

Herman v. Am. Honda Motor

Superior Court of Connecticut, Judicial District of Bridgeport At Bridgeport

October 18, 2024, Decided

FBT CV236124687

Reporter

2024 Conn. Super. LEXIS 2145 *

HERMAN v. AMERICAN HONDA MOTOR

Notice: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Core Terms

products, manufacturing, stream of commerce, personal jurisdiction, quotation, marks, forum state, asbestos-containing, contacts, purposefully, motion to dismiss, allegations, talc, customers, general jurisdiction, foreseeability, distributor, asbestos, cosmetic, availed, due process, resident, minimum contact, exposed, privilege of conducting activities, principal place of business, deposition transcript, deliberately, advertising, plurality

Judges: [*1] BELLIS, J.

Opinion by: BELLIS

Opinion

MEMORANDUM OF DECISION: MOTION TO DISMISS # 214

On May 7, 2024, the plaintiff, Jacob Russell Herman Sr., the surviving spouse and executor of the estate of Elaine Adelia Hickey Herman (the decedent),¹ filed the operative complaint in this action against numerous defendants, both in his personal capacity and as the executor of the decedent's estate.² In the complaint, the

¹ The decedent, Elaine Herman, was a party to this action at the time the original complaint was filed on June 8, 2023.

² The operative complaint is the plaintiff's third amended

plaintiff alleges the following relevant facts. The decedent was exposed to asbestos and/or asbestos-containing talcum products at various times in her life, from approximately the 1960s, through her personal use of asbestos-containing talcum products on herself and her children. She was further exposed to asbestos and/or asbestos-containing products from approximately the late 1950s to the late 1970s, through her contact with her father, an automobile mechanic, and from approximately the late 1970s to the early 2000s through her contact with the plaintiff, an automobile mechanic, from asbestos dust on their bodies and work clothes, in their vehicles, and from the dust being distributed and re-entrained in the family home. During these periods, the decedent was exposed to and did inhale/ingest asbestos [*2] dust, fibers, and particles, all of which originated from the asbestos-containing products that the defendants placed into the stream of commerce. Such exposure in Connecticut contributed in part or totally to the decedent's contraction of asbestos-related mesothelioma and other asbestos-related pathologies.

The plaintiff is a resident of Connecticut. The defendants are corporations, companies, or other business entities which, during all times material, and for a long time prior thereto, have been and/or are now engaged directly or indirectly, in the manufacturing, producing, selling, merchandising, supplying, distributing, and/or otherwise placing in the stream of commerce, asbestos-containing products. Courts of the state of Connecticut allegedly have personal jurisdiction over all of the defendants. The plaintiff alleges that his claims against the defendants arise out of the defendants' purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this state, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within [*3] Connecticut.

complaint, hereinafter referred to as "the complaint."

According to the plaintiff's allegations, this court has personal jurisdiction over the defendants because the plaintiff's claims arise from the defendants' conduct in: (a) transacting business in this state, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products within this state; (b) contracting to supply services or things in the state; (c) commission of a tortious act in whole or in part in this state; (d) having an interest in, using, or possessing real property in this state; (e) entering into a contract to be performed in whole or in part by either party in this state; and/or (f) exposing the decedent to asbestos dust, fibers and/or particles generated from the ordinary and foreseeable use of the asbestos-containing products it sold, supplied, distributed, incorporated, and/or otherwise placed in the stream of commerce in Connecticut. This court has general consent jurisdiction over the defendants based on the Connecticut business registration statute. Furthermore, this court has specific jurisdiction over every defendant that has obtained a certificate of authority to transact business in Connecticut and has thereby agreed [*4] that it is amenable to suit in this state.

The defendant, Intercos America, Inc. (Intercos), is a Delaware corporation with its principal place of business in New York. At all relevant times, Intercos was authorized to do business in the state of Connecticut and was engaged in the business of designing, manufacturing, processing, importing, converting, compounding, supplying, installing, replacing, repairing, using, and/or retailing substantial amounts of asbestos, asbestos-containing products, and/or asbestos-containing talc to each named Cosmetic Talc Defendant.³ Intercos does substantial business in the state of Connecticut, including the sale and distribution of its dangerous and/or defective products and services in Connecticut. The exposures to Intercos' products, actions, inactions, and/or other activities, which caused or contributed to cause the decedent's disease and injury, occurred in Connecticut, and arose out of the business that Intercos conducted in Connecticut. The plaintiff's claims against Intercos sound in product liability in count one; negligence and recklessness in count two; loss of consortium in count four; and

³The complaint refers to those defendants that it alleges manufactured, sold, and/or distributed asbestos-containing cosmetic talcum powder products and talc make-up products and/or raw asbestos materials, raw asbestos talc used in said cosmetic talcum, powder products and talc make-up products for use in Connecticut, and other states, at times relevant to this action, as "Cosmetic Talc Defendants."

fraudulent misrepresentation and conspiracy/concert [*5] action in count five.

