

**PERSONAL JURISDICTION AND THE STREAM-OF-COMMERCE THEORY:
*The Illinois Supreme Court Holds That Illinois Has Jurisdiction Over
A French Company That Supplied Component Parts For A Helicopter***

By: K. Clark Schirle

I. Overview

In April 2013, the Illinois Supreme Court, in the case of *Russell v. SNFA*, 987 N.E.2d 778, held that Illinois had personal jurisdiction over SNFA, a French company, that supplied tail-rotor bearings custom made for helicopters manufactured by an Italian company.

Mr. Russell, a pilot, was operating one of the helicopters for an Illinois air ambulance service. Unfortunately, the helicopter crashed in Illinois and he died. Plaintiff sued a number of entities, including SNFA. SNFA contended that Illinois did not have personal jurisdiction over SNFA.

The Illinois Supreme Court held that Illinois did, in fact, have personal jurisdiction over SNFA. In a lengthy opinion, the Supreme Court held that SNFA's connections or contacts with Illinois were sufficient to satisfy federal due process requirements. One Justice issued a dissenting opinion.

The Court held that Illinois did not have general personal jurisdiction over SNFA. General jurisdiction exists when a company is engaged in continuous and substantial business activity in the forum State, so much so, as to render them essentially at home in the forum State.

However, the Court held that Illinois did have specific personal jurisdiction over SNFA. Specific jurisdiction exists when a company purposefully directs its activities at the forum State and the cause of action arises out of or relates to the company's contacts with the forum State. In finding specific jurisdiction, the Court relied in part on the stream-of-commerce theory which the United States Supreme Court first adopted in 1980.

First, this paper will provide an overview on both the statutory and constitutional law regarding personal jurisdiction and the stream-of-commerce theory. The section will describe the federal due process requirements for personal jurisdiction and the U.S. Supreme Court cases which have analyzed those requirements. The Illinois Supreme Court focused on the stream-of-commerce theory in the *Russell* case.

Second, this paper will discuss the facts of the *Russell* case.

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Third, it will examine the Illinois Supreme Court opinion and why the Court came to its conclusion. It will also discuss the dissenting opinion.

Finally, it will provide commentary on the opinion and whether, in fact, the Illinois Supreme Court was correct. It will also discuss the ramifications of the opinion and the possibility that the United States Supreme Court will consider this case in the future.

II. Statutory And Constitutional Requirements For Personal Jurisdiction

A. Overview

The ability of United States federal and state courts to exercise jurisdiction over persons and entities is an issue that arises frequently in cases involving foreign (non-U.S.) defendants. The authority to exercise judicial power over a particular person or entity — referred to as “personal jurisdiction” in the United States — involves a consideration of whether there is statutory authority to exercise jurisdiction and whether the exercise of jurisdiction complies with constitutional due process requirements.

B. Statutory Requirements for Personal Jurisdiction

A court may only exercise jurisdiction over a defendant if it is authorized to do so by statute. Although this requirement is frequently easily satisfied, it remains essential to ensure compliance.

If a foreign defendant has been sued in a state court, the law of that state will apply to the question of whether suit against the defendant is authorized. If the foreign defendant has been sued in federal court, the applicable law for determining personal jurisdiction will depend on the basis for the federal court’s subject matter jurisdiction. If the case is in federal court and a federal statute is at issue, or there is a “federal question” being considered by the court, federal law must be consulted to determine the statutory limits of personal jurisdiction. If the case is in federal court because the parties reside in or are domiciled in different jurisdictions (i.e., diversity jurisdiction), state law will determine the statutory limits of personal jurisdiction.

In many states, the statutory authorization for exercising jurisdiction over a defendant is based on what is known as a “long-arm statute.” Generally, these statutes provide that the state’s courts may exercise personal jurisdiction over a person if they engage in certain activities within the state. Typically, if the person transacts business, enters into a contract, owns property or commits a tort within the state, then the court has jurisdiction as to any cause of action arising from doing those acts.

