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PRODUCT LIABILITY

ALERT

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NINTH CIRCUIT LIMITS PERSONAL JURISDICTION OVER FOREIGN PARENT CORPORATION AND REQUIRES PRODUCT DEFECT TO RESULT IN SAFETY HAZARD

By Lilian M. Loh

Last week in *Williams v. Yamaha* (No. 15-55924),[1] the Ninth Circuit Court of Appeals affirmed the district court's two separate rulings in favor of defendants: dismissal of Japanese corporation, Yamaha Motor Co., Ltd. ("YMC"), for lack of personal jurisdiction and dismissal of plaintiffs' consumer fraud claims against Yamaha Motor Corporation, U.S.A. ("YMUS") under FRCP 12(b)(6).

The Ninth Circuit found that no general or specific jurisdiction could be extended to YMC and that appellants had failed to adequately plead against YMUS that the alleged defect produced an unreasonable safety hazard.

Procedural History

In July 2013, plaintiff/appellant George Williams filed suit against defendants/appellees Japanese parent YMC and its U.S. subsidiary YMUS, alleging violations of federal and state warranty law and other claims. The suit was consolidated with two similar actions. Appellants purchased outboard boat motors that YMC designed and manufactured in Japan and that YMUS imported and marketed in California. Appellants alleged that the motors contained a design defect that caused premature corrosion in the motors' dry exhaust system, that appellees knew of the defect prior to the sales, and that the defect posed an unreasonable safety hazard.

On August 19, 2014, the district court dismissed Japan-based YMC for lack of personal jurisdiction. In a separate ruling, the district court dismissed plaintiffs' claims for breach of warranty and unjust enrichment against YMUS. On April 29, 2015, the district court granted YMUS's fifth motion to dismiss, ruling that appellants failed to prove that YMUS had presale knowledge of the alleged defect and dismissed the remaining claims that YMUS violated California consumer protection laws.

Appellants appealed both rulings.

No General Jurisdiction Over YMC

The Ninth Circuit found that YMC did not have sufficient contacts with California for general jurisdiction to be established. Appellants failed to submit evidence to support that YMC was "at

[1] *Williams v. Yamaha Motor Co.*, No. 15-55924, 2017 WL 1101095, at *1 (9th Cir. Mar. 24, 2017).

home" in California.[2] Although California was important to YMC, YMC has 109 subsidiaries in 26 different countries and YMC's net sales in North America (including all 50 states and Canada) accounted for only approximately 17% of YMC's total net sales.

Appellants also failed to establish that YMC and YMUS were "alter egos." The Ninth Circuit recognized that although *Daimler*[3] invalidated the "agency" test, it left the alternative "alter ego" test for imputed general jurisdiction.[4] To establish that a parent is an alter ego of a subsidiary, plaintiff must show: (1) there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) failure to disregard their separate identities would result in fraud or injustice.[5] Appellants made almost no factual allegations about YMUS and YMC's parent-subsidiary relationship, and even if the Court assumed that YMUS's contacts could be imputed to YMC, it was insufficient to establish general jurisdiction under *Daimler*.

No Specific Jurisdiction Over YMC

The Ninth Circuit also felt that appellants did not allege that YMC purposefully directed any actions at California.[6] The Court found that the facts here were similar to those in *Asahi*,[7] where defendant knew its products would be sold and used in California and benefited economically from such sales, but exertion of personal jurisdiction over the defendant was found unreasonable.[8] Appellees submitted unrebutted evidence that YMC did not conduct any activities within California or target California with marketing or advertising. The only connection appellants identified between YMC and California was through YMUS; therefore the Court looked to whether YMUS's connections could be attributed to YMC under the agency theory.

Although the Court recognized that *Daimler* left open whether an agency relationship would justify specific jurisdiction,[9] it determined that such an analysis was doubtful. As appellants neither alleged nor showed that YMC had the right to substantially control YMUS's activities, the Court did not conduct such an analysis.

No *Prima Facie* Case Against YMUS

Appellants' claims under California consumer fraud statutes require an affirmative misrepresentation or an omission of material fact. Appellants did not allege any affirmative misrepresentations, just that

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[2] Courts have general jurisdiction over a foreign corporation only if the corporation's "continuous and systematic" connections to the forum state render it "at home." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

[3] *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014).

[4] The "alter ego" test is used to extend personal jurisdiction to a foreign parent when "the foreign entity is not really separate from its domestic affiliate." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015).

[5] *Id.*

[6] California courts will exercise specific jurisdiction over a non-resident defendant only when: (1) the defendant purposefully directs its activities or purposefully avails itself of the benefits afforded by the forum's laws; (2) the claim arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction comports with fair play and is reasonable. *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002).

[7] *Asahi Metal Indus. Co. v. Super. Ct. of Solano Cty.*, 107 S. Ct. 1026 (1987).

[8] *Id.* at 1033.

[9] *Daimler*, 134 S. Ct. at 759 n.13.

YMUS failed to notify consumers of the alleged dry exhaust defect. To state a claim for failing to disclose a defect, a party must allege (1) a design defect exists; (2) an unreasonable safety hazard exists; (3) a causal connection between the alleged defect and the alleged safety hazard; and (4) the manufacturer had presale knowledge of the defect.[10]

The district court had found that appellants' use of consumer complaints about corrosion did not support a finding of presale knowledge and relied upon multiple cases to illustrate that customer complaints as a basis for establishing a party's presale knowledge was disfavored. In contrast, the Ninth Circuit found such cases distinguishable because appellants provided sufficient detail as to the timing of the complaints, how they were lodged, how YMUS responded, and YMUS's internal complaint tracking system.

The Ninth Circuit still affirmed the dismissal because appellants failed to plausibly plead that the alleged defect constituted an unreasonable safety hazard. Appellants proffered two unreasonable hazards resulting from the alleged dry exhaust defect: (1) the potential for fires and (2) the risk of injury due to loss of steering power. However, appellants' own characterization of the defect doomed their claims. According to appellants, the defect merely accelerated the normal and expected process of corrosion. If the Court were to conclude that premature (but otherwise normal) wear and tear would establish an unreasonable safety hazard, it would open the door to claims that all of Yamaha's outboard motors eventually pose an unreasonable safety hazard. Furthermore, the hazard was speculative: no customer or plaintiff experienced a fire. Finally, the alleged defect concerned the premature, but post-warranty, onset of a natural condition, raising concerns about using consumer fraud statutes to impermissibly extend a product's warranty period.

The Ninth Circuit continues to follow *Daimler*'s limitations on personal jurisdiction by refusing to extend jurisdiction over a foreign corporation without significant forum state contacts or control over its U.S. subsidiary. Dismissal is also appropriate under FRCP 12(b)(6) where plaintiffs fail to plead sufficient facts to support their failure to disclose defect case. ◆

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[10] *Apodaca v. Whirlpool Corp.*, No. 13-00725 JVS (ANx), 2013 WL 6477821, at *9 (C.D. Cal. Nov. 8, 2013).