On January 16, 2024, Intercos filed a renewed motion to dismiss based on lack of personal jurisdiction. The motion was accompanied by a memorandum of law and a signed and sworn affidavit by Morena Maurizia Genziana (Genziana), President of Intercos, dated August, 10, 2023. On February 14, 2024, the plaintiff filed a memorandum of law in opposition to Intercos' motion to dismiss along with the following exhibits: the plaintiff's first amended complaint, dated October 30, 2023 with exhibits ; a copy of Lisa Gildea's (Gildea), corporate representative of Mary Kay, Inc., November 14, 2022 deposition transcript; copy of Gildea's November 15, 2022 deposition transcript; and the plaintiff's second supplemental requests for production of documents to Intercos, dated December 26, 2023.

Intercos filed a reply memorandum of law on February 28, 2024. On June 7, 2024, the plaintiff filed a supplemental response in opposition to the motion to dismiss with along with a copy of Genziana's May 9, 2024 deposition transcript and a list of Intercos' vendors with addresses in Connecticut. On June 21, 2024, Intercos filed a supplemental brief in support of its motion to dismiss along [*6] with a copy of Genziana's signed and sworn affidavit, dated August 10, 2023; a copy of a signed and sworn affidavit by Genziana, dated June 21, 2024; a copy of an Ohio trial court order granting Intercos' motion to dismiss in *Smith v. Avon Products, Inc.*, Case No. CV-23-985434; and a copy of the decedent's February 24, 2023 deposition transcript in the California case of *Herman v. 3M Company*, Case No. 22STCV32540. Oral argument on the motion took place on August 5, 2024.

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) [MacDermid, Inc. v. Leonetti, 310 Conn. 616, 626, 79 A.3d 60 \(2013\)](#). "A motion to dismiss shall be used to assert . . . lack of jurisdiction over the person . . ." *Practice Book* § 10-30 (a). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) [Hinde v. Specialized Education of Connecticut, Inc., 147 Conn. App. 730, 740-41, 84 A.3d 895 \(2014\)](#). "Because a lack of personal jurisdiction may be waived by the defendant, the rules of practice require the defendant to challenge that jurisdiction by a motion to dismiss." (Internal

quotation marks omitted.) [Golodner v. Women's Center of Southeastern Connecticut, Inc., 281 Conn. 819, 825, 917 A.2d 959 \(2007\)](#).

"In deciding a jurisdictional [*7] question raised by a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . In most instances, the motion must be decided on the complaint alone. However, when the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss . . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. . . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. . . . If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings. . . . If, however, the defendant submits either no proof to rebut the plaintiff's jurisdictional allegations . . . or only evidence [*8] that fails to call those allegations into question . . . the plaintiff need not supply counteraffidavits or other evidence to support the complaint . . . but may rest on the jurisdictional allegations therein." (Citation omitted; internal quotation marks omitted.) [North Sails Group, LLC v. Boards & More GmbH, 340 Conn. 266, 269-70, 264 A.3d 1 \(2021\)](#).

Ordinarily, the defendant has the burden to disprove personal jurisdiction. [Cogswell v. American Transit Ins. Co., 282 Conn. 505, 515, 923 A.2d 638 \(2007\)](#). However, if the defendant challenging the court's personal jurisdiction is a foreign limited liability company or corporation, it is the plaintiff's burden to prove the court's jurisdiction. Cf. *Id.* ("[i]f the defendant challenging the court's personal jurisdiction is a foreign corporation or a nonresident individual, it is the plaintiff's burden to prove the court's jurisdiction"). Moreover, "[w]hen a motion to dismiss for lack of personal jurisdiction raises a factual question which is not determinable from the face of the record, the burden of proof is on the plaintiff to present evidence which will establish jurisdiction." (Internal quotation marks omitted.) *Id.*

"When a defendant challenges personal jurisdiction in a motion to dismiss, the court must undertake a two part

inquiry to determine the propriety of its exercising such jurisdiction [*9] over the defendant. The trial court must first decide whether the applicable state long-arm statute authorizes the assertion of jurisdiction over the [defendant]. If the statutory requirements [are] met, its second obligation [is] then to decide whether the exercise of jurisdiction over the [defendant] would violate constitutional principles of due process." (Internal quotation marks omitted.) [Id., 514-15](#).

