fraud, conversion,

constructive trust, and unjust enrichment. The defendant moved to dismiss for lack of jurisdiction, saying that he had not maintained a business in New Jersey for the past six years. The court denied the motion: "Defendant instructed Plaintiff to wire over $160,000 to Defendant's account at a New Jersey bank. At the time, Defendant maintained a business office in New Jersey. These claims arise from that transaction and from the subsequent interactions between Plaintiff and Defendant. Plaintiff has proven Defendant's sufficient minimum contacts with New Jersey to warrant personal jurisdiction."

The court cited *Nicastro* once in a parenthetical citing cases for a general proposition.

122. *Mobius Risk Group, LLC v. Global Clean Energy Holdings, Inc.*, 2012 WL 590926 (S.D. Tex. 2012).

Outcome

Dismissal denied

Description

Plaintiff, a Texas company, entered into a contract with a California company to operate an R&D program in Texas regarding biofuels in return for periodic payments, and sued for breach of contract when the payments were not made. The plaintiff also sued the California company and its CEO for fraud for making misrepresentations about payments. The CEO moved to dismiss for lack of personal jurisdiction. The court (Lee Rosenthal, J.) held that the CEO had no contacts that would support general jurisdiction, but that making a misrepresentation from another state to someone in Texas provided constitutional minimum contacts sufficient to support jurisdiction. Court rejected application of a Texas Supreme Court precedent finding no personal jurisdiction because it was based not on interpretation of Texas's long-arm statute but on the Texas court's understanding of federal constitutional due process principles, and binding Fifth Circuit case law contradicted the Texas Supreme Court on the point. *Nicastro* cited only for a general statement concerning the concept of "purposeful availment," not decisive of outcome.

123. *Momenta Pharmaceuticals, Inc. v. Amphastar Pharmaceuticals, Inc.*, 841 F. Supp. 2d 514 (D. Mass. 2012).

Outcome

Jurisdiction

Description

The plaintiffs filed suit in Massachusetts against out-of-state companies for alleged infringement of patents covering manufacturing methods for a generic drug, enoxaparin. The defendants moved to dismiss for lack of personal jurisdiction. The court held that it possessed general jurisdiction over one of the defendants because of the enormous volume of business it did in Massachusetts, and that it had specific jurisdiction over others because they had purposely directed infringing activity at the Massachusetts forum by bidding to supply drugs to networks with large numbers of Massachusetts subscribers. The court applied Federal Circuit case law predating *Nicastro* but also cited *Nicastro* in support of its ruling, finding that the defendants availed themselves of the privilege of doing business in Massachusetts within the meaning of *Nicastro* by using the "typical industry medium by which manufacturers can reach the Massachusetts pharmaceutical market."

124. *Monge v. RG Petro-Machinery (Group) Co., Ltd.*,
701 F.3d 598 (10th Cir. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

An employee injured in oil rig accident In Oklahoma brought a products liability suit against the Chinese manufacturer of the rig. The court cited *Nicastro* to reject plaintiff's argument that the district court in Oklahoma had personal jurisdiction. Although the manufacturer had originally sold the rig to an Oklahoma company, the rig was intended to be consigned to a Kansas company and was shipped to Kansas, as were replacement parts. The Kansas company later unilaterally moved the rig to Oklahoma without knowledge of the manufacturer. Although *Nicastro* is cited, the court relied mainly on *World-Wide Volkswagen* and *Asahi* to reject plaintiff's argument. The court noted that Kansas would probably have jurisdiction over the claims.

125. *Moore v R.G. Brinkman Co.*,
2012 WL 407203 (S.D. Ill. 2012).

Outcome

Dismissed

Description

This case arose after plaintiff Moore was injured on his construction job when a piece of equipment malfunctioned, causing him to fall and sustain injuries. He and his wife sued several entities, including the equipment manufacturer IAM. IAM argued that the Illinois federal court did not have personal jurisdiction over it because it is not organized under the laws of Illinois, maintains no offices in Illinois, does not engage in business in Illinois, does not own, lease or control property in Illinois, does not maintain an office, telephone or fax listings within Illinois, has no shareholders or officers residing in Illinois, does not advertise or market products in Illinois, has no employees in Illinois, has never had business operations in Illinois, has never entered into a contract with Illinois residents and has never advertised itself as a company that provides services or products or does business in Illinois. The court granted the motion. The court cited *Nicastro* once in string cite about purposeful availment. The decision appears to have turned on the absence of any evidence that the presence of the equipment in Illinois bore any foreseeable relationship to any actions by IAM.

126. *Moroccanoil, Inc. v. Conforti*,
2012 WL 1981786 (D.N.J. 2012).

Outcome

Third-party complaint dismissed

Description

The plaintiff pleaded violations of the Lanham Act, alleging that defendants infringed its trademarks and copyrights and distributed counterfeit Moroccanoil products in New Jersey. The two defendants then filed a third party complaint against Venus Beauty Supplies, another Canadian company, alleging that Venus sold them the allegedly

counterfeit products in Canada. Venus moved to dismiss the third party complaint for lack of personal jurisdiction. The court cited *Nicastro* for a boilerplate proposition.

127. *Pension Benefit Guaranty Corp. v. Asahi Tec Corp.*,
839 F. Supp. 2d 118 (D.D.C. 2012).

Outcome
Jurisdiction

Foreign defendant
Yes

Description
The plaintiff brought an ERISA claim for pension plan termination against a Japanese company that acquired a U.S. company and assumed control of its group pension liability. The court stated that *Nicastro* and *Goodyear* did not bear on its analysis because it was not based on a stream of commerce theory of personal jurisdiction.

128. *Perficient, Inc. v. Pickworth,*
2012 WL 3204011 (W.D.N.C. 2012).

Outcome
Dismissed

Description
A consulting firm headquartered in North Carolina brought suit in North Carolina for violation of a non-compete agreement by a consultant formerly employed at its Atlanta, Georgia office. The defendant had been hired in Georgia, was a resident of Georgia, and did consulting exclusively for Georgia clients, including Coca-Cola. She did engage in some telephone calls and correspondence with firm officials in North Carolina, and her contract specified application of North Carolina substantive law, but that was the extent of her North Carolina contacts. She moved to dismiss for lack of personal jurisdiction, and the court, adopting a magistrate judge's report, granted the motion. The court held that the minimal contacts with North Carolina that her acceptance of employment in Georgia and performance of her duties there entailed were not sufficient to constitute purposeful availment of the North Carolina forum. The court rested its holding principally on precedents and legal principles that predated *Nicastro*, and cited *Nicastro* only once, after its statement that the contacts were "too attenuated" to support jurisdiction.

129. *Powell v. Profile Design LLC*,
838 F. Supp. 2d 535 (S.D. Tex. 2012).

Outcome
Dismissed

Description
An injured bicyclist filed a products liability action against the designer of a bicycle's aerobar stem. The designer filed a third-party complaint against the Chinese stem manufacturer's United States affiliate (located in California), who allegedly sold stems to a United States distributor, seeking contribution and indemnification. The Fifth Circuit had, before *Nicastro*, adopted Justice Brennan's *Asahi* approach. The court did not decide whether the Fifth Circuit's rule survived *Nicastro*, but instead held that jurisdiction was lacking under either *Nicastro* or Brennan's *Asahi* opinion. The court read the Breyer

concurrence to require "something more" than "merely delivering its goods to a distributor, and desiring for products to be distributed throughout the United States." Moreover, according to the court, the third-party plaintiff had not met its burden of showing that the third-party defendant was "aware that the final product" was being marketed in Texas. In fact, the only product known to have been in Texas was actually sold in Arizona.

130. *Rafinasi v. Coastal Cargo Co., Inc.*,
2012 WL 1032908 (E.D. La. 2012).

Outcome

No ruling on personal jurisdiction

Description

The plaintiff sued for damage to a boiler that occurred when it was being moved by a stevedoring company as it was being prepared to be loaded onto a ship for transport. The court's opinion concerns whether the claim is barred by the Carriage of Goods by Sea Act (COGSA); the court concluded that it was not (a decision later reversed by the Fifth Circuit). In the course of setting forth its findings of fact and conclusions of law, the court included a boilerplate recitation that it possessed personal jurisdiction (not a disputed issue in the case), with a citation to *Nicastro*.

131. *Read v. Moe*,
2012 WL 4467545 (W.D. Wash. 2012).

Outcome

Motion to dismiss denied, plaintiff's motion to compel discovery granted

Foreign defendant

Yes

Description

The owner of a commercial vessel sued the Norwegian manufacturer of a snap hook to recover for injuries sustained when the snap hook on the vessel broke free. The manufacturer filed motions to dismiss, and the plaintiff filed motions to compel discovery related to the motions to dismiss. The court stated: "What is plain to the court, viewing *Asahi* and *J. McIntyre* as the bookends of twenty-five years of Ninth Circuit precedent, is that [defendant] has declined to provide the very evidence that would permit the court to decide whether it is subject to jurisdiction in Washington. … Because of [defendant's] silence, Plaintiff has no way to determine the nature of the distribution chain that brought the allegedly defective snap hook from [defendant] to the [vessel]."

132. *Roberts v. Hartman*,
2012 WL 2254325 (W.D. Tex. 2012),
***on reconsideration*, 2012 WL 5499553 (W.D. Tex. 2012).**

Outcome

No jurisdiction, case transferred to W.D. Okla.

Description

The plaintiff sued defendant Moss Trucking, an Oklahoma company that hauls and transports rocks and asphalt exclusively within Oklahoma. The plaintiff alleged negligence in connection with an automobile accident in Oklahoma between him and a vehicle owned by Moss Trucking. The court cites *Nicastro* and other cases when setting forth standard.

The court held that the facts alleged by the plaintiff and evidence presented by the defendant did not support a finding that the defendant's activities in Texas were "continuous and systematic" so as to allow the Court to exercise general jurisdiction over Defendant.

133. *Roper v. TAP Pharmaceutical Products, Inc*.,
2012 WL 2974912 (D.S.C. 2012).

Outcome

Transferred to N.D. Ill.

Description

The plaintiff alleged six causes of action against two defendants 1) fraud, 2) negligent design and negligent failure to warn, 3) negligent misrepresentation, 4) product liability/design defect, 5) breach of express and implied warranties, and 6) fraudulent concealment. The defendant Abbott moved to dismiss or, alternatively, transfer. The court found no personal jurisdiction and transferred. The court cited *Nicastro* to explain that the Supreme Court has rejected the exercise of jurisdiction where a defendant has merely placed a product into the stream of commerce and that an intent to serve the U.S. market does not show purposeful availment of the forum state. The court also rejected an argument that jurisdiction could be sustained on an agency theory.

134. *Samson Tug & Barge Co. v. Koziol*,
869 F. Supp. 2d 1001 (D. Alaska 2012).

Outcome

Jurisdiction

Description

An Alaskan transportation corporation sued Californian executives of a company that hired the corporation, alleging fraudulent and negligent misrepresentation. Following removal, the executives filed a motion to dismiss, which the court denied. The court found that the executives engaged in an intentional act that was expressly aimed at Alaska and that had foreseeable effects in Alaska, that the conduct was a significant purposeful interjection into Alaskan affairs, that the exercise of jurisdiction in Alaska did not conflict with California's sovereignty, that Alaska had a strong interest in providing redress for its residents, and that a substantial part of the events giving rise to the claim occurred in Alaska. The court cited *Nicastro* three times for basic points.

135. *Schultheis v. Community Health Systems, Inc.*,
2012 WL 253366 (S.D. Ill. 2012),
***reconsideration denied,* 2012 WL 2017975 (S.D. Ill. 2012).**

Outcome

Jurisdiction

Description

The plaintiffs were employed as registered nurses in the labor and delivery department at Marion Hospital in Marion, Illinois. They filed a five-count first amended complaint against defendants Community Health Systems, Inc. and Marion Hospital Corporation. The plaintiffs' complaint alleged claims under the Fair Labor Standards Act of 1938 and state common law for violation of the Illinois Minimum Wage Law, the Illinois

Wage Payment and Collection Act, the Illinois Whistleblower Act, and breach of contract. Community Health Systems, a Delaware holding company, had no employees, offices or real property in Illinois and contended that it did not transact business in Illinois and did not maintain control over Marion Hospital. The plaintiffs countered that CHS dictated the employment policies to by utilized by Marion Hospital, transacted business in Illinois, and was the plaintiffs' joint employer." *Nicastro* was cited once in a string cite on purposeful availment.