The statute has been made co-extensive with the reach of constitutional due process in many states. In effect, these types of long-arm statutes obviate the need for a separate statutory inquiry and the courts simply focus on whether the exercise of authority is consistent with due process. The Illinois statute has a provision which states: “A court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.” 735 ILCS 5/2-209. Accordingly, the sole issue the Illinois Supreme Court in *Russell* considered was whether jurisdiction was proper under the due process

standards, because the “catch-all provision . . . effectively collapses the jurisdictional inquiry into the single issue of whether a defendant’s Illinois contacts are sufficient to satisfy federal and Illinois due process.” 987 N.E.2d at 784-785.

C. Constitutional Due Process: In General

The Fifth and Fourteenth Amendments of the United States Constitution guarantee all persons the right to “due process of law.”¹ One aspect of this guarantee is a limitation on the exercise of the state tribunal’s power or authority to proceed against a defendant. *See Goodyear Dunlop Tires Operations v. Brown*, 131 S.Ct. 2846, 2850 (2011) (“A state court’s assertion of jurisdiction exposes defendants to the State’s coercive power, and is therefore subject to review for compatibility with the Fourteenth Amendment’s Due Process Clause.”)

As a baseline, if a person or entity has no connection, contacts, or relationship to a particular forum, and is not otherwise “present” in the forum, then the forum’s judiciary may not enter a binding judgment against the person. Such a judgment would be at odds with the purposes of the Due Process Clause; namely, the fair and orderly administration of laws.

D. Minimum Contacts: *International Shoe*

The United States Supreme Court issued the modern iteration of the constitutional limitations on personal jurisdiction in *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945). The Court was called upon to address whether a state court in Washington could exercise jurisdiction over an out-of-state corporation in an action by the state to collect unpaid contributions to the state’s unemployment compensation fund. The defendant, which manufactured and sold shoes, was incorporated in Delaware and had its main office in Missouri. The defendant had no offices in Washington, made no contracts for the sale or purchase of goods in the state and had no merchandise in stock in the state. However, the defendant had salesmen who resided in Washington who solicited orders in the state, sent those orders to Missouri and then the merchandise was shipped to Washington. The salesmen were paid by commission. The Supreme Court held that Washington had jurisdiction over the defendant.

In making its decision, the Supreme Court enunciated personal jurisdiction and due process standards which have been followed for over 65 years. The Supreme Court, noting that the traditional test for personal jurisdiction focused on physical presence, recognized that since a corporation is a legal construct/legal fiction, a different test was required for determining when jurisdiction could be properly exercised. Since corporations obviously act only through their representatives, the Court found that the question of “presence” was simply to ask what was sufficient to satisfy the demands of due process.

The *International Shoe* Court determined that a person or entity can be properly subjected to a forum’s judicial power if the person or entity has sufficient “minimum contacts” with the forum such that the exercise of jurisdiction does not “offend traditional notions of fair

¹ The Fifth Amendment limits the power of the Federal government, and the Fourteenth Amendment limits the power of the states. In accordance with usual legal parlance, references to the Due Process Clause, while appropriately understood as references to the Fourteenth Amendment, express limitations on both the states and the federal government.

play and substantial justice.” 326 U.S. at 316. In announcing this rule, the Court made a further distinction, enunciating two categories of contacts.

The Court explained there are instances where the corporation’s activities or operations in the state may be so substantial, continuous and systematic that the corporation would be subject to jurisdiction even as to causes of action unrelated to those activities. Conversely, the corporation’s contacts with the state may be more limited and, in those situations, the corporation would be subject to jurisdiction only as to causes of action arising out of or relating to those contacts. Commentators and courts refer to these two categories respectively as “general jurisdiction” and “specific jurisdiction.”

The Illinois Supreme Court in *Russell* focused on specific jurisdiction. As discussed below, the requirement that the cause of action arise out of or relate to SNFA’s contacts with Illinois is one issue which may warrant reversal of the decision if the case is reviewed by the United States Supreme Court.

E. Jurisdictional Principles Derived From *International Shoe* and The Genesis Of The Stream-of-Commerce Theory

The Court in *International Shoe* enunciated two key principles: (a) the defendant must have sufficient minimum contacts with the forum; and (b) the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice. These two prongs, then, are what courts have considered and analyzed for decades when determining whether jurisdiction over a defendant complies with due process.