Intercos argues that whether the exercise of personal jurisdiction comports with due process is the dispositive issue for purposes of resolving the present motion to dismiss and that the plaintiff has failed to meet his burden to establish that his allegations relate to Intercos' contacts with Connecticut or that Intercos has sufficient minimum contacts with Connecticut. Given that Intercos relies primarily on the argument that the exercise of personal jurisdiction over it would violate constitutional principles of due process, this court will address that issue first. See, e.g., [North Sails Group, LLC v. Boards & More GmbH, supra, 340 Conn. 273-74](#) ("[B]ecause we agree with the trial court that the exercise of personal jurisdiction over the defendants would violate due process, we need not address whether [\[General Statutes\] § 52-59b](#) would support the exercise of jurisdiction over them."). [*10]

"The [f]ourteenth [a]mendment's [d]ue [p]rocess [c]ause limits a state court's power to exercise jurisdiction over a defendant. The canonical decision in this area remains [International Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 \(1945\)](#). There, the [United States Supreme] Court held that a tribunal's authority depends on the defendant's having such contacts with the forum [s]tate such that the maintenance of the suit is reasonable, in the context of our federal system of government, and does not offend traditional notions of fair play and substantial justice. . . . In giving content to that formulation, the [c]ourt has long focused on the nature and extent of the defendant's relationship to the forum [s]tate. . . . That focus led to [the] recogni[tion] [of] two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction." (Internal quotation marks omitted.) [Adams v. Aircraft Spruce & Specialty Co., 345 Conn. 312, 322-23, 284 A.3d 600 \(2022\)](#).

"A state court may exercise general jurisdiction only when a defendant is 'essentially at home' in the [s]tate. . . . General jurisdiction, as its name implies, extends to any and all claims brought against a defendant. . . . Those claims need not relate to the forum [s]tate or the

defendant's activity there; they [*11] may concern events and conduct anywhere in the world. But that breadth imposes a correlative limit: Only a select set of affiliations with a forum will expose a defendant to such sweeping jurisdiction. . . . In what [is] called the 'paradigm' case, an individual is subject to general jurisdiction in her place of domicile. . . . And the 'equivalent' forums for a corporation are its place of incorporation and principal place of business." (Internal quotation marks omitted.) *Id.*, 323. The Supreme Court in *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014) underscored that it did "not foreclose the possibility that in an exceptional case . . . a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that [s]tate." (Citation omitted.)

In the present action, the paradigm bases for general jurisdiction are absent as to Intercos because it is not incorporated in Connecticut or principally placed in said state for business. Rather, the plaintiff alleges that Intercos is a Delaware corporation with its principal place of business in New York. The plaintiff does not allege that Intercos has any offices or employees [*12] in Connecticut. Rather, the plaintiff makes a conclusory allegation that the court has general jurisdiction over all defendants based on the Connecticut business registration statute and over those defendants that have obtained a certificate of authority to transact business in Connecticut.⁴ Genziana testified in her affidavit that Intercos is not, and has never been, licensed to do business in Connecticut; has never had a registered agent for service of process in Connecticut; has never had a place of business located in Connecticut; has never had a mailing address, post office box or telephone listing in Connecticut; has never owned or operated any manufacturing, sales, or distribution

⁴ See *Matthews v. SBA, Inc.*, 149 Conn. App. 513, 550-51, 89 A.3d 938 ("A review of the complaint and accompanying affidavits . . . suggests that the plaintiffs merely have made the same general allegations against broad categories of defendants . . . and have not specifically alleged any tortious conduct against [the individual defendants]. These generalized allegations are insufficient to establish jurisdiction, especially as the affidavits submitted in support of the defendants' motions to dismiss specifically refuted the claims against the individual defendants. . . . The plaintiffs' counteraffidavits do not refute those claims. Rather, they rely solely on the conclusory allegations contained in their complaint . . ."), cert. denied, 312 Conn. 917, 94 A.3d 642 (2014).