136. *Scorpiniti v. Fox Television Studios, Inc*.,
2012 WL 3791314 (N.D. Iowa 2012).

Outcome

Jurisdiction

Description

Scorpiniti filed a Complaint alleging trademark infringement, false designation of origin, and unfair competition. Fox moved to dismiss. The court denied the motion.

Fox relied on *Nicastro*. The court distinguished the case, explaining, "Unlike the circumstances in *J. McIntyre Machinery, Ltd*., it was highly foreseeable that ABC would broadcast 'The Gates' nationally, including in Iowa. Furthermore, it is well known that ABC has local affiliates across the nation, and it would be natural to expect that a program sold to ABC would be broadcast nationally and be viewed by a national audience, including individuals in Iowa. This is also not a circumstance where a single broadcast of a program occurred in Iowa—thirteen episodes of 'The Gates' were shown in Iowa as a broadcast of a full season of a television series."

137. *Scottevest, Inc. v. AyeGear Glasgow Ltd*.,
2012 WL 1372166 (S.D.N.Y. 2012).

Outcome

Motion for entry of default judgment denied.

Foreign defendant

Yes

Description

The plaintiff alleged that defendant AyeGear Glasgow Limited infringed plaintiffs' patent and trademarks by producing and selling certain clothing. The plaintiff served and later moved for entry of default judgment. Because the plaintiffs' submissions did not set forth facts establishing that the court had personal jurisdiction over the defendant, the motion for entry of default judgment was denied.

The court cited *Nicastro* in saying that the plaintiff had not shown purposeful availment. The court also cited *Nicastro* when rejecting the argument that defendant's ownership of an interactive web site that sells goods in to the United States and New York confer personal jurisdiction over the defendant because the complaint does not identify any transaction that was directed to New York.

138. *Sieg v. Sears Roebuck & Co.*,
855 F. Supp. 2d 320 (M.D. Pa. 2012),
***opinion on motion for reconsideration*, 2012 WL 1657921 (M.D. Pa. 2012).**

Outcome
Dismissed

Foreign defendant
Yes

Description
Consumers brought an action in state court against the seller and alleged manufacturer/distributor of a power tap that allegedly caused a house fire, asserting strict liability and negligence claims. Following removal, the manufacturer/distributor a filed third-party complaint against a Taiwanese corporation that it alleged had manufactured the power tap.

The court held that because *Nicastro* did not announce a new rule, the court would continue to apply the Third Circuit's rule, which requires analysis of both *Asahi* approaches. The court dismissed the third-party complaint because the third-party plaintiff could show only that the defendant had contacts with the United States as a whole and with California. The third-party plaintiff could not show that the defendant's products "regularly flow through the stream-of-commerce into Pennsylvania."

The plaintiff then requested that the court reconsider its previous finding that Leviton failed to establish personal jurisdiction under either *Asahi* standard. The court denied the motion to reconsider because all the arguments had been considered in the prior order. The court cited *Nicastro* for the point that "[a]lthough a majority of the United States Supreme Court has yet to reach a decision on the continued validity of the more liberal approach to determining personal jurisdiction, as espoused by Justice Brennan in *Asahi*, a majority of the court agrees that personal jurisdiction cannot be exercised over a manufacturer that fails both *Asahi* standards."

139. *Simmons v. Big #1 Motor Sports, Inc.*,
908 F. Supp. 2d 1224 (N.D. Ala. 2012).

Outcome
Jurisdiction

Foreign defendant
Yes

Description
The plaintiff sued a Canadian manufacturer of motorcycle steering systems. The defendant sold and delivered the steering systems to a distributor in Canada, which later sold them in Alabama. The court held that *Nicastro* did not change the law, but also found that it was unclear which *Asahi* test the Eleventh Circuit applied. Accordingly, the court concluded, the broad stream of commerce theory remained good law. The court found jurisdiction over the defendant because the defendant was aware that the distributor marketed the product throughout the U.S. and made no effect to limit the scope of the distributor's activities. Moreover, the defendant assisted in recall efforts related to its product in Alabama.

140. *Smith v. Teledyne Continental Motors, Inc.*,
840 F. Supp. 2d 927 (D.S.C. 2012).

Outcome

Jurisdiction

Description

Following the death of a jogger, a Georgia citizen struck by an airplane in South Carolina, the administrator of the jogger's estate sued, inter alia, the manufacturer of the airplane's engine, a citizen of Delaware and Alabama. The court read *Nicastro* to adopt Justice O'Connor's "stream-of-commerce plus test," which had previously been adopted by the Fourth Circuit. The court applied that test and found jurisdiction proper because the manufacturer sold at least 400 engines directly to SC purchasers over the previous 10 years and its engines were installed in approximately one-third of aircraft based in the state. It maintained a continuous relationship with the aircraft owners through warranty programs and advertised through aviation magazine and through contracts with stores and service centers in SC airports.

141. *Sonoco Products Co. v. ACE INA Insurance*,
877 F. Supp. 2d 398 (D.S.C. 2012).

Outcome

Dismissed as to one defendant

Foreign Defendant

Yes

Description

This case was a breach of contract action against insurance companies. A Canadian insurer underwrote Canadian policy covering Canadian property at the direction of an American affiliate. The only connection to South Carolina was the use of a South Carolina-based claims adjuster to handle the claim, but the plaintiffs selected the claims adjuster. The court dismissed the Canadian insurer for lack of specific personal jurisdiction. The other defendants' motion to dismiss on *forum non conveniens* grounds was denied. The court cited *Nicastro* once, cited a law review article as saying that *Nicastro* contracted the scope of specific jurisdiction, and cited pre-*Nicastro* cases.

142. *Sprint Communications, LP v. Cox Communications, Inc.*,
896 F. Supp. 2d 1049 (S.D. Ill. 2012).

Outcome

No jurisdiction, case transferred

Description

This case was for patent infringement. The court cited *Nicastro* for boilerplate about the stream-of-commerce theory. The court held that Atlanta-based Delaware holding company did not have contacts with Kansas sufficient to give rise to specific or general jurisdiction in Kansas and balance of convenience factors strongly favored transfer to Kansas.

143. *Sproul v. Rob & Charlies, Inc.*,
304 P.3d 18 (N.M. Ct. App. 2012).

Outcome

Jurisdiction

Description

The buyer of a bicycle brought a products liability suit against the bicycle manufacturer and others, based on the allegedly negligent manufacture of bicycle and its component parts which failed, causing the front tire to separate from the bicycle fork assembly. The bicycle manufacturer filed a third-party complaint against the Chinese manufacturer of the quick-release mechanism based on an allegation that the defective mechanism caused the front tire to separate from the fork assembly. The court held that because *Asahi* and *Nicastro* did not provide any clear rule, it would apply "the stream of commerce standard as described in *World-Wide Volkswagen*." The court found jurisdiction proper because the manufacturer knew that bicycles containing its part would be sold worldwide, and its manufacturing processes complied with U.S. safety standards.

144. *Stein v. Hartford Life & Annuity Insurance Co.*,
2012 WL 1592148 (Conn. Super. Ct. 2012).

Outcome

Dismissed

Description

The plaintiffs alleged that they were induced by false and/or misleading statements by the defendants to participate in a defined benefit pension plan that the Internal Revenue Service determined to be an abusive tax shelter. As a result, the plaintiffs claimed, they were subject to substantial back taxes, penalties and interest. In addition to suing an insurance company, bank, and law firm, the plaintiffs sued an attorney at the firm. The court granted the attorney's motion to dismiss, finding that he did not have the minimum contacts necessary to satisfy the state jurisdictional statute and that exercising jurisdiction over him would not comport with due process. The court cited *Nicastro* only for general propositions.

145. *Surefire, LLC v. Casual Home Worldwide, Inc.*,
2012 WL 2417313 (S.D. Cal. 2012).

Outcome

Jurisdiction

Description

Surefire, a California company, sued two defendants alleging infringement of two patents. The defendant, a New York Corporation, argued that it was unclear whether the Federal Circuit's precedent on jurisdiction would continue to be followed in light of *Nicastro*. The court held that a Supreme Court plurality opinion is not binding law, and that, in any event, this case was not a "stream of commerce" case because the defendant directly sold the products in California, rather than merely placing the products in a chain of distribution.

146. *Tharp v. Colao*,
2012 WL 1999484 (D. Md. 2012).

Outcome

Dismissed

Description

The plaintiff was injured when a tire came off of the defendant's truck when he was driving on the highway and struck the plaintiff's car, badly injuring him. The defendant filed a third-party complaint against the Wyoming car dealership who sold him his car. He argued that the Court had jurisdiction over the dealership because it solicited business on its website, which Maryland citizens might have accessed. The court held that the website did not provide a basis for the exercise of personal jurisdiction over the dealership.

The court cited *Nicastro* in a footnote, saying that it "rejects a foreseeability standard of personal jurisdiction and 'merely affirms the status quo' of personal jurisdiction."

147. *Tire Engineering and Distribution, LLC v. Shandong Linglong Rubber Co.*,
682 F.3d 292 (4th Cir. 2012).

Outcome

Finding of jurisdiction affirmed on appeal

Foreign defendant

Yes

Description

Plaintiff, a Virginia manufacturer of tires for use in underground mining operations, had a substantial market share because of its unique designs, the blueprints for which it had copyrighted. The defendants were companies from the United Arab Emirates and China, which, working in concert with an employee of the plaintiff who lived and worked in Virginia, stole the plaintiff's blueprints and developed their own line of competing tires, which they manufactured abroad and sold to the plaintiff's former customers in the U.S. The plaintiff sued in the Eastern District of Virginia for conversion, copyright infringement, and trademark infringement. After a judgment for the plaintiff, the defendants appealed, arguing among other things that the Virginia court lacked personal jurisdiction over them. The Fourth Circuit ruled that both the UAE and Chinese companies had sufficient contacts to support the exercise of jurisdiction. The chairman of the UAE company had personally traveled to Virginia, met with the plaintiff's employee, and developed the plan to steal its blueprints; the UAE company then established the employee in an office in Virginia, which it described as one of its own offices, and worked with him closely to develop the plan to manufacture and market the products. The Chinese company had fewer direct Virginia contacts, but it knew the plans were stolen from the Virginia manufacturer, and it communicated extensively with the Virginia employee concerning the design and manufacture of the tires. The court cited *Nicastro* only to distinguish a situation in which a defendant had only "fleeting" forum contacts.

148. *UTC Fire & Sec Americas Corp. v. NCS Power, Inc.*, 844 F. Supp. 2d 366 (S.D.N.Y. 2012).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

In this breach of contract action, third-party plaintiff NCS Power, Inc. asserted that third-party defendant Yoku Energy Technology Ltd. supplied nonconforming lithium-ion batteries to plaintiff UTC. Yoku moved for summary judgment based on lack of personal jurisdiction. Yoku, a corporation headquartered in Hong Kong, operated a lithium-ion battery plant in China through its subsidiary Yoku Energy Co. Yoku's batteries were used in consumer electronics worldwide, including in the United States. NCS is a Washington-based corporation that provides batteries and power supply equipment to customers throughout North America. Yoku and NCS maintained a contractual relationship pursuant to a written agreement under which NCS agreed to serve as Yoku's "agent/sales representative" for distribution of Yoku's lithium polymer battery products in North America and to "actively and diligently solicit[ ] trade" of Yoku's products in that territory.

