



Illinois Supreme Court Applies Broad "Stream of Commerce" Approach Asserts Personal Jurisdiction Over Foreign Component Part Manufacturer

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- Are you, or your clients, a non-Illinois manufacturer without any offices, assets, property or employees in Illinois and have no license to do business in Illinois?
- Do you only sell your products to another non-Illinois company that uses your products in making its own and then sells that completed product wherever they want without your knowledge or input?
- Do you not specifically direct any of your products into Illinois?

If you answered yes to these questions and think you aren't subject to the jurisdiction of the Illinois courts – think again. And then, take a closer look at your contractual indemnity, forum selection, choice of law and insurance agreements.

On April 18, 2013, the Illinois Supreme Court in the case of *Russell v. SNFA* issued its decision finding that SNFA, a French component part manufacturer, which sold its product (ball bearings for helicopters) to Agusta, an Italian helicopter manufacturer, was subject to the jurisdiction of a Cook County, Illinois, court in a wrongful death action arising out of the crash of a helicopter manufactured and first sold by Agusta to a non-Illinois company.

SNFA had argued and the Court accepted: that it had no office, asset, property or employee in Illinois and no license to do business in in Illinois; it only sold its helicopter ball bearings to Agusta, manufactured to Agusta's specification, which then sold its completed product wherever it wanted without SNFA's knowledge or input; and, SNFA did not specifically direct its helicopter ball bearing product at issue into Illinois. How then, did the Court reach its decision affirming the finding of personal jurisdiction over SNFA?

There are a number of ways courts justify asserting jurisdiction over a non-resident defendant, but they all require establishing the defendant has sufficient "minimum contacts" with the forum. The "stream of commerce" theory is one way to make such a showing as a manner of "specific personal jurisdiction." But, it is unsettled whether the theory should be applied broadly (without regard for any directed contact to the forum by a defendant) or narrowly (requiring "something more" than putting a product into the stream of commerce). Specific personal jurisdiction, regardless of the theory, requires a defendant to have "purposefully directed its activities at the forum" and for the claim to "arise out of or relate to" the defendant's contacts with the forum.

In considering specific personal jurisdiction and the stream of commerce theory, the *Russell* Court turned SNFA's supplier status around on it and attributed Agusta's marketing and distribution efforts as though they were SNFA's. In so doing, the Court considered this distribution system would be sufficient, on its own, to establish a reasonable expectation that SNFA was aware its product was being marketed in Illinois and thus warrant exercising jurisdiction over them. This conclusion is a bit tenuous when the helicopter ball bearings are viewed as



the product at issue as they are not sold directly by SNFA to anyone in Illinois and SNFA argued it was unaware of whether Agusta was selling its product in Illinois. Yet, the Illinois court did not go so far as to formally adopt a broad application of stream of commerce. In fact, it was careful not to, stating:

We will not adopt either the broad or narrow version of the [stream of commerce] theory without more definitive guidance from a majority of the United States Supreme Court.

More troubling is that the Illinois court, in seeking to establish that its finding of personal jurisdiction against SNFA would also pass muster under a narrow stream of commerce theory requiring additional conduct, applied the “arising out of or related to” prong of “specific personal jurisdiction” in an expansive fashion. In doing so, the Court first noted:

Certainly, defendant’s business relationship with the Rockford, Illinois, division of Hamilton Sundstrand, including [its sales representative’s] attempts to solicit additional business on behalf of defendant in Illinois, constitutes the additional “purposefully directed conduct” or the “something more” required under Justice O’Connor’s narrow stream-of-commerce theory.

The Illinois Court then recognized SNFA’s argument that the claims at issue did not “arise from,” or “relate to,” its relationship with Hamilton Sundstrand, but rejected this argument:

Although the United States Supreme Court has not clarified what is meant by “arising out of” or “related to” in the context of a jurisdiction question, several courts have determined that the applicable standard is lenient or flexible.

It may seem a bit unfair that the Court would refrain from choosing either a narrow or broad approach to stream of commerce because it felt the U.S. Supreme Court had not definitively stated a position, but then not hesitate to apply the likewise unclarified “lenient or flexible” standard to the “arising out of or related to” requirement. But that is what the Court did.

Given this lenient construction of the “related to” requirement, a part manufacturer is left to wonder how a state court in Illinois will apply this standard to their potential contacts with the forum. Arguably, contacts once considered remote and irrelevant to the specific personal jurisdiction analysis become much more important. Even more troubling, perhaps, is that an Illinois court can now find a part supplier bound to the marketing and distribution systems of its clients, regardless of that supplier’s actual knowledge of where the end product is marketed and sold. And, if the marketing and distribution systems include Illinois, then an Illinois court may find personal jurisdiction over the supplier.

The scenario in *Russell* likely applies to a good amount of component part manufacturers serving as suppliers to completed product manufacturers. Such likelihood and the potentially expansive ramification of the majority’s analysis drew the concern of dissenting Justice Garman who expressed a cautionary view:

Under the majority holding, a foreign defendant can now be haled into court in Illinois for even the most fleeting and inconsequential business contact with the state.

While the Illinois Supreme Court has said it is not adopting a broad stream of commerce approach, it signals that it remains open to such an interpretation of the theory, and given its adoption of a lenient approach to applying the “arising out of or relating to” prong of the specific personal jurisdiction test, it has vitiated a good portion of the operative differences between the broad and narrow approaches.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

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