facilities in Connecticut; has never owned, leased, or operated any real or commercial property in Connecticut; has never maintained a bank account in Connecticut; has never paid taxes in Connecticut or received any tax credits from Connecticut; and has never operated a business in Connecticut. The complaint and record are devoid of any facts or evidence that would suggest Intercos is "essentially at home" in Connecticut. For these reasons, the court does not have general jurisdiction over Intercos. [*13]

"Specific jurisdiction is different [than general jurisdiction]: It covers defendants less intimately connected with a [s]tate, but only as to a narrower class of claims. The contacts needed for this kind of jurisdiction often go by the name 'purposeful availment.' . . . The defendant . . . must take some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum [s]tate. . . . The contacts must be the defendant's own choice and not random, isolated, or fortuitous. . . . They must show that the defendant deliberately reached out beyond its home—by, for example, exploi[ting] a market in the forum [s]tate or entering a contractual relationship centered there. . . . Yet even then—because the defendant is not 'at home'—the forum [s]tate may exercise jurisdiction in only certain cases. The plaintiff's claims, we have often stated, must arise out of or relate to the defendant's contacts with the forum. . . . Or put just a bit differently, there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum [s]tate and is therefore subject to the [s]tate's regulation." [*14] (Emphasis omitted; internal quotation marks omitted.) *Adams v. Aircraft Spruce & Specialty Co.*, *supra*, 345 Conn. 323-24.

"These rules derive from and reflect two sets of values—treating defendants fairly and protecting interstate federalism. . . . [The United States Supreme Court's] decision in *International Shoe [Co.]* founded specific jurisdiction on an idea of reciprocity between a defendant and a [s]tate: When (but only when) a company exercises the privilege of conducting activities within a state—thus enjoy[ing] the benefits and protection of [its] laws—the [s]tate may hold the company to account for related misconduct. . . . Later decisions have added that [the] doctrine similarly provides defendants with fair warning—knowledge that a particular activity may subject [it] to the jurisdiction of a foreign sovereign. . . . And [the] [c]ourt has considered alongside defendants' interests those of the [s]tates in relation to each other. One [s]tate's sovereign power to

try a suit, [it] ha[s] recognized, may prevent sister [s]tates from exercising their like authority. . . . The law of specific jurisdiction thus seeks to ensure that [s]tates with little legitimate interest in a suit do not encroach on [s]tates more affected by the controversy." (Emphasis [*15] omitted; internal quotation marks omitted.) [Id.](#), 324.

"In the context of specific jurisdiction then, the due process test can be said to have the following elements: (1) the defendant purposefully availed itself of the privilege of conducting activities within the forum, (2) the plaintiff's claim arises out of or relates to the defendant's forum related contacts, and (3) if the first two elements favor the plaintiff's choice of forum, the exercise of jurisdiction is ultimately fair and reasonable under the circumstances. . . . If the plaintiff cannot prove either of the first two elements, or the defendant prevails on the third element, the forum cannot exercise jurisdiction over the defendant." (Citation omitted; footnote omitted.), [Id.](#), 325. Our Supreme Court refers to these elements as "(1) purposeful availment, (2) case linkage, and (3) fairness." (Footnote omitted.) [Id.](#), 326.

"[T]he purposeful availment inquiry represents a rough quid pro quo: when a defendant deliberately targets its behavior toward the society or economy of a particular forum, the forum should have the power to subject the defendant to judgment regarding that behavior. . . . The cornerstones of this inquiry are *voluntariness and foreseeability* [*16]. . . . Foreseeability means that the defendant's conduct and connection with the forum [s]tate are such that he should reasonably anticipate being haled into court there. . . . The requirement of purposeful availment, therefore, ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts . . ." (Citation omitted; emphasis added; internal quotation marks omitted.) [Id.](#), 326.

The purposeful availment element is the main issue with respect to the due process analysis in the present action. The plaintiff argues that Intercos purposefully availed itself of the privilege of conducting activities in Connecticut by placing its asbestos-containing talc into the stream of commerce and that given its heavy involvement in the sale and supply of talc products to major cosmetic and personal care product brands and companies, Intercos should have anticipated litigation ensuing from its failure to warn its customers or global consumers about the hazards associated with its asbestos-containing talc product. The plaintiff relies on Genziana's May 9, 2024 deposition, where Intercos

confirmed that it manufactured cosmetic products for other brands. [*17] Therefore, he argues, Intercos was aware that the entities for which it manufactured cosmetic products sold these products in multiple states and/or regions, including potentially, Connecticut. Intercos counters that even if it were true that it placed its asbestos-containing talc products into the stream of commerce, Connecticut law requires that plaintiffs show that the defendant went beyond merely placing its product into the stream of commerce. There must be evidence, or at the very least, a plausible allegation that the manufacturer purposefully directed its activities toward the forum or intentionally targeted the forum's market.

