

アサヒ・メタル事件判決の意義

平成 18 年 7 月 14 日

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Case I [Carol Clune, et al. v. Alimak AB et al., (8th Cir. Dec. 1, 2000)]

In its most recent discourse on the stream of commerce theory, the Court in *Asahi* debated whether a foreign manufacturer that places a product in the stream of commerce purposefully avails itself of the privilege of conducting business in a state where the product ultimately is found. Although a majority of the *Asahi* Court agreed with Justice O' Connor that jurisdiction was not proper in that case, five Justices refused to adopt her articulation of a stream of commerce "plus" theory. In short, Asahi stands for no more than that it is unreasonable to adjudicate third-party litigation between two foreign companies in this country absent consent by the nonresident defendant.

Case II [Kern v. Kurz-Hastings, Inc. (2nd Cir. Apr. 15, 1999)]

In *Asahi Metal Industry Co. v. Superior Court* , 480 U.S. 102 (1987), personal jurisdiction was not upheld after a plurality of the Court held that to satisfy the minimum contacts prong of the due process inquiry, a manufacturer must do more than merely place a product into the "stream of commerce." Instead, the plurality stated, a "finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State.*" (citing *Burger King* , 471 U.S. at 476).

The concurring members of the Court joined the plurality's decision in *Asahi* only to the extent that it held that allowing jurisdiction on the facts of that case would not "comport with fair play and substantial justice," (Brennan, J., concurring in part and concurring in the judgment) (quoting *International Shoe* , 326 U.S. at 320), and would be "unreasonable and unfair," (Stevens, J., concurring in part and concurring in the judgment), thus making the "minimum contacts" inquiry unnecessary to a finding that the exercise of jurisdiction was unconstitutional. Justice Brennan's concurring opinion, joined by three members of the Court, would have established a "stream of commerce" standard in products liability cases that allowed jurisdiction over any manufacturer which places its product in the "stream of commerce" and is aware that its product may be sold in the forum state. We need not adopt either view of the "stream of commerce" standard, however; even assuming *arguendo* that we were to adopt the *Asahi* plurality's more restrictive view, we would still conclude for the reasons already stated that the "exclusive sales rights" agreement constitutes the type of purposeful action sufficient to support a finding of minimum contacts.