The court stated that the soundness of the "stream of commerce" theory has been called into question by the Supreme Court's recent ruling in *Nicastro*, and that, because no opinion in *Nicastro* commanded five votes, Justice Breyer's concurrence controls. Therefore, the court said, *Nicastro* does not categorically foreclose the exercise of personal jurisdiction based on a "stream of commerce" theory, and does not preclude consideration of other facts in addition to the presence of defective Yoku batteries in New York.

149. *Universal Music Venezuela, SA v. Montaner*, 105 So.3d 588 (Fla. App. 2012).

Outcome

Trial court decision finding jurisdiction reversed

Foreign defendant

Yes

Description

The plaintiff, a composer and recording artist, attempted to assert Florida long-arm jurisdiction over a Venezuelan corporation that operated an independent music company and record label. The action arose from a series of contracts, executed in Venezuela, that provided that they were to be governed by Venezuelan law, and that any payments due to the plaintiff were to be made in Venezuela with Venezuelan currency, for the distribution of recordings made by the plaintiff in Venezuela. The defendant had no agents or employees in and did no business itself in Florida. The plaintiff argued that personal jurisdiction existed because of the activities of an affiliated, but entirely separate corporation. Citing the absence of evidence that the appellant in any way controlled or directed the operations of Universal Music Latino, the court reversed a trial court decision finding jurisdiction. The court cited *Nicastro* in a string cite with a parenthetical stating "holding that foreign corporation did not 'engage in any activities in New Jersey that reveal an intent to invoke or benefit from the protection of its laws [and therefore] its exercise of jurisdiction would violate due process.'"

150. *Van Heeswyk v. Jabiru Aircraft Pty. Ltd.*,
276 P.3d 46 (Ct. App. Ariz. 2012).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

Survivors of a deceased light airplane pilot brought a wrongful death action against the Australian manufacturer of an airplane kit, an Arizona retailer, and the propeller manufacturer. The Australian manufacturer moved to dismiss for lack of jurisdiction. The Superior Court granted the motion, and the plaintiffs appealed. The court of appeals found that the evidence showed "purposeful direction of [marketing] activities toward this state;" the company's distribution agreement with a US company was evidence of this purposeful direction, showing that the Australian defendant "targeted" Arizona as a market for its goods by requiring the distributor to utilize its "best efforts to actively promote sales" in the state.

151. *Velez v. Portfolio Recovery Associates, Inc.*,
881 F. Supp. 2d 1075 (E.D. Mo. 2012).

Outcome

Dismissed

Description

The plaintiff, a Missouri citizen, brought suit in Missouri against a Delaware corporation with its principal place of business in Virginia, based on communications in connection with a debt that she claimed violated the Fair Debt Collection Practices Act. The defendant removed to federal court and moved to dismiss for lack of personal jurisdiction on the ground that the challenged conduct had actually been carried out by a separate company of which the defendant, a holding company, was the parent. The court cited *Nicastro* for the proposition that due process requires that the exercise of personal jurisdiction comport with fair play and substantial justice, and it cited other standard precedents for the requirements of minimum contacts and the nature of specific jurisdiction. The court assumed that directing letters and telephone calls to a Missouri resident in order to collect a debt would be sufficient to subject an out-of-state company to personal jurisdiction under these standards, but it held that in order to attribute the subsidiaries contacts to the parent, the plaintiff must show either an alter ego or agency relationship making the subsidiary the instrumentality of the parent. The plaintiff had not done so. The court rejected the argument that the requisite relationship could be found simply because the subsidiary performed functions that the parent would have to perform for itself absent the separate company.

152. *Viator v HTC Holding*,
2012 WL 5984700 (Ct. App. Tex. 2012).

Outcome
Affirmed dismissal

Foreign defendant
Yes

Description
Hargrave suffered fatal injuries when the brakes and/or clutch on the tractor he was using to push an old fence into a fire pit allegedly failed, causing him to fall into the fire pit. Hargrave purchased the 2400 tractor at an auction in Mississippi and transported the tractor to his ranch in Uvalde County. The plaintiff alleged that the tractor was manufactured by Zetor a.s., a Czech company, and equipped with hydraulic components manufactured by Fragokov, a Slovakian company. The plaintiff sued Alton LeBlanc & Sons, LLC, Deere & Company, Zetor North America, Inc., HTC Holding a.s., Zetor a.s., and Fragokov asserting causes of action for products liability, negligence, wrongful death, and breach of the implied warranty of fitness. The court dismissed. Citing *Nicastro*, it explained that there was no evidence that Fragokov sought a benefit, profit, or advantage by availing itself of the Texas market, or that Fragokov had sufficient minimum contacts with Texas to make it amenable to jurisdiction in Texas. It also cited *Nicastro* for the point that Zetor had not subjected itself to stream of commerce jurisdiction because there was no evidence that Zetor purposefully availed itself of the Texas market.

153. *Walker v. THI of New Mexico at Hobbs Center*,
801 F. Supp. 2d 1128 (D.N.M. 2012).

Outcome
Dismissed

Description
A former employee brought an action against a nursing home facility, her former employer, and its parent companies, alleging race-based discrimination and retaliation in violation of Title VII and New Mexico Human Rights Act. One of the parent companies was a Maryland corporation, and other than being a holding company for the other defendant, had no connections to New Mexico. The court cited *Nicastro* once in a "cf" citation with a parenthetical describing its facts.

154. *Wallace v. Mathias,*
864 F. Supp. 2d 826 (D. Neb. 2012).

Outcome
Jurisdiction

Description
The plaintiff, a Nebraska resident, purchased cattle from defendant, a Kansas resident, through a middleman located in Kansas. The defendant had been selling cattle to these Nebraska parties for years, and shipped the cattle to Nebraska while receiving payment from Nebraska. A complicated dispute about payment arose (based on the middleman's failure to pass on a payment to the defendant) in the course of which the defendant specifically requested that the Nebraska plaintiff wire him funds, and promised to return a check if he did so. The dispute was taken for resolution to the Department of

Agriculture, which, under the Packers and Stockyards Act, has authority to make orders in cases involving claims of unfair business practices involving livestock. The Department ruled that the defendant had to repay money to the plaintiff, but the defendant did not comply. The plaintiff brought suit to enforce the order in federal district court in Nebraska, and the Kansas defendant claimed personal jurisdiction was lacking. Because the federal act did not authorize extraterritorial or nationwide service of process, the court looked to whether it could exercise jurisdiction under the Nebraska long-arm statute, subject to due process limits. The court cited *Nicastro* for the general proposition that purposeful availment is necessary for satisfaction of the constitutional minimum contacts standard, and then turned to pre-*Nicastro* Eighth Circuit precedents to determine whether the contacts here sufficed. Noting that use of interstate commercial arteries to conduct a transaction with someone in another state was not necessarily sufficient, the court nonetheless found that the defendant's performance of actions intended to have effects in Nebraska (specifically, causing the Nebraska plaintiff to wire him money) was a sufficient basis for exercise of personal jurisdiction.

155. *Washington Shoe Co. v. A-Z Sporting Goods Inc.*,
704 F.3d 668 (9th Cir. 2012).

Outcome

Jurisdiction

Description

A Washington shoe manufacturer brought a copyright infringement action against an Arkansas retailer that allegedly sold knock-off copies of its boots. The district court dismissed for lack of personal jurisdiction, and the manufacturer appealed. The Ninth Circuit held that the retailer committed an "intentional act" that was expressly "aimed at" the state of Washington and the retailer knew or should have known that the impact of its willful infringement of the copyright would cause harm likely to be suffered in Washington.

In a footnote the court discussed *Nicastro*, and said that a plurality of the Supreme Court "questioned whether our rough division between contract and tort is sound, and applied 'a purposeful availment (rather than a purposeful direction) analysis,'" in a products liability case. The court said that it nonetheless recently found *Nicastro* consistent with the line of cases finding specific jurisdiction when there has been purposeful direction.

156. *Weinberg v. Grand Circle Travel, LLC*,
891 F. Supp. 2d 228 (D. Mass. 2012).

Outcome

Dismissed

Foreign defendant

Yes

Description

The estate of Florida resident, who died in a hot air balloon crash in the Serengeti, and the deceased's fiancée, who was also a Florida resident who sustained severe bodily injuries in the crash, brought a negligence action against a resident travel agent, and foreign company that operated the hot air balloon. The court held that the travel agent was not the foreign company's legal agent and so there was no jurisdiction. Although this case had nothing to do with *Nicastro*, the court criticized the decision for letting product

manufacturers off the hook and explained its holding in part by vaguely noting the "restrictive approach to personal jurisdiction posited by the plurality opinion in *Nicastro*."

157. *Willemsen v. Invacare Corp.*,
282 P.3d 867 (Or. 2012).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The personal representative of a wheelchair user's estate brought a products liability action against the Taiwanese manufacturer of battery chargers installed into motorized wheelchairs manufactured in Ohio, after the user died in a fire allegedly caused by a defective charger. The court viewed Breyer's concurrence as the controlling *Nicastro* opinion. The court found that the sale of over 1,100 battery chargers over a two year period constituted a "regular flow" or "regular" course of sales sufficient for jurisdiction. The court acknowledged that the plaintiffs would probably lose if the plurality opinion were controlling.

158. *Wilson v. Metals USA, Inc.*,
2012 WL 5932990 (E.D. Cal. 2012), &
2012 WL 4888477 (E.D. Cal. 2012).

Outcome

No resolution of personal jurisdiction issue

Description

Plaintiffs are California residents who contended that roofing tiles used on their house were defective. They sued, among others, a Canadian individual (Reid), who was the principal, and, they claimed, the alter ego of the Canadian company that manufactured the tiles. The plaintiffs claimed that the court could exercise personal jurisdiction over the individual because he was the alter ego of the company, over which the court would have possessed personal jurisdiction had they sued it—which they had not.

In the first opinion, the court determined that under the circumstances, the company itself was a "required party" under Rule 19(a) who must be joined if feasible. Feasibility in turn would depend on whether there was personal jurisdiction. The court determined that although plaintiffs had arguably pleaded facts adequate to show the company had deliberately availed itself of the privilege of doing business in California, the company had not had an opportunity to brief whether it would be "unreasonable" to assert jurisdiction over the company under the *Burger King* standard. The court cited *Nicastro* only in a footnote saying that the Ninth Circuit did not regard the case as changing the standard for finding minimum contacts when a defendant purposefully directed products or activities at the forum state.

In the second opinion, the court concluded that it lacked jurisdiction based on physical presence and general jurisdiction over the individual defendant, a Canadian who had not conducted substantial, continuous or systematic activities in the U.S. The court further held that it required further briefing on whether jurisdiction could be based on a claimed alter ego relationship with a corporation over which the plaintiffs asserted there

was specific jurisdiction, but which the plaintiffs had not sued. The court summarized some general principles of personal jurisdiction in its opinion and dropped a footnote stating that the Ninth Circuit has held that *Nicastro* did not change prior Ninth Circuit law on the circumstances in which a defendant will be found to have purposefully directed activities at the forum state.

159. *Yeszin v. Neolt, S.P.A.*,
2012 WL 3156997 (E.D. Mich. 2012).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiffs were injured by a drafting table manufactured and designed in Italy by the defendant, an Italian corporation. The plaintiffs alleged that the table had dangerous spring-loaded support arms that released unexpectedly when they were moving the table and struck both of the plaintiffs in the face. They alleged that the defendant negligently designed and manufactured the table and failed to adequately warn then about the danger in moving it.

Citing *Nicastro*, the court held that the shipped goods themselves represent sufficient actions taken by the defendant amounting to a legal submission to jurisdiction of the Court. "[T]he shipment of goods from Italy to Michigan constitutes activity specifically directed towards the Michigan forum."

160. *Yocum v. Rockwell Medical Technologies, Inc.*,
2012 WL 2502701 (S.D. Cal. 2012).