"The debate on the stream of commerce theory is whether mere foreseeability or awareness that the product will end up in the forum state is sufficient or, instead, whether there must be some additional conduct of the defendant purposefully directed toward the forum state. . . . [T]he United States Supreme Court has not clearly resolved this debate." [McCoy v. General Motors, LLC, Superior Court, judicial district of Hartford, Complex Litigation Docket, Docket No. X03-CV-206142910-S \(August 5, 2021, Schuman, J.\) \(71 Conn. L. Rptr. 282, 83, 2021 Conn. Super. LEXIS 1292, *2-3\).](#)

In 1980, the United States Supreme Court first recognized the "stream of commerce" theory as one way a forum state may have sufficient minimum contacts for purposes of establishing specific jurisdiction [*18] over a defendant manufacturer, stating that a forum state "does not exceed its power under the *Due Process Clause* if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum [s]tate."⁵ [World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98, 100 S. Ct. 559, 62 L. Ed. 2d 490 \(1980\).](#) The theory "refers to the movement of goods from

⁵ Although the *World-Wide* court analyzed whether due process permitted the exercise of specific jurisdiction over a corporation in Oklahoma via a stream of commerce theory, our trial courts have applied said theory to foreign limited liability companies in Connecticut. See, e.g., [McCoy v. General Motors, LLC, supra, Superior Court, Docket No. X03-CV-20-6142910-S](#) (analyzing whether due process permitted exercise of specific jurisdiction over foreign limited liability company in Connecticut via stream of commerce theory); [Bonomo v. Kurtz Truck Equipment, Inc., Superior Court, judicial district of Hartford, Docket No. CV-20-6133424-S, 2021 Conn. Super. LEXIS 2056 \(December 21, 2021, Sicilian, J.\)](#) (same).

manufacturers through distributors to consumers" [*J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881, 131 S. Ct. 2780, 180 L. Ed. 2d 765 \(2011\)](#). When establishing this theory, the court reasoned that if the sale of a manufacturer's product "is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other [s]tates, it is not unreasonable to subject it to suit in one of those [s]tates if its allegedly defective merchandise has been the source of injury to its owners or to others." [*World-Wide Volkswagen Corp. v. Woodson*, supra, 297](#). For this reason, the court underscored that "'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the *Due Process Clause*."⁶ [*Id.*, 295](#). If foreseeability alone was sufficient, "[e]very seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to [*19] suit would travel with the chattel." [*Id.*, 296](#). When applying this theory, the court held that the Oklahoma court could not exercise specific jurisdiction over a corporate defendant who was incorporated and had its principal place of business in New York because it did not solicit business, sell its products, or offer its services in Oklahoma. [*Id.*, 299](#).

Subsequently, in [*Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102, 112, 107 S. Ct. 1026, 94 L. Ed. 2d 92 \(1987\)](#), a plurality of the United States Supreme Court, led by Justice O'Connor, expressed a narrower view of the stream of commerce standard established in *World-Wide*, stating that "[t]he placement of a product into the stream of commerce, *without more*, is not an act of the defendant purposefully directed toward the forum [s]tate. *Additional conduct* of the defendant may indicate an intent or purpose to serve the market in the forum [s]tate, for example, designing the product for the market in the forum [s]tate, advertising in the forum [s]tate, establishing channels for providing regular advice to customers in the forum [s]tate, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum [s]tate. But a defendant's awareness that the stream of commerce may or [*20] will sweep the product into the

forum [s]tate does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum [s]tate." (Emphasis added.) *Id.* Thus, in addition to placing a product in the stream of commerce, the plurality required a showing of additional conduct by a manufacturing defendant to establish purposeful availment of a given forum under this theory. [*Id.*, 112-13](#) (stating that foreign manufacturing defendant did not purposefully avail itself of California market because it had no office, agents, employees, or property in California, did not advertise or otherwise solicit business in California, and did not create, control, or employ distribution system that brought its valves to California, and there was no evidence that it designed its product in anticipation of sales in California).