The Supreme Court has elaborated on both of these principles.

As to the first prong, the minimum contacts requirement is meant to ensure fair warning that a particular activity may subject a person to liability for lawsuits in a certain forum, so that individuals and corporations alike can structure their conduct in a way that allows them to predict or reasonably anticipate the possibility of being sued. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 (1985). Where a person “purposefully direct[s]” his actions at the residents of a particular forum, the person should have an expectation that he may be subject to litigation in that forum on account of those activities. *Id.* If a defendant should have foreseen that his actions would subject him to jurisdiction, such as where a defendant purposefully avails himself of the benefits and protections of a forum’s laws by conducting business there, the defendant cannot and should not be able to evade the jurisdiction of the forum’s courts. *Id.* at 474-75 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)).

Courts consider general and specific jurisdiction in the context of analyzing whether the minimum contacts standard has been met. Courts, as well as legal scholars, have focused most of their attention on specific jurisdiction.

In 1980, the United States Supreme Court first recognized the stream-of-commerce theory as one way a forum State might have sufficient minimum contacts for purposes of establishing specific jurisdiction over a manufacturing defendant. *World-Wide Volkswagen Corp.*, 444 U.S. 286 (1980). In the case, the Supreme Court concluded:

[I]f the sale of a product by a manufacturer or a distributor . . . is not simply an isolated occurrence, but arises from the efforts of a manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or others.

Id., 444 U.S. at 297.²

Under the stream-of-commerce theory, the forum State has personal jurisdiction over a nonresident defendant that “delivers products into the stream-of-commerce with the expectation that they will be purchased by consumers in the forum State.” *Id.*, 444 U.S. at 297-98. As the Supreme Court aptly stated in an opinion in 2011: “Typically, in such cases, a nonresident defendant, acting *outside* the forum, places in the stream-of-commerce a product that ultimately causes harm *inside* the forum.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2855 (2011) (emphasis in opinion).

The Court in *World-Wide Volkswagen* found that an Oklahoma state court did not have personal jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products liability case. The defendants’ only connection with the state was the fact that an automobile sold in New York to New York residents was involved in an accident in Oklahoma.

The second prong is the requirement that the exercise of jurisdiction comport with notions of “fair play and substantial justice”. Essentially, this means that courts are required to consider whether, given the totality of the circumstances, it is reasonable and just to exercise jurisdiction over a particular defendant in a particular case. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 807 (1985); *Burger King*, 471 U.S. at 476-77; *Calder v. Jones*, 465 U.S. 783, 788 (1984). Courts take the following factors into account: “the burden on the defendant,” “the forum State’s interest in adjudicating the dispute,” “the plaintiff’s interest in obtaining convenient and effective relief,” “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 substantive social policies.” *Burger King*, 471 U.S. at 477 (citing *World-Wide Volkswagen*) (internal quotations omitted). In all instances, however, courts must recall that the “relationship among the defendant, the forum, and the litigation” remains the foundation of personal jurisdiction inquiry. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

F. Personal Jurisdiction Over Foreign Manufacturers - The Asahi Case And Stream-Of-Commerce

In 1987, the United States Supreme Court, in the case of *Asahi Metal Industry Co, Ltd. v. Superior Court of California*, 480 U.S. 102 (1987), attempted to provide guidance on the outer-limits of specific jurisdiction. The case involved the sale of a product by Asahi, a Japanese corporation that manufactured tire valve assemblies, which in turn were used as a component

² In the *Russell* opinion, the Illinois Supreme Court noted that it first recognized the stream-of-commerce theory prior to *World-Wide Volkswagen* in the 1961 case of *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432 (1961).

part of motorcycle tire tubes. *Id.* at 106-07. Although Asahi did not conduct any business in the United States, it did sell its tire valves to a tube manufacturer known as Cheng Shin, which was based in China. *Id.* Approximately 20% of the tubes that Cheng Shin manufactured were sold in the United States, including California. *Id.* Although Asahi was aware that some of the tire valves it sold to Cheng Shin would end up in California, all sales took place in China. *Id.*