Outcome

Jurisdiction

Description

Plaintiff, an M.D. residing in southern California, sued Rockwell, a Michigan pharmaceuticals company, in a California state court based on claims arising out of Rockwell's termination of the plaintiff's employment as vice president for drug development and medical affairs. Rockwell did not have offices or facilities in California, but allowed the plaintiff to telecommute from California, then allegedly fired him for raising issues about misrepresentations Rockwell was making for one of its products and thereafter failing to pay him for work he had performed before his termination. Rockwell removed to federal district court and then moved to dismiss for lack of personal jurisdiction or transfer of venue. The court held that personal jurisdiction existed, as the defendant had purposefully directed wrongful conduct toward the forum state, expecting it to cause injury there. The court cited *Nicastro* only for the proposition that tortious conduct directed toward the forum state can support specific jurisdiction.

161. *Young v. Heineman*,
2012 WL 1079126 (D. Neb. 2012).

Outcome

No ruling on personal jurisdiction

Description

The plaintiff, a California real estate broker, sued Nebraska state officials in a Nebraska federal court to enjoin enforcement of a statute requiring anyone who directly or indirectly performs a single act covered by Nebraska's real estate brokerage laws must be licensed in Nebraska. The statute further provides that the performance of such an act shall constitute a sufficient contact with Nebraska to support personal jurisdiction over an enforcement action in Nebraska. The plaintiff, who posted Nebraska real estate listings on her website, contended that the statute would subject her to personal jurisdiction despite the absence of actual minimum contacts with the forum. The court denied a preliminary injunction, ruling that she had an insufficient likelihood of success on her claims. The court summarized some general principles of the law of personal jurisdiction, and cited *Nicastro* for its explanation of the nature of and differences between general and specific jurisdiction, and for the proposition that the latter depends on whether claims arise out of some conduct by which the defendant purposefully avails herself of the benefits of the forum state. The court went on to discuss cases concerning the circumstances under which internet activities can subject someone to personal jurisdiction. It concluded that the Nebraska statute, reasonably construed, would permit a person against whom enforcement was sought to appear specially and contend that her contacts with the jurisdiction were not sufficient to satisfy due process, and thus there was no basis for preliminarily enjoining its operation.

162. *Zhao v. Skinner Engine Co.*,
2012 WL 5451817 (E.D. Pa. 2012).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

Plaintiff sued a British manufacturer of a rubber extrusion machine. The defendant sold the machine to a Pennsylvania corporation, which then sold it to another Pennsylvania corporation. The court found that the defendant purposefully directed its activities at Pennsylvania by selling the machine there. Although the defendant did not know who would eventually own or use the machine, it knew that it would reside, at least temporarily, in Pennsylvania. The court held that shipping the machine to the state passed any of the *Asahi* or *Nicastro* tests.

163. *Zuchowski v. Doctor's Associates, Inc.*, 2012 WL 6901169 (Conn. Super. Ct. 2012).

Outcome

Dismissed

Description

Plaintiffs are Ohio businessmen who sued in Connecticut over a dispute involving claimed breaches of contract/fraud/unfair trade act violations arising out of an arrangement to develop kosher Subway Restaurant franchises. The defendants were Doctor's Associates, Inc., the parent company of Subway, which is a Florida corporation with its principal place of business in Connecticut, and Ghazi Faddoul, an Ohio citizen and resident who was a development agent for Subway and owned Subway franchises in Ohio and Maryland. The claims against Faddoul essentially claimed that he had worked with them to develop a business model for kosher Subway franchises and had agreed to carry out all development of kosher franchises through a company that they formed with him, but that he had instead gone outside the company and worked with other kosher franchises, resulting in loss of business to them. The plaintiffs had previously filed state court actions in Ohio and, when Doctor's Associates brought an action in federal court in Connecticut to compel arbitration, successfully argued that the Connecticut court lacked personal jurisdiction over them because the case arose solely out of their dealings with Faddoul in Ohio and there were insufficient contacts with Connecticut. When they dropped the Ohio cases and sued in the Connecticut state court, Faddoul turned the tables on them and argued that he lacked relevant contacts with Connecticut. The plaintiffs pointed to Faddoul's interactions with Doctor's Associates, some of which took place in and all of which involved some contact with the company's Connecticut headquarters. But the court held that those contacts did not allow personal jurisdiction under the Connecticut long-arm statute because the claims did not arise out of them, but only out of Faddoul's interactions with the plaintiffs in Ohio. The court further held that even if they did, and even if Faddoul's contacts with Connecticut satisfied the constitutional minimum contacts requirement, assertion of personal jurisdiction would still violate due process under the circumstances of the case because it was unreasonable under the *Burger King* balancing-of-interests test. The court cited *Nicastro* only for a statement of the general proposition that personal jurisdiction must satisfy constitutional due process standards, which permit jurisdiction based on purposeful availment of the protection of a jurisdiction's laws.

2011

164. *AFL Telecommunications LLC v. Fiberoptic Hardware, LLC*, 2011 WL 4374262 (D. Ariz. 2011).

Outcome

Dismissed as to one defendant, dismissal denied as to another

Description

The plaintiff is the U.S. licensee of a Japanese company's fiber optic technology. It brought suit in Arizona against a New Hampshire company and an individual who was its principal owner, alleging that they were engaging in gray-market sales that infringed its rights. The defendants moved to dismiss for lack of personal jurisdiction. The court found that it had general jurisdiction over the New Hampshire company because it had facilities

in Arizona (sales and services offices) that constituted a systematic and continuous presence. As to the individual defendant, however, the court held that the companies' presence could not be attributed to him, so it examined whether specific jurisdiction was present. It cited pre-*Nicastro* authority for the requirements for specific jurisdiction, including that the claim arise from contacts amounting to purposeful availment and that the exercise of jurisdiction not be unreasonable; it added a see also cite to *Nicastro* to support this generality. The court then found no contacts indicating purposeful availment: A small number of emails and phone calls from the defendant to Arizona did not suffice to indicate purposeful availment or targeting of conduct at the forum, and although there were two sales of the allegedly infringing products to Arizona, the individual defendant was not involved personally in either one.

165. *Adelson v. Hananel*,
652 F.3d 75 (1st Cir. 2011).

Outcome

Jurisdiction

Description

An employer brought an action against a terminated employee who had managed the employer's operations in Israel, seeking a declaration that the former employee did not retain an option, under oral employment contract, to purchase an interest in a casino in Macau or in any other venture of the employer outside of Israel. The court cited the *Nicastro* plurality as part of a long list of specific jurisdiction cases.

166. *Appriss Inc. v. Information Strategies, Inc.*,
2011 WL 3585890 (W.D. Ky. 2011).

Outcome

Dismissed without prejudice

Foreign defendant

Yes

Description

In this patent case, the alleged infringer's only connection to the forum state is access to a website by residents of the forum state. The court cited *Nicastro* at the end of its opinion for the point that, without any activity purposely directed at Kentucky residents, "it is not enough that the defendant might have predicted that its goods will reach the forum state."

167. *Bays v. Corcell Inc.*,
2012 WL 1616746 (E.D.N.Y. 2011).

Outcome

Dismissed as to 2 defendants, motion to dismiss denied w/out prejudice to allow discovery as to one defendant.

Description

The plaintiffs contracted with CorCell to collect and store the blood from her umbilical cord at the time of her baby's birth. CorCell had previously marketed and displayed its services to her as a means for preserving stem cells, to allow the rebuilding of an individual's blood system to allow for other types of regenerative therapies. When Luke

was born, CorCell transferred the blood to a Bergen storage facility pursuant to a contract between those two entities. In October of 2007, however, CorCell ceased using Bergen's storage facility. It contracted instead with Progenitor, which maintained a New Jersey storage facility. Ms. Bays paid monthly storage fees to Cord Blood, not CorCell, to assure the safekeeping of the sample in the event it was needed. Luke wound up needing the blood, but because defendant Bergen mislabeled it and shipped it to defendant Progenitor without documentation to confirm its identity, the blood could not be used.

The court cited *Nicastro* as setting forth standards for general jurisdiction, but looked to other cases to discuss specific jurisdiction. As to defendant Progenitor, the court wrote that the question was how, if at all, Progenitor affirmatively expressed "an intention to benefit from and thus an intention to submit to the laws of" the state. It found that the evidence showed no such intention.

168. *Black v. JP Morgan Chase & Co.*,
2011 WL 4102802 (W.D. Pa. 2011).

Outcome

Dismissed with prejudice

Description

Plaintiff brought suit in a federal court in Pennsylvania alleging a broad antitrust conspiracy among national lenders (Bank of America, JP Morgan, Discover), the three major credit bureaus, FICO, and an entity called VantageScore, a Delaware company owned by the three credit bureaus. VantageScore holds the rights to a credit scoring algorithm that it licenses for use by the three credit bureaus, who in turn use it to calculate credit scores that they supply not only to lenders, but also directly to consumers. As to VantageScore, the magistrate recommended dismissal for lack of personal jurisdiction. The magistrate judge recognized that the antitrust laws authorize nationwide service of process to the full extent permitted by Fifth Amendment due process, and that in cases involving non-U.S. defendants, the Fifth Amendment allows assertion of personal jurisdiction based on national rather than state contacts. But the magistrate judge stated that it was not established that the same was true with respect to domestic defendants who were nonresidents of the forum state. The magistrate judge proceeded to address personal jurisdiction based on the Pennsylvania long-arm statute and the due process limits on it. He found no basis for general jurisdiction, as the company had no continuous and systematic business contacts with Pennsylvania, and its ownership of a registered trademark could not establish general jurisdiction nationwide. He borrowed language from *Nicastro* to express the conclusion that general jurisdiction based on trademark ownership would run afoul of "the mandate of the Due Process clause." Turning to specific jurisdiction, he analyzed the issue largely on the basis of pre-*Nicastro* precedents. He noted the failure of the Supreme Court to agree on an approach to the "stream of commerce" approach to jurisdiction in *Asahi* and that *Nicastro* had not resolved the issue. He held that under any approach, jurisdiction was unavailable here, because the defendant did not actually sell a product, directly or indirectly, that wound up in Pennsylvania; it simply licensed a methodology that other companies used. He also held that the complaint should be dismissed as against VantageScore for failure to state a claim. The district court later adopted the recommendation in a brief order that did not cite *Nicastro* and seems to rest on failure to state a claim.

169. *Brooks & Baker, LLC v. Flambeau, Inc.*,
2011 WL 4591905 (E.D. Tex. 2011).

Outcome

Jurisdiction

Description

The plaintiff sued a Wisconsin corporation with its principal place of business in Ohio, alleging patent infringement and common law business torts. The defendant also had manufacturing facilities in several other states, but not in Texas. The defendant contracted with Wal-Mart to sell its products nationwide, and so it was foreseeable that the products would reach Texas. Indeed, the defendant made direct shipments to Wal-Mart in Texas. Although the court applied the Fifth Circuit's broad stream of commerce rule, the court also distinguished *Nicastro* on the grounds that the defendant "has admitted that it inserted the accused products into the stream of commerce with the intention that the products reach a national market."

170. *Bruns v. Town of Fryeburg, Maine*,
2011 WL 5007075 (D.N.H. 2011).

Outcome

Dismissed w/out prejudice

Description

Bruns filed a negligence suit in New Hampshire against the Town of Fryeburg, Maine seeking damages for injuries suffered in an accident at the Town's transfer station. The town moved to dismiss the complaint for lack of personal jurisdiction. The court granted motion.

In discussing specific jurisdiction, the court cited *Nicastro*, saying that the Supreme Court recently reaffirmed that personal jurisdiction doctrine rests, in part, on proper concern for the sovereign interests of co-equal states. And in discussing general jurisdiction, the court cited *Nicastro* in a sentence about purposeful availment.

171. *Carolina Power & Light Co. v. 3M Co.*,
2011 WL 4589838 (E.D. N.C. 2011).
***Carolina Power & Light Co. v. 3M Co.*,**
2011 WL 4591077 (E.D. N.C. 2011).