In his concurrence, Justice Brennan rejected the plurality's narrower standard and instead endorsed a broad stream of commerce standard in product liability cases that would allow the exercise of specific jurisdiction over any manufacturer that places its products in the stream of commerce and is aware that its product may be sold in the forum state. [*21] ⁷ [*Id.*, 116-17, 121](#) (stating that although foreign manufacturing defendant did not control or design system of distribution that carried its valve assemblies into California, it purposefully availed itself of California market because it was aware of distribution system's operation, and it knew that it would benefit economically from sale in California of products incorporating its components). Due to this sharp divide,⁸ the court held that the exercise of personal jurisdiction by the

⁷As stated by Justice Brennan in support of this broader standard, "[t]he stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum [s]tate, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum [s]tate, and indirectly benefits from the [s]tate's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum [s]tate, or engages in additional conduct directed toward that [s]tate." [*Asahi Metal Industry Co., Ltd. v. Superior Court*, supra, 480 U.S. 116-17](#).

⁸In his concurrence, Justice Stevens stated that "the volume, the value, and the hazardous character of the components" affects the purposeful availment analysis. *Id.*, 122.

⁶As articulated by the Supreme Court, "the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum [s]tate. Rather, it is that the defendant's conduct and connection with the forum [s]tate are such that he should reasonably anticipate being haled into court there." [*World-Wide Volkswagen Corp. v. Woodson*, supra, 444 U.S. 297](#).

California court over the foreign manufacturing defendant "would be unreasonable and unfair" because it would offend traditional notions of fair play and substantial justice, analysis relevant to the third prong of due process analysis. See *id.*, 116; *Adams v. Aircraft Spruce & Specialty Co.*, *supra*, 345 Conn. 325.

Although *J. McIntyre Machinery, Ltd. v. Nicastro*, *supra*, 564 U.S. at 879 "[presented] an opportunity [for the United States Supreme Court] to provide greater clarity" concerning the stream of commerce theory *post-Asahi*, the court was similarly unable to issue, a binding precedent in that action. There, the plaintiff injured his hand in New Jersey while using a machine manufactured by a foreign defendant. *Id.*, 878. The machine had been manufactured in England, where the defendant was incorporated and operated, then sold to a U.S. distributor, which in [*22] turn sold and shipped the machine to New Jersey. *Id.* Although the defendant's U.S. distributor sold four or less machines in New Jersey, the defendant did not market, sell, or ship machines to New Jersey. *Id.* Moreover, while the defendant's employees attended annual scrap recycling conventions in the United States, none took place in New Jersey. *Id.* The court also noted that the defendant held both United States and European patents, had no office in New Jersey, and neither paid taxes nor owned property there, and the U.S. distributor structured its advertising and sales efforts pursuant to the defendant's directions whenever possible. *Id.*, 878-79, 886.

A plurality of the court, led by Justice Kennedy, essentially tracked Justice O'Connor's narrower *Asahi* standard, articulating that "[t]he defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have *targeted the forum*; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum [s]tate." (Emphasis added.) *Id.*, 882, 886-87 (stating that while defendant directed marketing and sales efforts at United States, it did not purposefully avail itself of New Jersey market [*23] as it did not engage in conduct purposely directed at state). For this reason, the plurality underscored that Justice Brennan's broad stream of commerce standard, which was set forth in *Asahi* and is based on general notions of fairness and foreseeability, "is inconsistent with the premises of lawful judicial power." *Id.*, 883.

As our appellate courts have not adopted a stream of

commerce standard⁹ and the majority of the federal circuit courts, including the Second Circuit, approve of Justice O'Connor's narrower standard, the court adopts said standard.¹⁰ See *Asahi Metal Industry Co., Ltd. v. Superior Court*, *supra*, 480 U.S. 102, 112-13, 107 S. Ct. 1026, 94 L. Ed. 2d 92.

In the present action, the plaintiff has failed to meet his burden to show that Intercos purposefully availed itself of the privilege of conducting activities within Connecticut. A nonresident manufacturer's awareness that the stream of commerce may or will sweep its products into Connecticut, alone, is not enough to establish personal jurisdiction. Considering Genziana's uncontroverted statements in her affidavit, it cannot be said that the purposeful availment requirement is met here. Her affidavit provides that (1) Intercos designs and manufactures certain cosmetic products and warehouses finished products in the [*24] state of New York; (2) Intercos' customers are responsible for picking up the product they purchase from Intercos' New York warehouse; (3) Intercos' customers pay the freight charges and the risk of loss transfers to the customer when the customer picks up the product from Intercos' New York warehouse; (4) after the customer takes

⁹ In *North Sails Group, LLC v. Boards & More GmbH*, *supra*, 340 Conn. at 318 n.26, our Supreme Court acknowledged the split of authority concerning the application of the stream of commerce theory but did not analyze this issue because the plaintiff did not advance it in the trial court or on appeal.