Asahi was sued in California state court (along with Cheng Shin and others) by the driver of a Honda motorcycle that had crashed into a tractor. *Id.* at 106-07. The driver of the motorcycle alleged that the accident was caused by the sudden loss of air in the rear motorcycle tire, and that the tire, tube, and sealant were defective. *Id.* The motorcycle had been fitted with a Cheng Shin tube that contained one of Asahi's tire valves. *Id.* Asahi moved for the dismissal of any claims against it on the grounds that the California court lacked personal jurisdiction. *Id.*

On appeal, the Supreme Court unanimously held that jurisdiction was lacking. *Id.* at 108-16. The Court found that, under the circumstances, it would be unreasonable and unfair to subject Asahi to the jurisdiction in California – i.e., it did not comport with notions of fair play and substantial justice to impose jurisdiction on Asahi. *Id.* at 113-14.

The Supreme Court was split, however, as to whether Asahi's knowledge, and indeed expectation, that the valves would eventually end up in California might have been sufficient to impose jurisdiction under different circumstances. *Id.* at 108-11.

A plurality of the Supreme Court (4 of the 9 Justices), agreed that mere knowledge, expectation, or foreseeability was not sufficient to serve as a basis for jurisdiction. *Id.* at 112-14. Justice O'Connor, joined by three others, explained that since due process requires that the defendant take action that is purposefully directed toward the forum State, "something more" than merely placing the product in the "stream of commerce" was required. *Id.* at 112. The action directed at the forum need not be great; "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 through a distributor who has agreed to serve as the sales agent for the forum State" would all suffice to demonstrate the requisite intent to avail oneself of the benefits and privileges of doing business in the forum. *Id.* But mere awareness that the product would travel through the stream-of-commerce and end up in the forum State was insufficient. *See id.* This later became known as the narrow stream-of-commerce theory or the stream-of-commerce "plus" standard.

Justice Brennan, joined by others, disagreed. They concluded that knowledge that a product would flow through the stream-of-commerce to a particular forum was sufficient to impose jurisdiction under certain circumstances (although not the circumstances of the *Asahi* case). *Id.* at 116-122. This later became known as the broad steam of commerce theory. These Justices rejected the narrow stream-of-commerce test for ascertaining personal jurisdiction since, in their view, if a manufacturer is aware that its products are flowing to a particular forum, the manufacturer cannot claim to be unfairly surprised by the prospect of a lawsuit in that forum. *Id.*

G. Post-*Asahi* Personal Jurisdiction: The *McIntyre* Case

For more than 20 years after *Asahi*, courts debated whether knowledge that a product would flow through the stream-of-commerce to a certain forum was sufficient to confer jurisdiction, or if knowledge plus some additional factor was required, i.e. a broad or narrow stream-of-commerce standard.

In 2011, the Supreme Court revisited *Asahi* in the case of *McIntyre v. Nicastro*. 131 S. Ct. 2780 (2011). *McIntyre* involved an injury occurring in New Jersey that was allegedly caused by a defect in a metal-shearing machine manufactured in England by a corporation named McIntyre. McIntyre contracted with an independent U.S. distributor to sell its metal-shearing machines in the United States. McIntyre anticipated and even assisted with the marketing of its machines to United States buyers. However, it did not advertise in, send goods to or target buyers in New Jersey, and, at most, no more than 4 of its machines ended up in New Jersey. The New Jersey Supreme Court found that there was jurisdiction, focusing on the stream-of-commerce theory.

Six of the Justices of the United States Supreme Court found that New Jersey could not, in fact, exercise jurisdiction over the defendant. However, they did not all agree on the rationale for decision.

Justice Kennedy wrote the opinion of the Court, joined by Justice Scalia and Justice Thomas. Justice Kennedy acknowledged that the rules and standards “have been unclear because of decades-old questions left open in *Asahi* and that this case “presents an opportunity to provide greater clarity.” *Id.* at 2785-2786. The Court, however, did not provide clarity. Like *Asahi*, *McIntyre* failed to achieve a majority, and thus demonstrates the difficulty not only of creating tests for determining whether a forum may exercise jurisdiction over a defendant, but also in applying those tests.

