Civil Procedure Class Notes

October 7, 2013

* **Review of what we did last time:**
* World-Wide Volkswagen v. Woodson (U.S. 1980)
	+ The end user brings the product to the forum state 🡪 not enough to establish personal jurisdiction.
	+ If D sends product directly to the forum state, then there will be sufficient minimal contacts needed to establish personal jurisdiction.
* **World-Wide Volkswagen v. Woodson** (continued)
* The plaintiff, in an effort to destroy diversity jurisdiction, added Seaway and World-Wide.
	+ P was a domiciliary of New York, as were Seaway and World-Wide.
	+ Joinder to defeat removal (as in the *Rose v. Giamatti* case)
	+ Unsuccessful not because of fraudulent joinder (as in *Rose*) but because no PJ over defendants
* What role do the McGee Factors play?
	+ The McGee Factors strongly in favor Oklahoma personal jurisdiction.
	+ BUT Supreme Court states you cannot establish personal jurisdiction based on the McGee Factors alone. The forum state’s courts must also have some sort of power over the defendant.
* **Asahi Metal Industry Co. v. Superior Court** (U.S. 1987)
* Asahi manufactured tire valves for Cheng Shin, a Taiwanese company, which sold tires in California. One of those caused a motorcycle accident involving Zurcher, who sued Cheng Shin. Cheng Shin impleaded Asahi, as the manufacturer of the valve in the tire. Cheng Shin and Zurcher settled, but Cheng Shin wanted Asahi to compensate it for what it had to pay to Zurcher. The suit was in California state court. Asahi claimed no PJ.
* Why was California’s long-arm statute not mentioned?
	+ It has exactly the same scope as the Constitution.
* When thinking about making personal jurisdiction arguments, it is important to look for anything at all that may connect the defendant to the forum state.
	+ However, in this case, there was no such connection, except for the fact that the defendant knew that the products could end up in the forum state.
* Three opinions come from this case.
	+ O’Connor
	+ Part II-B of her opinion:
		- Everybody but Scalia is on board.
		- McGee Factors are so poorly satisfied that it is unreasonable to subject defendant to California state courts, even if CA state courts did have had “power” over Asahi on the basis of Asahi’s reaching out to CA
			* This is important because five justices admit that there is in fact power in this case, but CA exercising PJ over defendant is not compatible with Due Process.
			* We learn that the McGee Factors can be reasons for not allowing personal jurisdiction.
	+ But was there “power” over the defendant?
	+ O’Connor’s opinion in Part II.A
		- Need some extra act showing intent to serve the CA market – does not exist here
		- E.g, having a distributor for the CA market
		- Designing the products so that they are for California use, i.e. “California valves,” would have created a sufficient connection.
		- Advertisement in CA would have also created a sufficient connection.
		- It seems very unlikely a component parts manufacturer could have satisfied O’Connor’s standard.
	+ Justice Brennan
		- Says California had power over Asahi because Asahi was definitely aware of the sales in California, and received benefits as a result of doing business in California.
	+ Justice Stevens
		- Stevens thinks the discussion is unnecessary, because the case turns out the same either way, because McGee factors were not satisfied. Nevertheless, he states his own opinion.
		- Says that there is power because Asahi had done enough to establish minimum contacts in the forum state.
		- By shipping your products to the forum state (or being a part of the process of the shipping your products to the forum state), and when you can foresee this as a regular matter, then you have reached out to the forum state in a manner that satisfies the necessity for minimum contacts according to *International Shoe*.
* What do we do if there is not majority opinion?
	+ The opinion with the narrowest reason for the court’s conclusion is the court’s holding.
* **J. McIntyre Machinery, Ltd., v. Nicastro**, (U.S. 2011)
	+ A machine made by J. McIntyre, a UK corporation, injured a New Jersey man. He brought suit in New Jersey state court. J. McIntrye claimed lack of PJ.
* McIntyre did not sell directly to the United States, but rather through a distributor.
* Why is P not just going after McIntyre USA, the distributor in this case? There was PJ over McIntyre USA in NJ
	+ McIntyre USA is bankrupt. 🡪 This is a defective product, and there were a number of lawsuits brought against McIntyre USA.
	+ P is trying to get money from the company that still has money, McIntyre UK.
* What are the contacts that McIntyre UK has with New Jersey?
	+ No more than four machines, including the one giving cause of action, ever reached New Jersey.
	+ The purchaser of the machine was at the trade show in Las Vegas
* We have three opinions result from this case.
	+ Kennedy (4)
		- Draws on O’Connor’s opinion from Asahi.
		- You must have some sort of directed intent toward the state of New Jersey, outside of the simple fact that you believe your products may end up in NJ.
		- No such directed intent existed; therefore NJ has no right to exercise PJ over McIntyre UK.
* Breyer Concurrence (2)
* Believes there is something dangerous about Kennedy’s opinion/O’Connor approach.
* Where there is a foreseeable regular flow of products into forum state, minimum contacts have been established.
* If the fact that the product will end up in the forum state is foreseeable but there is no regular flow, the O’Connor extra something indicating an intent to serve the forum state is needed
* In this case, Breyer believes that there was not a regular flow and not O’Connor’s extra something; therefore, NJ has no power over McIntyre.
* Ginsburg Dissent (3)
	+ Ginsburg says that by targeting the US, instead of any specific state, J. McIntyre should be submitted to PJ in any state their products are sold. Adjudicating the case in New Jersey doesn’t diminish the sovereignty of any other state. This is specific to international defendants.
* \*Important Note – a federal court cannot take a case that the state court, in that given location, could not also take.
	+ This answers the question as to why this case would not have tinred out differently in federal court on the basis of diversity jurisdiction.
	+ It must be established that the NJ state court can hear the case and exercise personal jurisdiction, otherwise, under the FRCP 4(k)(1)(A), no appropriate federal court can hear the case.