Outcome

Jurisdiction

Description

The plaintiff sued a Missouri electric utility that exclusively served Missouri customers. The plaintiff brought claims arising from the defendant's sales of transformers to plaintiff. The court rejected defendant's reliance on *Nicastro* because "[h]ere, jurisdiction is not ground[ed] in stream of commerce theory, but rather is based on purposeful availment and minimum contacts."

172. *Carreras v. PMG Collins, LLC,*
660 F.3d 549 (1st Cir. 2011).

Outcome

Dismissal reversed on appeal

Description

Two Puerto Rico residents sued two Florida companies in federal court in Puerto Rico seeking refunds of earnest money they had paid for Florida condominiums marketed and sold by the Florida companies. The sole contacts of the defendants were communications related to the transactions and, possibly, a relationship with the Puerto Rico real estate broker who referred the buyers to the defendants. The defendants moved to dismiss for lack of personal jurisdiction, and the district court granted the motion. On appeal, the First Circuit reversed and remanded for further factual development. The court held that to establish specific jurisdiction, the defendants' forum contacts had to be both related to the claims (which excluded certain alleged contacts with Puerto Rico that either had no relationship at all to the condos or that postdated the sales transactions) and had to support a finding of purposeful availment of the forum. The court cited *Nicastro* (as well as *Burger King* and other authority) for that proposition, and described purposeful availment under *Nicastro* as a "rough quid pro quo" under which a defendant's targeting of conduct at a forum allows the forum to exercise authority over him. The court held that when marketing efforts were directed at the forum, purposeful availment could be found, but not when a defendant communicated with a prospective buyer in response to an inquiry initiated by the buyer. The court also held that simply sending documents to a forum to consummate an agreement did not in itself constitute purposeful availment. However, the court held that details about the relationship between the defendants and the Puerto Rico broker, which were insufficiently developed in the record, could potentially provide a basis for a finding of targeting Puerto Rico, so it reversed and remanded.

173. *Cepia, LLC v. Alibaba Group Holding Ltd.*,
2011 WL 5374747 (E.D. Mo. 2011).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiff alleged a variety of trademark and related claims against a Hong Kong company. The court found that the company maintained significant business relationships in the United States and Missouri, and thus that it could not be said that litigation in Missouri posed a significant inconvenience to it. The court cited *Nicastro* for general propositions.

174. *Cheyenne Productions, S.A. v. Berry*
2011 WL 4014368 (E.D. Mo. 2011).

Outcome

Dismissed

Description

Cheyenne Productions, a Panama company headquartered in Nevada, brought suit in Missouri against Chuck Berry, his talent agency William Morris Enterprises, and a William Morris employee. Cheyenne formerly arranged tours for Chuck Berry in Europe, but the relationship deteriorated after Berry canceled some performances and demanded higher payments. There was no issue of personal jurisdiction with regard to the contractual claims against Berry, who lives in Missouri. William Morris, however, is based in California, New York, Tennessee and London, and the employee named as a codefendant was a California resident. The claims against them were based on the theory that they had interfered with Cheyenne's relationship with Berry in various ways (including by arranging for concert dates that conflicted with his European tour dates and encouraging him to hold out for more money) and were responsible for his contractual defaults. William Morris and its employee, a California resident, moved to dismiss for lack of personal jurisdiction. The court held that although William Morris had participated in arranging numerous performances by various clients in Missouri, those arrangements (which did not involve William Morris itself entering into contracts in Missouri, as the talent agency is not a party to its client's contracts to perform in particular locations) did not involve systematic and continuous enough presence to give rise to general jurisdiction. As for specific jurisdiction, the court held that the allegedly wrongful actions engaged in by William Morris and its employee took place in California, and if they were directed at some other jurisdictions, those would be Nevada or Panama, where the wrongful acts would have been expected to injure the plaintiff. Although William Morris's actions involved communications with Berry in Missouri, the court held those were too insubstantial to support jurisdiction. The court cited *Nicastro* only for the general propositions that personal jurisdiction must comport with principles of fair play and substantial justice and requires actions constituting purposeful availment of the forum.

175. *Circuit Connect, Inc. v. Preferred Transport & Distribution, Inc.*,
2011 WL 3678170 (D.N.H. 2011).

Outcome

Third-party plaintiff's complaint dismissed

Description

A third-party plaintiff (TPP), a reseller of electronic equipment, sued a seller for negligence in causing damage to an x-ray machine. The third-party defendant (TPD) was a Georgia corporation whose sole contact with New Hampshire was that a TPD employee requested TPP's assistance in selling an x-ray machine by listing it on TPP's website. The TPP later sold the x-ray machine to a New Hampshire company. The TPD sold the machine to the TPP and, on the TPP's behalf, loaded the machine for shipment to New Hampshire. The court held that the case is not a stream-of-commerce case, but a negligent loading case, and that the public policies implicated in product liability cases were not implicated. The court cited *Nicastro* once in a footnote.

176. *Ex Parte City Boy's Tire and Brake, Inc.*, 87 So. 3d 521 (Ala. 2011).

Outcome

Dismissal ordered on appeal (reversing trial court)

Description

The plaintiff, a resident of Alabama, bought a new tire for a van she co-owned with her Alabama employer at a tire store in Florida to replace a leaking tire. The tire was identical to the tires already on the vehicle. Later, the other three tires failed when she was driving the van in Alabama, and she was injured in the accident. She sued the Florida tire dealer for failing to inspect the other three tires and advise her that they were the wrong size for the vehicle. The tire dealer moved to dismiss. The plaintiff submitted an affidavit from her employer stating that he had an ongoing business relationship with the tire dealer and that it billed him in Alabama for his purchases, but it turned out that was a similarly named but unrelated store in a different town. Although the trial court declined to dismiss, the Alabama Supreme Court held that due process did not permit assertion of personal jurisdiction over the Florida tire dealer. The dealer did no business in Alabama and did not solicit business there, and engaging in an isolated transaction with an Alabama resident did not involve purposeful availment of the privilege of doing business in Alabama, notwithstanding the foreseeability that harm might result in Alabama. The court cited *Nicastro* simply for a general recitation of the "purposeful availment" standard, but rested its decision principally on preexisting law including *Burger King*, *Asahi*, and *World-Wide Volkswagen*. In particular, the court rejected the plaintiff's argument that the dealer was subject to jurisdiction under a stream of commerce theory, because the allegation here was not that it had introduced a defective product into the stream of commerce: The tire it sold was not defective. It was being sued solely for allegedly negligent failure to advise the plaintiff about her tires, conduct entirely within Florida. The court also rejected the argument that the dealer's warranty obligations created an ongoing relationship with Alabama, because the warranty only obligated it to perform repairs on the tire, or to align the vehicle's tires, in Florida.

177. *City of Greenville, Illinois v. Syngenta Crop Protection, Inc.*, 830 F. Supp. 2d 550 (S.D. Ill. 2011).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiffs, who are entities supplying drinking water to the public, brought suit in Illinois against Syngenta Crop Protection, Inc., a U.S. corporation, and its Swiss parent company, SAG, over contamination of drinking water supplies by atrazine, a chemical found in herbicides sold by Syngenta for use by Illinois' agriculture industry. SAG moved to dismiss for lack of personal jurisdiction, contending that it had no relevant contacts with Illinois and did no business there. The court cited *Nicastro* for the proposition that constitutional minimum contacts require that a defendant deliberately avail itself of the protection of the forum's law. The court held that the significant control exerted by SAG over its subsidiary was sufficient to allow attribution of Syngenta's forum contacts to SAG

and permit a finding that it had purposefully availed itself of the privilege of doing business in Illinois.

178. *CollegeSource, Inc. v. AcademyOne, Inc*,
653 F.3d 1066 (9th Cir. 2011).

Outcome

Jurisdiction

Description

A California corporation assisting students and educational institutions with college transfer process sued a competing Pennsylvania corporation for alleged misappropriation of college course catalogs and course descriptions from a California corporation's websites. The court held that *Nicastro* "is consistent with the line of cases finding specific jurisdiction when there has been purposeful direction" and so applied the *Calder* effects test. The court found purposeful direction because the defendant "has specifically target California students and schools."

179. *Colo'n v. Akil,*
449 Fed. Appx. 511 (7th Cir. 2011).

Outcome

Dismissal affirmed on appeal

Description

The plaintiff, a writer living in Indiana, sued a number of out-of-state defendants, including CBS Studios and a number of individuals, in Indiana for copyright infringement. She alleged that they had stolen a script she submitted for a television show called "The Game." The court dismissed claims against all but one of the defendants (the one defendant who had had direct contact with the plaintiff by soliciting the script) for lack of personal jurisdiction. The court declined to find general jurisdiction over CBS Studios, which is solely a production company and not a broadcast network, based on its corporate affiliation with CBS, as the plaintiff had shown no grounds for disregarding their separate corporate status. As for specific jurisdiction, neither CBS Studios nor any of the dismissed defendants had had any contact with Indiana or with the plaintiff in connection with the production of the allegedly infringing episode. Moreover, the court found that the airing of the episode in Indiana was not a contact attributable to the defendants, as they had no role in the airing of the show and thus had not "aimed" their conduct at Indiana. Nor had they done anything knowing that they would cause harm in Indiana, because they had no knowledge of the defendant or her presence in Indiana. The court mentioned *Nicastro* only in a string citation for the proposition that "purposeful availment" required conduct directed at the forum. Its decision turned principally on the facts and its view of the limits of the holding in *Calder v. Jones*.

180. *Corrosion Technology International, LLC v. Anticorrosive Industriales Ltda*, 2011 WL 3664575 (E.D. Va. 2011).

Outcome

Transferred

Description

Corrosion Technology International (CTI) brought suit in a Virginia federal court to stop a former joint venture partner, Anticorrosive Industriales LTDA (Ancor) and that company's current joint venture partner, Tecmin, from using a website using the name of the former joint venture, CTI-Ancor, to refer customers to the new joint venture's website. The parties had previously entered into settlement agreements arising from bankruptcy proceedings in Pennsylvania that governed the usage of the CTI-Ancor website. The two defendants, which conducted their activities in Chile, moved to dismiss for lack of personal jurisdiction. The court held that it lacked personal jurisdiction, both because the defendants had not transacted any business in Virginia within the meaning of the Virginia long-arm statute, and because assertion of jurisdiction would violate due process because of the absence of sufficient minimum contacts. The only contacts with Virginia claimed were: (1) registration of domain names with a company located in Virginia, which the court held could not in itself support jurisdiction; (2) the operation, from Chile, of a "semi-interactive" website that could be accessed in Virginia, which the court similarly held did not suffice; and (3) the conduct of a "global" business, which the court found did not in itself constitute the transaction of business in Virginia or a sufficient contact for due process purposes. The court relied principally on pre-*Nicastro* cases and decisions specific to the jurisdictional consequences of internet activity, but did cite *Nicastro* once, as support for its ultimate conclusion that due process did not permit the assertion of jurisdiction because the defendants did not purposefully avail themselves of the Virginia forum. The court found, however, that the Western District of Pennsylvania, where the bankruptcy proceedings that gave rise to the settlement agreements on which the plaintiff's claims rested had taken place, did have personal jurisdiction, and it transferred that action to that court.

181. *In re Cyphermint, Inc.*, 459 B.R. 488 (D. Mass. 2011).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

Russian creditors' sought the dismissal of adversarial proceeding. The bankruptcy court found that the creditors had significant contacts with the United States, including making multiple loans to a US corporation with American bank accounts and exerted substantial control over debtor. The court cited *Nicastro* as part of string cite about purposeful availment.

182. *Dejana v. Marine Technology, Inc.*,
2011 WL 4530012 (E.D.N.Y. 2011).