In his opinion, Justice Kennedy signaled a refocusing of the scope of the jurisdictional inquiry. *Id.* at 2787-88. Instead of analyzing the stream-of-commerce theory, Justice Kennedy emphasized general principles of due process. Due process protects the right of a person or entity to be subject only to lawful power. *Id.* at 2789. The general rule, and the primary focus, must be on whether the defendant purposefully availed itself of the privilege of conducting activities within a forum, thereby invoking the benefits and protections of its laws. *Id.* This general rule is applicable in products liability cases and the stream-of-commerce doctrine cannot “displace” it. *Id.* at 2785.

Under the circumstances, these Justices found that McIntyre did nothing to purposefully avail itself of the benefits and protections of the laws of New Jersey, and accordingly was not subject to personal jurisdiction there. *Id.* at 2790-91. In particular, they rejected the New Jersey Supreme Court’s opinion that jurisdiction was proper because the company knew or reasonably should have known that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states. As these Justices articulated, a defendant’s “transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum.” *Id.* at 2788.

Justice Kennedy did discuss the broad stream-of-commerce standard adopted by Justice Brennan in *Ashai*, indicating that the standard is “inconsistent with the premises of lawful judicial power.” *Id.* at 2789. He also mentioned the narrow stream of commerce theory adopted by Justice O’Connor in *Ashai*, noting that this approach commanded the assent of four Justices, not a majority of the Court. *Id.* at 2788.

Justice Breyer concurred in the judgment and wrote a concurring opinion. Justice Alito joined. Justice Breyer stated that the facts do not provide contacts between the defendant and New Jersey constitutionally sufficient to support jurisdiction. He wrote that the outcome of the case was determined by the Court’s precedents. He highlighted that based on these precedents, a single sale of a product in a state does not constitute an adequate basis for jurisdiction, even if the defendant places his goods in the stream-of-commerce fully aware that such a sale will take place. Justice Breyer also cited to Justice O’Connor’s narrow stream-of-commerce view in *Asahi*, and commented that there is no “something more” in this case.

Justice Ginsburg issued a dissenting opinion, which was joined by Justice Sotomayor and Justice Kagan. Justice Ginsburg’s view was that New Jersey did have jurisdiction over the defendant. Endorsing a very broad stream-of-commerce standard, her opinion was that since the defendant, through a U.S. distributor, promoted and sold its machines in the United States, it purposely availed itself of the U.S. market nationwide, and, therefore, in all States where its distributor sold the defendant’s products.³

III. Russell v. SNFA

A. Overview

Starting with *International Shoe* in 1945, the Illinois Supreme Court had several key U.S. Supreme Court decisions by which to examine the facts of *Russell* and reach a decision. The Illinois Supreme Court ultimately held that Illinois did not have general jurisdiction, but did have specific jurisdiction over SNFA based on a stream-of-commerce theory analysis.

B. The Facts

Mr. Russell’s fatal helicopter accident occurred in Illinois in 2003. He was the pilot and sole occupant of an Agusta 109C helicopter. Although a resident of Georgia, he was working at the time for Air Angels, Inc., an Illinois air ambulance service.

The helicopter was manufactured by Agusta S.p.A. in Italy in 1989. It contained seven tail-rotor bearings custom made by SNFA for that model.

³ Essentially contemporaneously with *McIntyre*, the United States Supreme Court issued an opinion in a case that considered whether foreign subsidiaries of a United States parent corporation are amenable to suit in state court on claims unrelated to any activity of the subsidiary in the forum State. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011). In that case, which involved claims for wrongful death arising from a bus accident in Paris, France, the Court determined that where the foreign subsidiary of a U.S. corporation has essentially no contacts with the United States, the subsidiary is not subject to general jurisdiction in the U.S. regardless of the parent’s continuous and systematic contacts with the United States.