¹⁰ Of the twelve circuit courts, eight support Justice O'Connor's standard; *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 503 (9th Cir. 2023); *Rodriguez-Rivera v. Allscripts Healthcare Solutions, Inc.*, 43 F.4th 150, 163 (1st Cir. 2022); *XMission, L.C. v. Fluent LLC*, 955 F.3d 833, 843 (10th Cir. 2020); *Farrar v. McFarlane Aviation, Inc.*, 823 F. Appx. 161, 164 (4th Cir. 2020); *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 780 (3d Cir. 2018); *New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 149 (2d Cir. 2011); *Bridgeport Music, Inc. v. Still N The Water Publishing*, 327 F.3d 472, 479-80 (6th Cir. 2003), cert. denied, 540 U.S. 948, 124 S. Ct. 399, 157 L. Ed. 2d 279 (2003); *Stanton v. St. Jude Medical, Inc.*, 340 F.3d 690, 694 (8th Cir. 2003); two support Justice Brennan's standard; *B.D. ex rel. Myer v. Samsung SDI Co., Ltd.*, 91 F.4th 856, 861 (7th Cir. 2024); *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Product Liability Litigation*, 888 F.3d 753, 778-79 (5th Cir. 2018); one last relied on Justice Breyer's concurrence in *Nicastro*; *Williams v. Romarm, SA*, 756 F.3d 777, 784, 410 U.S. App. D.C. 405 (D.C. Cir. 2014); and the last follows the standard set forth in *World-Wide*; *Ruiz de Molina v. Merritt & Furman Ins. Agency, Inc.*, 207 F.3d 1351, 1357 (11th Cir. 2000).

possession of the product, Intercos does not control where, when, or how the products are disseminated; (5) Intercos has no customers or distributors based in Connecticut; (6) Intercos does not directly ship products to Connecticut or otherwise intentionally put its products into the stream of commerce in Connecticut; (7) Intercos has never directed any advertising, marketing, or promotion to Connecticut or its residents; (8) Intercos has never had any subsidiaries or corporately related companies in Connecticut; and (9) Intercos has never bought or sold talc in Connecticut.

The plaintiff, on the other hand, has failed to provide any evidence of Intercos' purposeful contact with Connecticut. He merely argues that Intercos was aware that the asbestos-containing talc products it allegedly manufactured would be sold and used throughout the United States due to [*25] its relationship with major cosmetic and personal care brands. Even if that is true, an expectation that its talc products would be distributed and/or sold by major cosmetic and personal care companies throughout the United States, without more, does not establish purposeful availment. Compare [Rice Estate of Rice v. American Talc Co., Superior Court, judicial district of Fairfield, Docket No. CV-15-6053658-S, 2017 Conn. Super. LEXIS 4433 \(September 7, 2017, Bellis, J.\)](#) (finding defendant purposefully availed itself of conducting activities in Connecticut where evidence showed that defendant shipped its products to Connecticut during period when plaintiff's decedent was exposed to defendant's asbestos-containing products and that defendant was aware of the ship-to point when it sold and sent its products to distributors).

The plaintiff has not provided evidence showing that, for example, Intercos had any control over the distribution channel that brought its products to Connecticut; that it shipped its products directly to Connecticut; that Intercos designed its products specifically for a Connecticut market; or that it directed marketing or advertising of its products to Connecticut customers. Compare [Samelko v. Kingstone Ins. Co., 329 Conn. 249, 266-68, 184 A.3d 741 \(2019\)](#) (minimum contacts against defendant insurer satisfied where insurer drafted insurance policy expressly covering nationwide travel, and thus, should have foreseen [*26] the need to defend and indemnify its insured as a result of collisions during nationwide travel; and citing a Ninth Circuit Court of Appeals decision reasoning that "an insurer has the contractual ability to control the territory into which its product—the indemnification and defense of claims—will travel." [Internal quotation marks omitted.]