Outcome

No jurisdiction, transferred to E.D. Missouri

Description

This suit arose out of a fatal boating accident near Long Island. The plaintiffs were the personal representatives of two decedents. They sued Marine Technology, Inc. and Marine's CEO and sole shareholder for products liability. Marine manufactures boats in Missouri, and sells them either there, directly to customers, or through a distributor in Tennessee. Although Marine has sold a small number of boats to New York residents, the boat in this case was sold to a Missouri resident, who later resold it to one of the decedents, a resident of New York. The court explained that, to show that the defendants had the requisite minimum contacts with the forum, the plaintiffs had to show that the defendants purposely availed themselves of the privilege of doing business in New York and that they could foresee being hauled into court there. The court said that in *Nicastro*, the Supreme Court attempted to clarify what minimum contacts means in stream-of-commerce cases by explaining that, "as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State" and that the defendant must have targeted the forum. The court said that the defendants ought to have predicted its boats would reach New York, but that they did not target New York within the meaning of the Supreme Court's minimum contacts jurisprudence. The court transferred the case to the United States District Court for the Eastern District of Missouri, the venue where Marine was headquartered.

183. *Dow Chemical Canada ULC v. Superior Court*,
202 Cal. App. 4th 170 (Cal. Ct. App. 2011).

Outcome

Dismissed

Description

After a fuel tank explosion, users and bystanders brought a products liability action against the Canadian manufacturer of the fuel tank that was incorporated into personal watercraft by another Canadian manufacturer, which then distributed the product in the U.S. The court read *Nicastro* to hold that it is not sufficient for jurisdiction that the defendant "might have predicted or known that its products would reach California." The court dismissed because the defendant did not "engage in any activities in California that reveal and intent to invoke or benefit from the protection of its laws" nor was its product "in any way California-specific." The court rejected the plaintiff's argument that it was enough that the plaintiff knew the product would be sold in California.

184. *Dram Technologies v. America II Group, Inc.*, 2011 WL 4591902 (E.D. Tex. 2011).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiff filed a patent infringement action against Taiwanese manufacturer of memory chips. The court found the facts distinguishable from *Nicastro*, regardless of which opinion controlled. Specifically, the defendant shipped over a million memory chips to the United States, and at least twenty-five hard drive models containing the chips were available for purchase in Texas. Further, the defendant's employees regularly visited several U.S.-based customers and until 2007 the company had a U.S. affiliate.

185. *Early Learning Resources, LLC v. Sebel Furniture Ltd.*, 2011 WL 4593775 (D.N.J. 2011).

Outcome

Dismissed

Description

The plaintiff, a New Jersey company that sold furniture for use in schools, sued on Austrian company that held a patent on a school chair seeking a declaratory judgment of non-infringement. The defendant did not sell the chair in New Jersey, but it had sent a letter to the plaintiff claiming that a chair sold by the plaintiff infringed the patent, and insisting that the plaintiff cease and desist. After the plaintiff sued in the District of New Jersey, the defendant moved to dismiss for lack of personal jurisdiction and failure to state a claim. The district court found that the defendant's few forum contacts were insufficient to establish general jurisdiction. Turning to specific jurisdiction, the court applied Federal Circuit precedents on the nature of contacts that suffice to constitute minimum contacts in patent infringement cases. Those precedents established that the sending of a single cease and desist letter was insufficient; thus, the defendant lacked minimum contacts with New Jersey and therefore personal jurisdiction could not be established under New Jersey's long-arm statute. However, the plaintiff invoked Rule 4(k)(2), which allows a federal court to exercise personal jurisdiction in a case arising under federal law if (1) the defendant lacks sufficient contacts with any state to allow that state's courts to exercise jurisdiction, but (2) the defendant has sufficient contacts with the U.S. to make assertion of jurisdiction constitutional under the Fifth Amendment's due process clause. In analyzing the argument, the court cited *Nicastro* merely to illustrate that there could be circumstances where a defendant could have contacts with the U.S. as a whole but lack minimum contacts with a particular state. The court held, however, that other states would have jurisdiction over the defendant. The court declined to transfer the case to one of those jurisdictions because the plaintiff could refile elsewhere if it were so inclined.

186. *Esoterix Genetic Laboratories, LLC v. McKey*,
2011 WL 3667698 (Super. Ct. N.C. 2011).

Outcome

General jurisdiction

Description

Plaintiff Esoterix Genetic Labs, a Delaware company having its principal place of business in North Carolina, sued its former employees McKey, a resident of Washington, and Mecklenburg, a resident of Oklahoma, as well as their new employer Counsyl, Inc., a Delaware company having its principal place of business in California. The action was based on contracts McKey and Mecklenburg entered into in connection with their employment with Esoterix, Counsyl's alleged tortious interference with those contracts, and alleged misappropriation of trade secrets. The court held that it lacked specific jurisdiction but had general jurisdiction over the defendants. The court noted that *Nicastro* raises the question whether foreseeability is sufficient to confer jurisdiction but said that a plurality opinion cannot overrule prior cases. The court concluded that it did not have to analyze the question anyway because it could decide the cases on other grounds.

187. *Fulminator, Inc. v. Wahba*,
2011 WL 3847390 (E.D. Mo. 2011).

Outcome

Jurisdiction

Description

This case arose from the defendants' alleged unlawful sale of counterfeit pet grooming products using the plaintiff's trademarks and logos on the Internet. The plaintiff asserted claims for federal trademark counterfeiting and infringement, unfair competition, and false designation of origin, under the Lanham Act, common law trademark infringement and unfair competition, and unfair competition under Missouri statutory law. Defendants Wahba and Koch, residents of New Jersey and North Carolina, respectively, argued that their activities over the Internet were insufficient to subject them to jurisdiction. The court disagreed. It cited *Nicastro* for a general proposition about purposeful availment. Citing *Nicastro* for contrast, the court also noted that the case was not a products liability "stream-of-commerce" case where the nonresident defendant's product fortuitously ends up in the forum state where it injures the plaintiff and that the injury could have been sustained in only one state, Missouri, because the Missouri plaintiff was the owner of the trademark.

188. *Garrett v. Prime Transport, Inc.*
2011 WL 2648582 (N.D. Ind. 2011).

Outcome

Dismissed

Description

This case arose out of the plaintiff's effort to find a single jurisdiction with personal jurisdiction over a number of defendants against whom she asserted claims arising out of a traffic accident in Texas in which she was injured in a collision with a truck. The driver of the truck was a resident of Arkansas; the owner of the semi-tractor, and employer of the driver, was an Indiana company, and the alleged owners of the tank trailer were Utah

corporations. The plaintiff tried suing in Oklahoma, her own home state, and had her claims dismissed for lack of personal jurisdiction; tried again in Texas, which dismissed on statute of limitations grounds; tried again in Arkansas, which lacked personal jurisdiction over anyone but the driver, and then tried again in Indiana, where the trucking company was located. In the Indiana court, the driver and the companies that owned the tank moved to dismiss. The driver's sole Indiana contracts were his contractual relationship with the owner of the company, but the court said that those contacts were "incidental" and might have served as a basis of jurisdiction over him in a suit arising out of his contract, but not a personal injury action. The Utah companies did no business in Indiana, and the sole alleged basis for jurisdiction was the claim that the tank trailer, which they purchased from a Texas company, had been manufactured in Indiana. That fortuity, the court held, did not subject them to jurisdiction in Indiana. The court cited *Nicastro* for the proposition that jurisdiction based on transmission of goods required some targeting of the forum, but its decision didn't really turn on that proposition, as the Utah companies were not alleged to have transmitted any goods to Indiana, directly or indirectly, or caused any injury there.

189. *Gonzalez v. Reed-Joseph International Co.*,
2011 WL 5358689 (S.D. Tex. 2011).

Outcome

Dismissed w/prejudice

Description

Plaintiff Gonzalez sued for damages related to personal injuries he sustained in a work-related accident. TrueBlue, the employer, moved to dismiss, arguing that it had not purposefully directed its activities to Texas, and that Gonzalez's cause of action does not arise from or relate to TrueBlue's contacts with Texas. Rather, according to TrueBlue, Gonzalez alleged causes of action as a result of Gonzalez's use of a product allegedly manufactured, designed, and/or marketed by other defendants. TrueBlue argued that complaint does not make any allegations explaining how the court would have personal jurisdiction over TrueBlue. The court dismissed based on lack of jurisdiction and failure to state a claim.

190. *Gordon v. Holder*,
826 F. Supp. 2d 279 (D.D.C. 2011), *aff'd* 721 F.3d 638 (D.C. Cir. 2013).

Outcome

No ruling on personal jurisdiction.

Description

The plaintiff, a member of the Seneca Tribe and operator of a smoke shop that sells tobacco products for delivery to distant customers. He brought suit against the U.S. Attorney General to enjoin provisions of the Prevent All Cigarette Trafficking Act that forbid mailing of tobacco products and subject sellers of cigarettes (including members of Indian tribes) to the requirement of advance payment of state and local taxes on all sales. The district court granted a preliminary injunction against the taxation provision on the ground that there was a substantial question whether it violated due process by subjecting out-of-state sellers to state laws without sufficient contacts. The court cited Justice Breyer's concurrence in *Nicastro* for the proposition that the Supreme Court has never held that a single, isolated sale of a product in a jurisdiction subjects the seller to state law. The court

extensively cited pre-*Nicastro* personal jurisdiction cases, including *International Shoe*, *World-Wide Volkswagen*, and *Burger King*.

The D.C. Circuit subsequently affirmed. It cited *Nicastro* once for the proposition that the due process clause protects an individual against a deprivation of life, liberty or property except by the exercise of lawful power.

191. *Harrelson v. Seung Heun Lee*,
798 F. Supp. 310 (D. Mass. 2011).

Outcome

Jurisdiction

Description

A former member of an alleged yoga cult sued the cult leader and others, alleging claims for intentional and negligent infliction of emotional distress and sexual abuse. The leader moved to dismiss. The court held that the member pled sufficient plausible facts to support a piercing of the corporate veil of the leader's corporate entities, that alleged alter ego corporate entities had sufficient contacts with Massachusetts to warrant exercise of personal jurisdiction over leader, and that the exercise of personal jurisdiction over leader was reasonable. The court cited *Nicastro* for boilerplate propositions about general jurisdiction and for the point that, as to specific jurisdiction, the defendant's actions, not his expectations, matter.

192. *Henderson v. Laser Spine Institute*,
815 F.Supp.2d 353 (D. Me. 2011).

Outcome

Jurisdiction

Description

The plaintiff, a Maine resident, sued a Florida clinic and doctor for medical malpractice, breach of contract, and misrepresentation. The plaintiff had contacted the Florida clinic seeking treatment for unbearable back pain. The clinic returned his call and engaged in a series of communications to convince him to come to Florida for surgery, including assurances that his insurance would cover the surgery. The communications also were aimed at obtaining payments totaling $55,000 in advance of the surgery, to be reimbursed when his carrier granted coverage. The surgery did not alleviate the plaintiff's pain, nor did his insurer provide coverage. Post-surgery, the clinic and doctor engaged in further communications aimed at convincing the plaintiff that he could take further steps to obtain coverage and that he should visit the clinic again for a follow-up consultation. The plaintiff's carrier ultimately upheld its denial of coverage, and at the follow-up visit the only additional treatment offered was a steroid injection. After successful surgery in Massachusetts, the plaintiff brought suit in Maine against the Florida defendants, who predictably moved to dismiss for lack of personal jurisdiction. The court cited *Nicastro* solely for the very broad general proposition that jurisdiction depends on actions that subject the defendant to the power of the sovereign. The court then applied pre-*Nicastro* principles to find that the claim arose from the requisite minimum contacts and that assertion of jurisdiction would not be unfair. The court found that under the circumstances here, the extensive course of communications directed at Maine, as well as the clinic's national print and internet advertising aimed at attracting out of state patients, constituted

purposeful availment of the forum, though no single act of the defendant's would necessarily have been sufficient by itself. The court also found the requisite relationship between each of the claims and the forum contacts.

193. *Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank*, 807 F. Supp. 2d 699 (N.D. Ill. 2011).