The helicopter had several owners and operators between 1989 and 1998. In 1998, a German company sold the helicopter to Metro Aviation in Louisiana. In 1998 and 2002, Metro Aviation replaced some of the tail-rotor bearings by purchasing them from Agusta Aerospace Corporation (“AAC”), a subsidiary of Agusta located in Pennsylvania. The bearings had been manufactured by SNFA in France.

Metro Aviation sold the helicopter to Air Angels, Inc. in 2002.

Mr. Russell’s estate sued Metro Aviation, Agusta, the subsidiary of Agusta that sold the replacement bearings and SNFA. Agusta and AAC did not challenge personal jurisdiction. Metro Aviation moved to dismiss for lack of personal jurisdiction, but the motion was denied.

In response to SNFA’s motion to dismiss, plaintiff obtained discovery regarding SNFA’s sales, marketing and distribution activities.

SNFA makes custom-made bearings for the aerospace industry. In particular, it makes bearings for auxiliary power units used in airplanes and for fixed-wing aircraft engines. SNFA also makes bearings for helicopters. SNFA has customers in Europe and the United States, but has no offices, assets, or employees in Illinois and is not licensed to do business in Illinois.

Agusta is based in Italy. AAC is located in Pennsylvania and distributes helicopters and component parts internationally and in the United States. AAC sold approximately 2,198 SNFA-produced parts between 2000 and March 2007. During the most recent 10 year period, five Agusta helicopters were sold to customers located in Illinois.

SNFA sold custom-made helicopter tail-bearings to Agusta. SNFA was aware that Agusta used its bearings in helicopters sold by Agusta. SNFA denied specific knowledge of the destination of its custom-made helicopter tail-rotor bearings.

SNFA also manufactures and sells bearings for airplanes and fixed-wing aircraft to customers throughout Europe and to three customers in the United States, including Hamilton Sundstrand, an aerospace manufacturer in California. SNFA had a business relationship with Hamilton Sundstrand in Rockford, Illinois, since 1997. SNFA sold Hamilton Sundstrand aerospace bearings, but not the same model or type of bearings in the helicopter which crashed.

According to Mr. Ponchon, an SNFA employee responsible for selling product in the United States and elsewhere, Hamilton Sundstrand had multiple locations in the United States, including in Rockford, Illinois and San Diego, California. Mr. Ponchon personally attended at least three meetings with Hamilton Sundstrand in Rockford about SNFA’s products, and he attempted to sell a certain type of bearing to the Rockford location. However, he was unable to complete the sale.

SNFA did, in fact, sell aerospace bearings to Hamilton Sundstrand who, in turn, incorporated them into Hamilton Sundstrand’s products, including auxiliary power units. The bearings which were sold were shipped to San Diego. The Rockford location only processed payments. During a four-year period, SNFA sold products totaling approximately \$1 million to Hamilton Sundstrand in a number of shipments. The invoices listed Hamilton Sundstrand’s business address as Rockford, Illinois, and the delivery address as San Diego, California.

A purchasing agreement between SNFA and Hamilton Sundstrand lists Rockford, Illinois as the buying and buyer agent location. Further, a proprietary sharing agreement between SNFA and Hamilton Sundstrand identifies Hamilton Sundstrand's place of business as Rockford, Illinois and that the agreement will be governed by Illinois law.

Mr. Ponchon stated that he knew Agusta sold helicopters that contained SNFA's bearings in the United States, but denied knowing whether any Agusta helicopters were sold in Illinois.

C. The Opinion

The Court stated that the issue before it was whether SNFA's connection or contact with Illinois is sufficient to satisfy federal and Illinois due process. In particular, the Court had to determine whether SNFA had sufficient minimum contacts with Illinois and whether subjecting it to litigation in Illinois was reasonable under traditional notions of fair play and justice. 987 N.E.2d at 786.

As to the issue of whether Illinois had general jurisdiction over SNFA, the Court properly concluded it did not. *Id.* at 786. The Court noted that the standard for finding general jurisdiction "is very high" and requires a showing that the defendant carried on systemic business activity in Illinois with a fair measure of permanence and continuity. *Id.* Essentially, it means the foreign corporation has taken up residence in Illinois. The Court noted that SNFA was a French corporation and sells its products internationally, but has no offices, assets, property or employees in Illinois. It is also not licensed to do business in Illinois. *Id.* at 787.

