**1IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

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**No. 92-9059**
**Summary Calendar**

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**PHILIP D. TORGESON, and**
**KATHY TORGESON,**

**Plaintiffs-Appellants,**

**v.**

**NORDISK AVIATION PRODUCTS, INC., ET AL.,**

**Defendants,**

**HYDRO ALUMINUM NORDISK AVIATION PRODUCTS, A/S,**

**Defendant-Appellee.**

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Appeal from the United States District Court
for the Northern District of Texas
4:92 CV 495 A

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July 1, 1993

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.[*]

EDITH H. JONES, Circuit Judge:

This case comes before us on a review of a motion for summary judgment granted to Hydro Aluminum Nordisk Aviation Products, A/S, a Norwegian company, finding no personal jurisdiction over them in an accident occurring in Dallas/Fort

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Worth. After consideration of the law of personal jurisdiction we VACATE and REMAND for additional findings of fact.

The relevant jurisdictional facts are undisputed. On July 6, 1990, Philip D. Torgeson was injured at DFW Airport, Texas by an alleged defective cargo container which may have been manufactured and/or reconditioned by Hydro and rendered by its agent Aviation to Torgeson's employer, American Airlines. Torgeson and his wife sued Hydro Aluminum Nordisk Aviation Products (Hydro) and its American subsidiary/agent Nordisk Aviation Products, Inc. (Aviation) in the United States District Court for the Northern District of Texas. Both defendants filed a motion to dismiss for lack of personal jurisdiction. After briefing, the district judge signed a memorandum order denying the motion as to Aviation and releasing Hydro. Torgeson timely appealed.

Hydro Aluminum had no contacts with Texas other than being the maker of the product which caused the harm and sending an agent to Texas once or twice a year in order to meet with customers relating to the use of their products. While we agree with the district court that these contacts do not rise to the level necessary for general jurisdiction, we disagree that the plaintiffs did not present facts sufficient to constitute a prima facie case of specific jurisdiction over Nordisk vis a vis their product.

Review of this issue is de novo, as a question of law, bearing in mind that Torgeson need only prove a prima facie case of personal jurisdiction prior to trial. Dalton v. R & W Marine, Inc., 897 F.2d 1359, 1362 (5th Cir. 1990); Command-Aire Corp. v.

Ontario Mechanical Sales & Services, Inc., 963 F.2d 90, 93 (5th Cir. 1992).

Our review of jurisdiction has two components; (1) the defendants must have established minimum contact with the forum state so they can reasonably anticipate being hailed into court there; and (2) the exercise of personal jurisdiction, under the circumstances, must not offend traditional notions of fair play and substantial justice. Asahi Metal Industry v. Superior Court of California, 480 U.S. 102, 107 S. Ct. 1026, 94 L.Ed.92 (1987); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174, 85 L.Ed.2d 528 (1985); Asarco, Inc. v. Grenela, Ltd., 912 F.2d 784 (5th Cir. 1990).

Minimum contacts may result in either specific or general jurisdiction:

> When a cause of action arises out of a defendants purposeful contacts with the forum, minimum contacts are found to exist and the court may exercise its "specific" jurisdiction. A single, substantial act directed towards the forum can support specific jurisdiction. Where a cause of action does not arise out of a foreign defendant's purposeful contact with the forum, however, due process requires that the defendant have engaged in "continuous and systematic contacts" in the forum to support the exercise of "general" jurisdiction over the defendant.

Dalton v. R & W Marine, Inc., 897 F.2d at 1361-62 (citations omitted).

In this case, the plaintiffs rely on a theory of specific jurisdiction based on Hydro's putting their product into "the stream of commerce". This theory of personal jurisdiction holds

that when a manufacturer injects a product into the stream of commerce, and it is reasonably forseeable that it will be used in the forum state, the manufacturer will be subject to the jurisdiction of that state for injuries caused by that product. See Generally, Mollie Murphy, Personal Jurisdiction and the Stream of Commerece: A Reapprasial and a a Revised Aproach, 77 Ky. L. J. 243 (1989) (and citations therin).

Asahi Metal Industry Co., op. cite, was the Supreme Court's most recent statement on personal jurisdiction and the stream of commerce. In Asahi four justices favored a narrow interpretation of the stream of commerce doctrine. Nevertheless, an equal number of justices, while concurring with the pluralities analysis under the due process test second prong, refused to require a showing of "additional conduct", under the stream of commerce doctrine. Because the Supreme Court's splintered view of contacts in Asahi provides no clear guidance on this issue, the Fifth Circuit continues to use the stream of commerce standard as per World Wide Volkswagen and embraced by the circuit in a variety of cases. Irving v. Owings-Corning Fibreglass, 864 F.2d 383, 385-86 (1989), cert denied 493 US 823, 110 SCT 83, 107 L.Ed2d 49 (1989).

There is no doubt that there is insufficient contact for general jurisdiction in this case. Wenche Siemer v. Lear Jet Acquisition Corporation, 966 F.2d 179 (5th Cir. 1992), cert denied __ US __, 113 S.Ct.1047, 122 L.Ed2d 356 (1993). This is not the case for specific jurisdiction however.

There are several on-point cases finding specific jurisdiction as to actors such as Hydro in cases such as these. In Gulf Consolidated Services v. Corinth Pipe Works, 898 F.2d 1071 (5th Cir. 1990), cert denied 498 US 900, 111 S.Ct. 256, 112 L.Ed.2d 214 (1990), an action was commenced against a Greek oil field casing manufacturer on the same basis as that brought against the Norwegian manufacturer in this case. The court in Corinth held that specific jurisdiction did exist as to the casings. Id. at 1073-74. As in the instant case, the court in Corinth admitted that Corinth was a Greek corporation which was not registered to do business in Texas or any location in the United States. It had no office, agent or assets in the United States and that the actual sale of the casings took place in Greece as did all other relevant financial transactions. Id. at 1073. The court based its conclusion on the fact that Corinth's could expect its casings would be used in Texas. The court further distinguished the Asahi case under the same basis as have other Fifth Circuit opinions, in that in Asahi there was no interest in the forum state to litigate the dispute. Id. at 1074.

Corinth, is further supported by two other cases that are very close to on-point, Beene Dredging Corporation v. Rogers Olympic Corporation, 744 F.2d 1081 (5th Cir. 1984) and Oswald v. Scripto, 616 F.2d 191 (5th Cir. 1980). Both cases rely on the analysis of World Wide Volkswagen v. Woodsen, 444 U.S. 286, 100 S. Ct. 559, 62 L.Ed.2d 490 (1980), which is still the law of the circuit. In Scripto, the court held that since the plaintiff

wanted to service a large market, they had indirectly made efforts to market in Texas, Scripto, 616 F.2d at 200, and therefore could reasonably anticipate being hailed in a court there. Id. Bean Dredging, holds the same without regard to numbers of products sold, as long as the manufacturer reasonably expects the products to be marketed throughout the United States . Bean Dredging, 744 F.2d at 1085. These cases have already taken into account the argument of Hydro that it would be unfair to ask it to be amenable to suit anywhere that American flies as it found that Scripto and Bean Dredging were amenable to suit anywhere their products went.

Finally, Hydro still maintains that it may not have been their container that malfunctioned as well as a variety of other arguments that would limit its jurisdiction. We find these arguments unanswered in the record and therefore we make no final finding as to its personal jurisdiction as to Texas and **REMAND** to the district court for further findings of fact.