Outcome

Jurisdiction

Description

Holocaust victims filed suit in the Northern District of Illinois against a number of European banks. One of the banks moved for reconsideration of the court's earlier ruling that personal jurisdiction was proper under Fed. R. Civ. P. 4(k)(2), which provides for personal jurisdiction in cases involving federal claims against foreign defendants who have sufficient national contacts with the United States to make personal jurisdiction proper under the Constitution even though the defendant lacks sufficient contacts with any one state to provide the courts of that state with jurisdiction. The motion for reconsideration included an argument that the court's decision was inconsistent with *Nicastro*, which the court brushed aside on the ground that the defendant's extensive contacts with the United States were ample to support jurisdiction.

194. *Irving v. Revera, Inc.*, 2011 WL 5329726 (D. Vt. 2011).

Outcome

Dismissed in part, dismissal denied in part

Description

Plaintiffs, residents of Vermont, brought suit in Vermont based on their son's death in a nursing facility in Vermont. They originally named only the company that operated that specific facility, but then amended their complaint to name various Canadian and U.S. companies that constituted the corporate family of the facility. One of those companies, an operating company responsible for U.S. nursing home operations (including the Vermont facility), conceded that the court had personal jurisdiction, but the other companies, both Canadian and U.S., moved to dismiss for lack of personal jurisdiction. The court cited *Nicastro* only once, for the general proposition that a defendant that lives and operates outside a state generally has a due process right not to be subject to the state's authority. The court then cited *Burger King* for the proposition that purposeful direction of actions at a state is a sufficient basis for jurisdiction. The court held that it had jurisdiction over the ultimate parent of all the companies, a Canadian corporation, because that corporation had "continuously and systematically conducted business aimed at Vermont's market" by operating several nursing homes there (through its subsidiary companies). The court found these operations sufficient to support general jurisdiction, and it distinguished a decision denying general jurisdiction over a corporate parent based on presence of a subsidiary on the ground that here, the parent exerted significant control over operations in Vermont and had engaged in a planned, active campaign to penetrate the Vermont market. As to two other intermediate companies in the corporate hierarchy, however, the court found that it lacked jurisdiction because although they were part of the ownership chain of the nursing home where the injuries took place, mere passive ownership of a facility does not suffice,

and there was no evidence either of systematic, continuous activity in Vermont that could give rise to general jurisdiction or of particular actions directed at Vermont that could support specific jurisdiction.

195. *Johnson v. Avient, Ltd.*,
2011 WL 2847419 (D. Minn. 2011).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The plaintiff, the survivor of an airplane that crashed en route from Krygyzstan on a pilot training flight, sued Avient, the operator of the aircraft, and Boeing, the manufacturer of the aircraft. The plaintiff claimed that the crash was caused both by the negligence of the flight crew and by the negligent and defective design of the aircraft. Avient is based in Britain and Zimbabwe. The plaintiff alleged that Avient hired him, a Minnesota resident, to recruit, hire, train, and prepare flight crews to fly the aircraft for Avient, that Avient expected Johnson to work out of his Minnesota home, provided him with a credit card and mobile phone that he used from and in Minnesota, and communicated and exchanged documents with knowing and intending that their communications and messages would be received by Mr. Johnson at his Minnesota home. The court denied the motion to dismiss. The court cited *Nicastro* for general propositions.

196. *Kidd v. Symbion, Inc.*,
2011 WL 6140657 (E.D. La. 2011).

Outcome

No ruling on personal jurisdiction

Description

Plaintiff, a urologist who worked at a clinic in Louisiana, brought claims against the company that owned the clinic, in which he was an investor, alleging both mismanagement and misrepresentation, and personal injuries resulting from negligent exposure to X-ray radiation. In the course of ruling on motions for summary judgment, the court observed that it possessed personal jurisdiction, and cited *Nicastro* without further explanation.

197. *Kidston v. Resources Planning Corp.*,
2011 WL 6115293 (D.S.C. 2011).

Outcome

Jurisdiction

Description

This case was brought by the former CEO of a company, alleging that the company breached its employment agreement with him and failed to pay certain taxes and employee withholding, which resulted in his being subject to liens by the state. He sued the company and certain shareholders. The shareholder defendants were not parties to the agreement. The court granted their motion to dismiss for lack of personal jurisdiction. The court cited *Nicastro* only for general propositions.

198. *Lindsey v. Cargotec USA, Inc.*,
2011 WL 4587583 (W.D. Ky. 2011).

Outcome
Dismissed

Description
The plaintiff sued a forklift manufacturer. The Sixth Circuit had previously adopted Justice O'Connor's *Asahi* view. The district court found that *Nicastro* effected no change in the law, applied the Sixth Circuit's precedent, and found no jurisdiction. The exclusive "nationwide distribution agreement" between the defendant and a distributor was not enough to confer jurisdiction on the court.

199. *Mavrix Photo, Inc. v. Brand Technologies, Inc.*,
647 F.3d 1218 (9th Cir. 2011).

Outcome
Jurisdiction

Description
A celebrity photo agency, a Florida corporation with its principal place of business in Miami, brought a copyright infringement action against an Ohio corporation, alleging that defendant posted plaintiff's copyrighted photos on its website. The court noted that *Nicastro* was consistent with "the line of cases finding specific jurisdiction where there has been purposeful direction" and so applied its circuit's explication of the *Calder* effects test. The court found jurisdiction because the website was significantly directed at a California audience and California advertisers.

200. *May v. Osako & Co.*,
83 Va. Cir. 355 (Va. Cir. Ct. 2011).

Outcome
Dismissed

Foreign defendant
Yes

Description
The plaintiff sued Japanese manufacturer of stitching machines with exclusive American distributor. The plaintiff submitted her brief before the U.S. Supreme Court decided *Nicastro* and argued that her case was identical to *Nicastro*. When the Supreme Court issued its decision, the plaintiff had thus argued herself into a corner. The court noted that *Nicastro* "strongly affirmed" Justice O'Connor's *Asahi* view.

201. *Merced v. Gemstar Group, Inc.*,
2011 WL 5865964 (E.D. Pa. 2011).

Outcome
Jurisdiction

Foreign defendant
Yes

Description
The plaintiff worked at Belfi Brothers & Co. in Pennsylvania, unloading marble slabs packed inside a shipping container by the Margraf Defendants. While the plaintiff was

unloading the container, the marble slabs crushed his leg causing severe and potentially permanent injuries. The marble slabs were produced, packaged, and loaded into a shipping container by Margraf, S.P.A., an Italian Corporation, who then distributed the container to Gemstar, a tile distributor in Ontario, Canada. Gemstar then sold and distributed the marble slabs to Belfi Brothers in Philadelphia. An email from Margraf's agent states that Margraf would "load and fix the materials in [the] best and [most] secure way possible" in a shipping container for transport to Philadelphia. An invoice showed that the agent and thus Margraf had actual knowledge that the products' final destination was Philadelphia. Margraf moved to dismiss for lack of personal jurisdiction. The court mentioned *Nicastro* once in a footnote and states that Margraf targeted the forum state by noting that the package's destination was Philadelphia.

202. *Mische v. Bracey's Supermarket*,
420 N.J. Super. 487, 22 A.3d 56 (N.J. Super. App. Div. 2011).

Outcome

Dismissal affirmed on appeal

Description

Plaintiff who slipped and fell in a Pennsylvania grocery store moved to New Jersey and sued the grocery store there. The court held that the store's membership and purchase of goods from a New Jersey based retailers' cooperative (the "Shop Rite" stores, which the plaintiffs argued were a "chain") did not allow personal jurisdiction under a general jurisdiction theory and also did not suffice for specific jurisdiction because the claim did not arise out of those contacts. The court cited *Nicastro* only for the general proposition that due process limits personal jurisdiction. *Nicastro* had no apparent impact on outcome.

203. *Montalbano v. HSN, Inc.*,
2011 WL 3921398 (N.D. Ill. 2011).

Outcome

Dismissed with prejudice

Description

The plaintiff sued several defendants alleging claims for negligence and strict liability arising from injuries he received from a defective holiday garland. The court dismissed with prejudice as to two defendants over which it lacked personal jurisdiction because they were holding companies with no involvement in the activities tied to the forum. The court cited *Nicastro* once for the point that, in a products liability case, the court has personal jurisdiction over the defendant when the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its law."

204. *Northern Insurance Co. of New York v. Construction Navale Bordeaux*, 2011 WL 2682950 (S.D. Fla. 2011).

Outcome

Dismissed

Foreign defendant

Yes

Description

Plaintiff insurance company sued a French boat manufacturer. The defendant sold boats to independent dealers, some located in the United States. Since 2009, defendant sold 20 boats to a dealer in Florida and attended two boat shows every year in the state. The court read Breyer's *Nicastro* opinion to require "something more" than "merely placing a product into the stream of commerce." Even though the contacts here were greater than those in *Nicastro*, the court held that jurisdiction was improper because the dispute did not arise out of one of the defendant's Florida sales.

205. *Original Creations, Inc. v. Ready American, Inc.*, 836 F. Supp. 2d 711 (N.D. Ill. 2011).

Outcome

Jurisdiction

Description

Patentee brought action against California competitor, alleging infringement of patent relating to a multi-functional charger with power generating and illumination functions. The patentee argued that jurisdiction was proper because the defendant sold infringing products to two distributors with multiple stores in Illinois. The court held that *Nicastro* did not overturn the Federal Circuit's stream-of-commerce precedent. The court found the facts of the case distinguishable from *Nicastro* because the defendant created a "distribution network" in Illinois such that it knew the likely destination of its products.

206. *Oticon, Inc. v. Sebotek Hearing Systems, LLC*, 865 F. Supp. 2d 501 (D.N.J. 2011).

Outcome

Dismissed

Description

The owner of a patent embodying method for creating an analog-digital processing unit, including an amplifier with amplification that is adjustable in stages, brought an infringement action against competitors. The court read *Nicastro* to at least overrule earlier cases holding that targeting the national market is enough to impute jurisdiction to all the forum states. Applying both the plurality and concurring opinions, the court held jurisdiction lacking because the defendant's product was sold as part of other products only five or nine times in New Jersey.

207. *Pangaea, Inc. v. Flying Burrito LLC*,
647 F.3d 741 (8th Cir. 2011).

Outcome

Dismissed

Description

An Arkansas corporation, owner of the trademark "The Flying Burrito Company," filed an infringement action against an identically named Iowa restaurant and its Iowa manager. The defendants' only contact with the forum state was a 2004 trip to Arkansas to obtain permission to use the trademark. The court cited *Nicastro* for general personal jurisdiction propositions and, in a footnote, noted the analogy between a "single contact" and the single sale in *Nicastro*.

208. *RBC Bank (USA) v. Hedesh*,
827 F. Supp. 2d 525 (E.D.N.C. 2011).

Outcome

Dismissal and transfer

Description

A lender brought action against closing attorneys and a title insurer alleging that closing attorneys were negligent and breached fiduciary duties in handling of closings of real estate transactions and that they permitted perpetration of a mortgage fraud scheme, and seeking declaratory judgment that the insurer was required to indemnify lender for its losses. Closing attorneys moved to dismiss or transfer. The court held that the closing attorneys were not subject to personal jurisdiction in North Carolina; the exercise of personal jurisdiction over closing attorneys did not comport with fair play and substantial justice; and transfer of venue to South Carolina was warranted.

The only cite to *Nicastro* is in a footnote saying that the Supreme Court reiterated the importance of the minimum contacts, due process, and purposeful availment inquiries (discussed used prior cases) in *Nicastro* and *Goodyear Nicastro* "required a forum-by-forum analysis, noting that "[p]ersonal jurisdiction, of course, restricts 'judicial power not as a matter of sovereignty, but as a matter of individual liberty,' for due process protects the individual's right to be subject only to lawful power."

209. *Red Earth LLC v. U.S.,*
657 F.3d 138 (2d Cir. 2011).