The Court then went into a lengthy discussion and analysis of specific jurisdiction and the stream-of-commerce theory.

In general, the Court, citing *Burger King*, stated that "specific jurisdiction requires a showing that the defendant purposefully directed its activities at the forum state and the cause of action arose out of or relates to the defendant's contacts with the forum state." *Id.* The Court went on to elaborate that one way to satisfy the requirements for specific jurisdiction is under the "stream of commerce" theory. *Id.* at 787-788.

The Illinois Supreme Court then analyzed, in some detail, the stream-of-commerce cases noted in Section II above.⁴ *Id.* at 788-798. The Court, in particular, focused on *McIntyre*, as it was the most recent U.S. Supreme Court case on the stream-of-commerce theory. After analyzing the opinions, the Illinois Supreme Court stated that three points can be derived from the three opinions issued in *McIntyre*.

First, the U.S. Supreme Court endorsed the continued validity of the stream-of-commerce theory, though the proper application of the theory is not settled. *Id.* at 793.

⁴ The Illinois Supreme Court also discussed its own stream-of-commerce opinion it rendered in 1988, *Wiles v. Morita Iron Works Co.*, 125 Ill. 2d 144 (1988).

Second, specific jurisdiction should not be exercised based on a single sale in a forum, even if the manufacturer knows or reasonably should know that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states. *Id.*

Third, a minority of the U.S. Supreme Court believes a broader stream-of-commerce theory should be applied. However, the Illinois Supreme Court refused to adopt either the broad or narrow version of the stream-of-commerce theory without more definitive guidance from the United States Supreme Court. *Id.* at 793-794.

The Illinois Supreme Court then discussed the application of the law to the facts of the case, finding that Illinois had specific personal jurisdiction over SNFA.

The Court found that Agusta and its American subsidiary, ACC, “effectively operated as an American distributor for defendant’s tail-rotor bearings in the United States market.” *Id.* at 794. The Court explained that SNFA custom made the bearings at issue specifically for Agusta. Agusta, in turn, incorporated them into helicopters and sold those internationally, including in the U.S. through ACC. *Id.* The Court emphasized that the sole market for SNFA’s bearings of this type was Agusta and the only way they would ever reach the final consumer in the U.S. and Illinois was through Agusta and ACC. *Id.* The Court added that SNFA’s product actually reached Illinois through this distribution network. *Id.* The Court further added that in the past 10 years, five Agusta helicopters were sold in Illinois and that, during a seven year period, ACC sold approximately 2,198 parts manufactured by SNFA to entities located in Illinois. *Id.* at 795.

The Court also highlighted that in 1982 a federal court in Pennsylvania, presented with almost identical facts, held that the forum State had personal jurisdiction over SNFA, emphasizing that Agusta and ACC acted as SNFA’s distributors in the United States. *Id.* *Rockwell International Corp. v. Costruzioni Aeronautiche Giovanni Agusta*, 553 F. Supp. 328 (E.D. Pa. 1982).

SNFA argued that *Rockwell* was no longer valid after *McIntyre* because that opinion endorsed a narrow stream-of-commerce theory and requires some state specific activity on the part of the foreign defendant. Further, SNFA contended that the defendant has to be aware that the product was sold or marketed in Illinois.

The Illinois Supreme Court responded that, in this case, they are not dealing with a single or isolated sale of products in Illinois. *Id.* at 795-796. Further, even if the narrow stream-of-commerce theory were applicable, the evidence showed that SNFA engaged in Illinois specific activity sufficient to establish minimum contacts even under the more demanding standard. *Id.*

The Court highlighted SNFA’s business relationship with Hamilton Sundstrand in Rockford, Illinois. *Id.* at 796. The Court, in particular, noted that there were hundreds of invoices listing Rockford as the purchasing location representing multiple shipments of SNFA’s products that totaled approximately \$1 million. *Id.* The Court also noted that Mr. Ponchon, who sold SNFA’s products in the U.S., made three visits to the Rockford location. *Id.* On one of the trips, he intended to discuss a further product line for the Rockford location, although the attempt

was unsuccessful. The Court held that these constituted the additional “purposefully directed conduct” or “something more” required under the narrow stream-of-commerce theory. *Id.*