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation. . . . For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State. . . . [T]he relationship must arise out of contacts that the defendant *himself* creates with the forum State. . . . Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties. . . . We have consistently rejected attempts to satisfy the defendant-focused minimum contacts inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." (Citations omitted; emphasis in [*27] original; internal quotation marks omitted.) [Walden v. Fiore, 571 U.S. 277, 283-84, 134 S. Ct 1115, 188 L. Ed. 2d 12 \(2014\)](#); see also [U.S. Bank National Assn. v. Bank of America, N.A., 916 F.3d 143, 150 \(2d Cir. 2019\)](#) ("To meet the minimum contacts requirement, the defendant's suit-related conduct must create a substantial connection with the forum State -- that is, the defendant [it]self must create those contacts, and those contacts must be with the forum State itself, not simply with persons who reside there. . . . Thus, although a defendant's contacts with the forum state may be intertwined with [its] transactions or interactions with the plaintiff or other parties . . . [,] a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." [Citation omitted; emphasis omitted; internal quotation marks omitted.]). See also [North Sails Group, LLC v. Boards & More GmbH, supra, 340 Conn. at 279](#) ("Jurisdiction is proper . . . [when] the contacts proximately result from *actions by the defendant [itself]* that create a substantial connection with the forum [s]tate." [Emphasis in original; internal quotation marks omitted.]

"Nor is it sufficient for a plaintiff to show simply that a defendant's actions caused an effect in the forum state where the defendant has not expressly aimed its conduct at the forum. . . . And mere injury to a forum resident is insufficient. . . [*28] . . . Similarly, the fact that harm in the forum is foreseeable . . . is insufficient for the purpose of establishing specific personal jurisdiction over a defendant." (Citations omitted; internal quotation marks omitted.) [U.S. Bank National Assn. v. Bank of America NA., supra, 916 F.3d 151](#).

In the absence of voluntary efforts by Intercos to target the Connecticut market, it is not sufficient, to establish minimum contacts, for the plaintiff to assert that the decedent was a resident of Connecticut; used Intercos'

alleged asbestos-containing talc products in Connecticut and was, thus, injured in Connecticut; or that she was diagnosed with Mesothelioma in Connecticut. In addition, Intercos' alleged purchases from vendors located in Connecticut for the purpose of manufacturing its cosmetic products is also not sufficient to establish purposeful availment. See, e.g., [Walden v. Fiore, supra, 571 U.S. at 285](#) ("[O]ur 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there. . . . Accordingly, we have upheld the assertion of jurisdiction over defendants who have purposefully reach[ed] out beyond their State and into another by, for example, entering a contractual relationship that envisioned continuing and [*29] wide-reaching contacts in the forum State. . . or by circulating magazines to deliberately explo[it] a market in the forum State . . ." [Citations omitted; internal quotation marks omitted.]).

Mere purchases from Connecticut-based vendors, without more, cannot be said to constitute a deliberate effort by a product manufacturer to serve, directly or indirectly, the market of said forum for its products or an attempt to deliberately exploit that market. See, e.g., [Colon v. Rose Assocs., Superior Court, judicial district of Fairfield, Docket No. CV-19-6081720-S, 2019 Conn. Super. LEXIS 2015 \(July 11, 2019, Stewart, J.\)](#) (where plaintiffs alleged causes of action in wrongful death based on premises liability and loss of consortium arising out of a fall down stairs and through a pane glass door at property located in New York and owned by defendant, plaintiffs failed to establish general jurisdiction despite plaintiffs' submission of jurisdictional discovery evidence, including, seven contracts between defendant and vendors located in Connecticut, because such evidence did not rebut defendant's chief operating officer's affidavit stating that defendant "does not and has never, maintained a place of business in Connecticut, has never transacted any business in Connecticut, and does not derive revenue from business conducted in the State of Connecticut;" [*30] nor did plaintiffs establish specific jurisdiction because there was "no allegation in the complaint, nor [was] there any evidence in the [defendant's] affidavit, the [deposition transcript of defendant's chief operating officer] or the exhibits put forth by the plaintiffs that the defendants purposefully directed its activities at Connecticut residents . . .").

Accordingly, this court does not have specific jurisdiction

over Intercos.¹¹

For the foregoing reasons, Intercos' renewed motion to dismiss is granted.

BELLIS, J.

End of Document

¹¹ Given that the purposeful availment requirement is not met, analysis pertaining to the relatedness or case-linkage element, as well as the factors that bear on reasonableness, is unnecessary.