Outcome

No ruling on personal jurisdiction

Description

In this case, a company operated by a member of the Seneca Tribe and engaged in "delivery sales" of tobacco products challenged the constitutionality of the Prevent All Cigarette Trafficking Act (PACT Act). The district court issued a preliminary injunction against provisions of the act that required all delivery sellers of tobacco to collect and pay state excise taxes as if their sales had actually taken place entirely within the jurisdiction of the taxing state. The Second Circuit affirmed. The court noted that the Supreme Court had adopted a due process minimum contacts standard based on personal jurisdiction decisions such as International Shoe for purposes of determining whether states may tax out-of-state businesses. The court held that the plaintiff had shown a likelihood of success

on the claim that the PACT Act succeeded due process limits by subjecting all delivery sellers of tobacco to taxation in the state of delivery on the basis even of a single sale, regardless of whether the extent of the sellers' contacts with the taxing state were sufficient to indicate purposeful availment of the forum. The court cited Justice Breyer's concurrence in *Nicastro* for the proposition that the Supreme Court had never decided one way or the other whether a single sale in a forum constituted a sufficient basis for assertion of jurisdiction over the seller, though its decisions suggested that a single sale was insufficient.

210. *Ritrama, Inc. v. Burlington Graphic Systems, Inc.*, 2011 WL 5374566 (D. Minn. 2011).

Outcome

Transferred

Description

This case involved a claim for breach of contract alleging that the defendants failed to pay for replacement products. The court cited *Nicastro* for general propositions, along with other cases.

211. *S.E.C. v. Compania Internacional Financiera S.A.*, 2011 WL 3251813 (S.D.N.Y. 2011).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

The SEC brought an action in federal court in New York against a Swiss investment company that had engaged in purchases and sales "contracts for difference" of the shares of an American company traded on the New York Stock Exchange. The trades took place in London, but had direct effects transactions in the company's stock on the NYSE. The SEC alleged that the Swiss defendant had engaged in insider trading based on confidential information about an imminent acquisition of the American company by another Swiss company. The defendant moved to dismiss for lack of personal jurisdiction. The court denied the motion. It cited *Nicastro* for the propositions that jurisdiction rests on the defendant's actions, not its expectations, and that those actions must manifest assent to the authority of the forum by purposeful availment of the forum. In this case, the relevant forum was the United States as a whole, as the securities laws authorize global service of process to the limits of Fifth Amendment due process, so that the required minimum contacts are contacts with the U.S. rather than a particular state. The court noted that *Nicastro* had recognized that contracts could include intentional tortious activity aimed at obstructing the law of the forum. Here, the defendant directed its activities at the U.S. by engaging in actions that would have damaging effects on U.S. securities markets.

212. *Senese v. Hindle*,
2011 WL 4536955 (E.D.N.Y. 2011).

Outcome

Dismissed

Description

The plaintiff, a New York resident who purported to be an advocate for victims of international child abduction and a writer about that subject, brought suit in a New York state court against a bitter rival in the same field, a British national residing in Virginia. The plaintiff's vague allegations involved claims of defamation, and supposed harassment and threats, all involving communications made on the internet and in one instance via email while the defendant was living in either Virginia or his former state of residence, Florida. The plaintiff succeeded in getting a TRO and civil contempt finding in state court before the defendant appeared. The defendant then removed the case to federal court and moved to dismiss for lack of personal jurisdiction or transfer to Virginia.

A magistrate judge recommended that the action be dismissed and that the state-court TRO and contempt findings be vacated because there was no jurisdiction under New York statutes. The magistrate judge first held that it lacked general jurisdiction because there was no evidence that the defendant had a systematic and continuous business presence in New York, as required by statute. Turning to New York's long-arm statute, the magistrate judge pointed out that it did not extend jurisdiction to the full extent permitted by due process, and ruled that none of its subsections applied. The defendant owned no real property in New York and had not engaged in any business transaction in New York. As to the two subsections concerning torts that either were committed in New York or caused injury in New York, the magistrate judge pointed out that they excluded torts of defamation, which were the sole conceivable torts alleged. The various fleeting contacts with New York to which the plaintiff pointed did not involve conduct out of which any tort claims arose. In a footnote, the magistrate judge added that if she were required to consider a due process issue, she would find the contacts insufficient; the footnote cited *Nicastro* as an example of a case where jurisdiction was lacking because of the absence of conduct purposefully directed at the forum. The district court subsequently adopted the magistrate judge's report and recommendation with no mention of *Nicastro*.

213. *Singh v. M/S Crompton Greaves Ltd*.,
2011 WL 5833969 (E.D. Mo. 2011).

Outcome

Dismissed w/out prejudice

Foreign defendant

Yes

Description

The plaintiff, a Michigan resident, asserted claims allegedly arising out of his employment with defendant Crompton Greaves Ltd, in Mumbai, India from 1978 through 1991. The defendant company was a company incorporated under the laws of India and headquartered in India. The individual defendants were Indian citizens residing in India. The plaintiff's claims revolved around certain actions allegedly taken by the defendants against the plaintiff 20 years ago, while plaintiff was employed with defendant Crompton

Greaves in India. The court cited *Nicastro* when discussing basic principles. It applied a five-factor test adopted by the Eighth Circuit prior to *Nicastro*.

214. *Soria v. Chrysler Canada, Inc.*,
2011 Ill. App. 2d 101236 (Ill. App. Ct. 2011).

Outcome

Jurisdiction

Foreign defendant

Yes

Description

A passenger who lost her vision in a motor vehicle collision brought products liability action against a foreign subsidiary of a bankrupt automobile manufacturer. The court held that under either *Asahi* theory, the defendant had sufficient minimum contacts with Illinois. The defendant was not only aware that its products were distributed in Illinois, but by selling through its US distributor 28,383 vehicles in Illinois over two years, purposefully directed its conduct towards Illinois. The court describes the opinions in *Nicastro*, but the case does not seem to affect the outcome.

215. *Starbucks Corp. v. South Dakota Network LLC*,
2011 WL 6399550 (D. Neb. 2011).

Outcome

Jurisdiction

Description

This case was an action for declaratory relief involving a trademark. The defendant moved to dismiss for lack of personal jurisdiction and improper venue or, in the alternative, for transfer to South Dakota. It asserted that it did not have sufficient minimum contacts with Nebraska. Starbucks argued that the defendant voluntarily consented to jurisdiction by appointing a registered agent for service of process in the state, and that the defendant has had continuous and systematic business contacts in Nebraska that satisfy the minimum contacts requirement. The court found that it had jurisdiction and denied the motion. It cited to *Nicastro* only for general propositions.

216. *Warren v. Cardonza Publishing, Inc.*,
2011 WL 6010758 (E.D. Mo. 2011).

Outcome

Dismissed w/out prejudice

Description

The plaintiff brought a breach of contract and fraud action arising out of six publishing contracts between plaintiff and defendant Cardoza Publishing. During the relevant time period, the plaintiff was an over the road truck driver whose state of residence fluctuated among Mississippi, Kansas, and Missouri. Defendant Cardoza, a Florida corporation with its principal place of business in Nevada, Cardoza conducted no business in Missouri beyond its relationship with the plaintiff. Defendant Avery Cardoza, an employee of Cardoza, had never been to Missouri and negotiated each of the six publishing contracts between Cardoza and the plaintiff from New York. The court cited *Nicastro* for

the requirement of minimum contacts and purposeful availment. It applied a pre-existing Eighth Circuit test.

217. *Williams v. Uribe*,
2011 WL 6813453 (C.D. Cal. 2011).

Outcome

No ruling on personal jurisdiction

Description

This is a federal habeas corpus petition brought by a state prisoner challenging his armed robbery convictions on various meritless grounds, among them that the trial court lacked "jurisdiction" over the case. The magistrate judge, recommending that the petition be denied (a recommendation later adopted by the district court) cited *Nicastro* as a "see also" cite for the proposition that a criminal conviction by a court that lacked jurisdiction would violate due process.

218. *Windsor v. Spinner Industry Co.*,
825 F. Supp. 2d 640 (D. Md. 2011).
***Windsor v. Spinner Industry Co.*,**
825 F. Supp. 2d 632 (D. Md. 2011).

Outcome

Dismissed as to defendant

Foreign defendant

Yes

Description

Bicyclists brought action against a bicycle designer, nonresident component manufacturer, and others, asserting claims for breach of contract, negligence, products liability, and breach of warranty arising out of accident in which the bicyclists were thrown to the ground after the front wheel of the bicycle they were riding dislodged. The component manufacturer, a Taiwanese company, moved to dismiss the claim against it for lack of jurisdiction.

In its first opinion addressing the motion, the court reviewed the case law and decided to hold the motion in abeyance pending an evidentiary hearing. The court read *Nicastro* as "rejecting the foreseeability standard of personal jurisdiction, but otherwise leaving the legal landscape untouched." The court therefore looked to its circuit's post-*Asahi* precedents, which adopted Justice O'Connor's approach.

After an evidentiary hearing, the court held that the manufacturer had not intentionally directed any conduct toward the forum state or purposefully availed itself of protections of the forum's laws. The court found that the plaintiffs had not identified Maryland connections of the defendant manufacturer. The court found the defendant's internet marketing irrelevant because the bicycle in question was not bought on the internet.

219. *Woodmen of the World Life Insurance Society v. U.S. Bank National Ass'n*, 2011 WL 5075615 (D. Neb. 2011).

Outcome

Jurisdiction

Description

An investor brought state common law and statutory claims against a banks and the bank's managing director for misrepresentations and breach of contract arising out of investments in mortgage-backed securities. The bank manager moved to dismiss for lack of personal jurisdiction. The court cited *Nicastro* once for description of what general jurisdiction entails. The court held that it had specific jurisdiction over the defendants based on evidence that Busse, on behalf of U.S. Bank, purposefully availed itself of the privilege of conducting business activities in this state, that U.S. Bank had "continuous and systematic contacts" with the state, that U.S. Bank targeted Woodmen in marketing campaigns and solicited Woodmen's business, and that the claims were directly related to the activity of entering into securities lending agreements with a Nebraska corporation.

220. *World Wide Stationery Manufacturing Co. v. Bensons International Systems, Inc.*, 2011 WL 6217410 (N.D. Ohio 2011).

Outcome

Dismissed

Foreign defendant

Yes

Description

This case was a patent dispute relating to a ring-binder mechanism invented by Johann Horn and assigned to Esselte Leitz, who is the record owner of the patent. Esselte Leitz was a German limited partnership with its headquarters and principal place of business in Germany. Esselte Leitz manufactured and sold certain office supplies, including ring binders with automatic locking ring mechanisms, primarily in European markets. It did not directly sell its products in the United States, but Esselte Leitz utilized distributors, some who may have sold Esselte Leitz products through other distributors in the United States, including in Ohio.

The court discussed *Nicastro* at length to explain its holding that distribution agreements alone are insufficient to satisfy due process requirements. The court found that no evidence "supports the conclusion Esselte Leitz directed business at Ohio and/or entered into a contract with an Ohio-based company."

221. *Yentin v. Michaels, Louis & Associates, Inc.*, 2011 WL 4104675 (E.D. Pa. 2011).

Outcome

Jurisdiction

Description

The plaintiff brought an action under the Fair Debt Collection Practices Act against a debt collection company and one of its principals. The suit was brought in federal court in Pennsylvania, where the debt collection activity, including the initiation of a lawsuit based on a complaint verified by the individual defendant, had taken place. The individual defendant was a Pennsylvania resident and the company was a Pennsylvania company. The

defendants moved to dismiss for failure to state a claim, and prominent among their arguments was that there was no basis for a claim against the individual defendant. They also argued that because there was no basis for imposing liability on the individual, the court also lacked personal jurisdiction over him. The court held that the complaint stated claims against both defendants; it largely disregarded the personal jurisdiction argument except to say that since it rested on the proposition that there was no basis for a claim against the individual, it was subsumed in the analysis of the 12(b)(6) motion. The court cited *Nicastro* in a footnote stating that the principal question posed by a personal jurisdiction motion is whether the defendant's activities manifested intent to submit to the authority of a sovereign through purposeful availment of the forum.