SNFA responded that the connection with Hamilton Sundstrand in Rockford was not relevant because the location just processed payments, the products were shipped to California and the bearings were for airplane auxiliary power units. *Id.* Further, the bearings were a completely different product line from the helicopter tail-rotor bearings. *Id.* SNFA contended the relationship with the company in Rockford cannot establish minimum contacts with Illinois because the plaintiff’s claim did not arise out of or relate to that relationship. *Id.*

The Illinois Court disagreed. *Id.* at 797. The Court stated that several courts have held that the standard for “arising out of” or “related to” is lenient and flexible. The Court held the standard has been met. The Court stated that SNFA was in the business of manufacturing custom-made bearings for the aerospace industry. SNFA’s proposed distinction between subcategories of its primary product is too restrictive and narrow.

The Court, having determined that SNFA had the requisite minimum contacts with Illinois for purposes of specific personal jurisdiction, turned to the next inquiry: the reasonableness of requiring SNFA to litigate in Illinois. The Court listed and considered the four factors set forth in *Asahi* for deciding reasonableness. *Id.* at 797-798. The Court focused on the fact that Illinois had a substantial interest in the dispute, as the crash was in Illinois, and the individual was living and working in Illinois for an Illinois company. The Court then weighed these facts against the burden on SNFA of litigating in Illinois. The Court held that although they gave the burden on SNFA substantial weight, the exercise of jurisdiction in Illinois is reasonable. The Court focused on the fact that they were not dealing with a single isolated sale by a foreign defendant. Instead, multiple sales of SNFA’s products were made in Illinois over the past 10 years, including business between SNFA and the Rockford location of Hamilton Sundstrand.

D. The Dissenting Opinion

Justice Garman issued a dissenting opinion. *Id.* at 799.

First, he concluded that the evidence did not show that by doing business with Agusta, SNFA delivered goods into the stream-of-commerce with the expectation that they would be purchased by Illinois users. He highlighted that there was no evidence that SNFA was aware, in any way, that the final product, the helicopter, was being marketed and sold in Illinois.

Second, he concluded that SNFA’s relationship with Hamilton Sundstrand did not establish that SNFA purposefully availed itself of the privilege of doing business in Illinois. He initially noted that the ball bearings in question involving Hamilton Sundstrand were for use in airplanes and fixed-wing aircraft; they were not helicopter bearings. Further, he concluded that none of the contacts between SNFA and Hamilton Sundstrand satisfy the “something more” required under the narrow stream-of-commerce theory.

IV. Analysis And Ramifications

The Illinois Supreme Court's opinion in *Russell* may be of interest to the United States Supreme Court. Counsel for SNFA has stated to this author that SNFA plans to ask the Court to review the case. If the United States Supreme Court agrees to hear the case, it would give it an opportunity to finally provide some clarity as to the stream-of-commerce theory and, in particular, whether the majority adopts a broad or narrow approach.

If the majority of the Justices adopt a narrow stream-of-commerce theory, then, under the facts of *Russell*, this author agrees with the dissenting opinion of Justice Garman. The "something more" required is not present and personal jurisdiction is lacking.

Further, the Court's opinion in *Russell* that Illinois has specific jurisdiction over SNFA is unsound for another reason. For specific jurisdiction to apply, the claim has to arise out of or relate to the defendant's contacts with the forum State. In *Russell*, the claim related to bearings that were incorporated into helicopters. By contrast, SNFA's contacts with Illinois related to bearings that were used for airplanes and shipped to San Diego. The claim in *Russell* did not arise out of or relate to SNFA's contacts with Illinois. The Court in *Russell* made a comment that the standard for determining whether a claim arises out of or relates to the contacts is lenient and flexible. However, the Court's analysis was superficial and incomplete. If the United States Supreme Court hears the case, perhaps it will provide an opportunity to elaborate on the arising out of or related to standard.