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Will the Dust Ever Settle on Personal Jurisdiction?

A Commentary by Edward R. Hugo of Hugo Parker LLP
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Over 40 years ago, the United States Supreme Court attempted to *permanently clarify* the requirements to impose personal jurisdiction on out-of-state defendants throughout the United States. Did SCOTUS succeed?

Applicable Law

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant. "[T]he constitutional touch-stone" of the determination whether an exercise of personal jurisdiction comports with due process "remains whether the defendant purposefully established 'minimum contacts' in the forum State." *Burger King Corp.* v. *Rudzewicz,* 471 U. S. 462, 474 (1985), quoting *International Shoe Co.* v. *Washington,* 326 U. S., at 316. Most recently we have rea firmed the oft-quoted reasoning of *Hanson* v. *Denckla,* 357 U. S.235, 253 (1958), that minimum c ontacts must have a basis "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." *Burger King,* 471 U. S., at 475. "Jurisdiction is proper ... where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Ibid.,* quoting *McGee* v. *International Life Insurance Co.,* 355 U. S. 220, 223 (1957) (emphasis in original).

. . .

The "substantial connection," between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State*. The placement of a product into the stream of co merce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, 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. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.

. . .

The strictures of the Due Process Clause forbid a state court to exercise personal jurisdiction over Asahi under circumstances that would offend " 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington,* 326 U. S., at 316, quoting *Milliken* v. *Meyer,* 311 U. S., at 463.

We have previously explained that the determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors. A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substa tive social policies." *World-Wide Volkswagen,* 444 U. S., at 292 (citations omitted).

Asahi Metal Industry Co., LTD. v. Superior Court of California, Solano County, 480 U.S. 102, 108-113 (1986) [internal citations omitted].

Why Is Jurisdiction So Important?

"Because 'any judgment entered without personal jurisdiction over a party is void.' " *Ingram v. Johnson & Johnson*, 608 S.W. 3d 663, 669 (Mo.App.E.D. 2020). In *Ingram*, 22 plaintiffs sued Johnson & Johnson Consumer Companies Inc. ("JJCJ") and its parent company, Johnson & Johnson ("J&J"), alleging that they developed ovarian cancer from the use of defendants' products. *Id*. at 677-678. Only five Plaintiffs lived, purchased defendants' products, used defendants' products and developed ovarian cancer *in Missouri* (the "Missouri Plaintiffs"). *Id*. at 678. Seventeen Plaintiffs lived, purchased defendants' products, used defendants' products and developed ovarian cancer *outside of Missouri* (the "Non-Resident Plaintiffs"). *Id*. The jury awarded each Plaintiff $25 million in compensatory damages (totaling $550 million) and $4.14 billion in punitive damages, with JJCI responsible for $990 million and J&J responsible for $3.15 billion. *Id*. at 680. The Court of Appeal found that Missouri lacked personal jurisdiction over JJCI as to two "Non-Resident Plaintiffs" and lacked personal jurisdiction of J&J as to all seventeen "Non-Resident Plaintiffs." That finding resulted in a proportional *loss* of $90,000,000 in punitive damages, alone, against JJCI and $2,399,090,909 against J&J. *Id*. at 724.

Similarly, in *Slemp v. Johnson & Johnson*, 589 S.W.3d 92 (2019), a Missouri jury awarded $5,400,000 in compensatory damages and $105,050,000 in punitive damages to a *non-resident* plaintiff. JVR No. 1705150043, 2017 WL 213 1178 (Mo.Cir.). The Court of Appeal found that Missouri lacked personal jurisdiction over the defendants and *vacated and reversed* the judgment of the trial Court. 589 S.W.3d at 97. In *Estate of Fox v. Johnson & Johnson*, 539 S.W.3d 48 (2017) a Missouri jury awarded $10,000,000 in compensatory damages and $62,000,000 in punitive damages to a *non-resident* plaintiff. JVR No. 1602250056, 2016 WL 795836 (Mo. Cir.) Again, the Court of Appeal concluded that the trial Court did not have personal jurisdiction over the defendant and *reversed and vacated* the judgment. Finally, in *Ristesund v. Johnson & Johnson*, 558 S.W.3d 77 (2018) a Missouri jury awarded $5,000,000 in compensatory damages and $15,000,000 in punitive damages to a *non-resident* plaintiff. Again, the Court of Appeal found that the trial Court lacked personal jurisdiction over the defendant and *reversed* the judgment. *Id*. at 83. The Court further declined to remand the matter to the trial Court for a "do-over" regarding personal jurisdiction. *Id*.

State Courts Still Struggle With Personal Jurisdiction

PTI Union, LLC (aka Pharma Tech Industries) has filed motions to quash in response to Complaints filed against it in talc-related lawsuits throughout California. Some of the motions have been granted. For example, in Los Angeles County, PTI's motions to quash were granted on January 23, 2026 in *Malka vs Albertsons Companies*, et al., 25TCV15861 and *Janocha vs Albertson's Companies*, et al., 25TCV12176: "Plaintiffs fail to present evidence sufficient to support PTI Union LLC's purposeful availment of the California market. Therefore, Defendant's motion to quash is granted." Others have been denied, including in Alameda County Superior Court in *Maricich vs Chattem, Inc*, et al., Case No. 25CV116787:

> In the present action, the Court finds that talc-containing Dr. Scholls foot powder was a product that between 2008 and 2019 was intentionally placed into the regular flow of commerce in the United States and was routinely distributed and sold in California. Although Defendant argues it would not have known that the Owners of the Dr. Scholls brand intended to distribute Dr. Scholls foot powder into California, like in *L.W.* [*L.W. v. Audi AG* (2025) 108 Cal.App.5th 95], "there is enough in this particular case for [Defendant] to be properly summoned." Dr. Scholls foot powder is a nationally distributed, retailed and advertised product, and the only surprise would have been if the Owners had elected not to distribute Dr. Scholls foot powder into California. However, in other respects the present facts are more like Bombardier. The evidence before the Court supports a finding that Defendant was a mere contractor to the Owners of the Dr. Scholls brand who provided blending and bottling services based on formulas and raw materials inputs determined by the Owners. Unlike *L.W.*, where Audi was entirely responsible for the design and manufacture of the Audi Q7 and employed a wholly controlled entity as the exclusive distributor for that product in the United States, including California, Dr. Scholls foot powder was the Owners' product, which the Owners designed and for which the Owners decided the inputs.
>
> However, *L.W.* states in relevant part: "Tellingly, *J. Mcintyre [Machinery, Ltd. v. Nicastro* (2011) 564 U.S. 873] confirms that 'additional efforts' are required only if 'regular flow' or 'regular course of sales' in the forum state are not shown." As stated above, Dr. Scholls foot powder was a nationally distributed and retailed product during the relevant period, and

Defendant was indisputably directly involved in the manufacture of that product between April 2008 and 2019, overlapping with the period of Mr. Maricich's use of Dr. Scholls foot powder.

Further, unlike *Bombardier* [*Bombardier Recreational Prods., Inc. v. Dow Chem. Can. ULC* (2013) 216 Cal.App.4th 591] or *Asahi*, the Owners are not cross-claiming against Defendant with respect to the Motion to Quash. Instead, Plaintiffs are suing Defendant directly for their injuries under, *inter alia*, a strict liability theory.

Upon consideration of the facts and the applicable controlling authorities, the Court elects to follow *L.W.*'s stream of commerce approach. Here, Defendant, when it contracted to manufacture Dr. Scholls foot powder, a product it knew or reasonably should have known would be distributed nationally, including into California, Defendant should have been prepared to face suit sounding in product defect in any United States forum where it could reasonably have anticipated the product would be distributed and sold.

Wherefore, the Court DENIES Defendant's Motion to Quash.

"...Is the existing personal jurisdiction 'rule' so factually intensive that it isn't really a rule at all? We shall see what the California Supreme Court, and maybe even SCOTUS, thinks about this, <u>again</u>.."

Order dated November 19, 2025

On December 1, 2025, PTI filed a WRIT OF MANDATE in *Maricich* with the Court of Appeal of the State of California, A174945, which ruled as follows:

BY THE COURT:

The petition for writ of mandate, prohibition, or other appropriate relief is denied. (*Asahi Metal Industry Co., Ltd. v. Superior Court* (1987) 480 U.S. 102, 112 (plur. Opn. of O'Connor, J.) ["Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, *designing the product for the market in the forum State* . . ."], italics added; *L.W. v. Audi AG* (2025) 108 Cal.App.5th 95, 114 ["[A]t a minimum, a plaintiff trying to establish personal jurisdiction over a foreign manufacturer must

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show a ‘ “regular … flow” ‘ or ‘ “regular course” ‘ of sales in the forum state, and/or some additional efforts directed toward the forum state, such as “special state-related design, advertising, advice, [or] marketing.’ “].) Here between 2008 and 2019, petitioner blended and bottled certain talc-containing products for the Product Owners. [ ] Petitioner blended and bottled 100% of the U.S. requirements for such products. [ ] It estimated that it blended and bottled between 600,000 and 800,000 thousand bottles of said products on average per year. [ ] Petition thus understood that the products it blended and bottled would be distributed throughout the United States, necessarily including California. [ ] Petitioner was obligated by contract to ensure that the products it bottled and blended complied “with all applicable United States federal, state and local laws and regulations.” [ ] Thus, petitioner undertook to produce products whose specifications would meet California requirements. [ ] Therefore, in addition to knowing that its products would be distributed in California, petitioner made “some additional efforts directed toward the forum state, such as ‘special state-related design.’ “ (*L.W. v. Audi AG*, supra, 108 Cal.App.5th U.S. 873, 889 (conc. Opn. of Breyer, J.).)

Order dated April 2, 2026.

Competing Issues Presented to the California Supreme Court

On April 13, 2026, PTI filed a PETITION FOR REVIEW with the Supreme Court of the State of California, S296173. Now, more than 40 years after the United States Supreme Court attempted to *permanently clarify* the requirements to impose personal jurisdiction on out-of-state defendants, the following are the competing issues pending before the California Supreme Court.

PETITIONER/DEFENDANT

Whether California courts may assert specific personal jurisdiction over a Missouri business that was contracted to mix and bottle a product in Missouri, where unrelated parties owned, manufactured, and distributed the product and the contractor had no control or influence over its distribution, solely on the ground that that contractor could have anticipated that the product owners would choose to distribute the product in California
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REAL PARTIES IN INTEREST/ PLAINTIFFS

Whether the Court of Appeal erred in holding that the *Asahi* “stream-of-commerce plus” standard is satisfied for purposes of specific jurisdiction over an out-of-state manufacturer, where the manufacturer sourced, manufactured, and bottled Dr. Scholl’s foot powder, contractually required that it be the exclusive manufacturer of all Dr. Scholl’s talc-containing foot powder products distributed throughout the entire United States; blended and bottled between 600,000 and 800,000 bottles of those products per year for over a decade; and contractually guaranteed that these products complied with all applicable state laws and regulations, including California’s.

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Conclusion

Is the existing personal jurisdiction “rule” so factually intensive that it isn’t really a rule at all? We shall see what the California Supreme Court, and maybe even SCOTUS, thinks about this, *again*.