No. 10-76

IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA,
GOODYEAR LASTIKLERI T.A.S., AND
GOODYEAR DUNLOP TIRES FRANCE, SA,

Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN, CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF THE ESTATE OF MATTHEW M. HELMS,

Respondents.

On Writ of Certiorari to the
North Carolina Court of Appeals

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether a foreign corporation is subject to general personal jurisdiction, on causes of action not arising out of or related to any contacts between it and the forum state, merely because other entities distribute in the forum state products initially placed in the stream of commerce by the corporation.

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Petitioners-Defendants Goodyear Luxembourg Tires, SA (now known as Goodyear Dunlop Tires Operations, SA), Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France, SA; Defendants Eric R. Meter, French Soccer Network, European Soccer Network, North Carolina Youth Soccer Association, Inc., The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., and Goodyear SA; and Respondents-Plaintiffs Edgar D. Brown and Pamela Brown, as Co-Administrators of the Estate of Julian David Brown, and Karen M. Helms, as Administratrix of the Estate of Matthew M. Helms.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioners disclose as follows:

Petitioners Goodyear Luxembourg Tires, SA (now known as Goodyear Dunlop Tires Operations, SA), Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France, SA, are indirect subsidiaries of The Goodyear Tire & Rubber Company. In addition, Sumitomo Rubber Industries, Ltd., indirectly owns more than 10% of the stock of Goodyear Luxembourg Tires, SA (now known as Goodyear Dunlop Tires Operations, SA), and Goodyear Dunlop Tires France, SA. No other publicly held company owns 10% or more of the stock of any of these entities.

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OPINIONS BELOW

The opinion of the North Carolina Court of Appeals (Pet. App. 1a-29a) is reported at 681 S.E.2d 382. The North Carolina Superior Court's opinion (Pet. App. 30a-36a) is unreported. The North Carolina Supreme Court's denial of review (Pet. App. 37a-38a) is reported at 695 S.E.2d 756, 364 N.C. 128.

JURISDICTION

The North Carolina Court of Appeals entered its judgment on August 18, 2009. Pet. App. 1a. The North Carolina Supreme Court denied review on April 14, 2010. Pet. App. 37a-38a. Jurisdiction in this Court exists under 28 U.S.C. § 1257(a). *See Shaffer v. Heitner*, 433 U.S. 186, 195 n.12 (1977); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1, cl. 2.

STATEMENT OF THE CASE

In this case, Petitioners Goodyear Luxembourg Tires, SA (now known as Goodyear Dunlop Tires Operations, SA) ("Goodyear Luxembourg"), Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France, SA ("Goodyear France") (collectively, "Petitioners")—all of them indirect subsidiaries of The Goodyear Tire & Rubber Company, an Ohio corporation—challenge North Carolina's exercise of general adjudicative jurisdiction over them on causes of action unrelated to any contacts with the state. Pet. App. 28a-29a. The court below based such general jurisdiction solely on the fact that a portion of the tires that Petitioners manufacture has reached the state via the stream of commerce. Pet. App. 29a.

As the court below recognized, this lawsuit does not arise out of or relate to even those attenuated contacts. Pet. App. 12a. Rather, it arises out of an April 18, 2004, bus accident in France that took the lives of two North Carolina teenagers traveling in Europe. The decedents' estates ("Respondents") filed this suit in North Carolina state court against Petitioners, The Goodyear Tire & Rubber Company, and other defendants, claiming, *inter alia*, that an allegedly defective tire on the bus had contributed to the accident. JA 138-39.

A. Petitioners' Business

Goodyear Luxembourg, Goodyear Turkey, and Goodyear France are incorporated and located in Luxembourg, Turkey, and France, respectively. JA 121-22. None of the three Petitioners has ever had a place of business or employed anyone in North Carolina; advertised or solicited business in the state;

sold any products in North Carolina or shipped products into the state; manufactured or designed products there; or negotiated contracts, paid taxes, or maintained bank accounts there. JA 155-57, 165-67, 184-86. Petitioners are not registered to do business in North Carolina, have not appointed registered agents in North Carolina to receive service of process, and have never previously used the state's court system. JA 156-57, 166-67, 185-86.

Petitioners make tires primarily for sale in European and Asian markets. These markets differ from United States markets in that tires sold there typically vary in size from American tires; are designed to carry significantly heavier loads; and are constructed differently to account for variations in local roads and driving speeds. JA 229-30, 235.

Although a small percentage of Petitioners' tires has been distributed in North Carolina, Petitioners, as the court below recognized, took no "affirmative action to cause" that to occur, and "other entities were responsible for" any North Carolina distribution. Pet. App. 22a. Specifically, from time to time, The Goodyear Tire & Rubber Company determined that it needed to obtain tires made in Europe—as, for example, in the case of an emergency resulting from a labor strike in the United States, JA 237-38, or because some "unique . . . vehicles . . . ha[d] been imported" into the United States and required specially sized tires, JA 241. In those instances, the tires would be purchased from a different European affiliate, which in turn would "source" them, at times, from Petitioners. JA 241.

In this fashion, between 2004 and 2007 a total of approximately 45,000 tires sold by the three Petitioners reached North Carolina, JA 293-94, as against Petitioners' total manufacturing capacity during that period of more than 90 million tires.[1] Many of the tires that reached the United States were for specialized vehicles, such as horse and boat trailers, cement mixers, and waste haulers. JA 242, 248, 250. In contrast, the type of tire at issue in this litigation—a Goodyear Regional RHS tire, which is designed for highway truck and bus driving in Europe, JA 233-34—is a size that is not generally used in the United States,[2] JA 244-45, 253, and was never distributed in North Carolina. JA 237-40.

B. The Trial Court's Decision

After Respondents initiated this suit against Petitioners by serving them with process overseas, JA 2-118, Petitioners moved to dismiss the complaint for want of personal jurisdiction. The trial court denied the motions, holding that Petitioners were subject to general jurisdiction in North Carolina—i.e., jurisdiction on any claim, arising anywhere in the

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[1] *See Global Tyre Report 2004*, Eur. Rubber J., Dec. 2004, at 21-22, 27; *Global Tyre Report 2005*, Eur. Rubber J., Nov./Dec. 2005, at 15, 21-22, 29; *Global Tyre Report 2006*, Eur. Rubber J., Nov./Dec. 2006, at 15, 20-21, 27; *Global Tyre Report 2007*, Eur. Rubber J., Nov./Dec. 2007, at 15, 20-21, 29.

[2] A "very, very, very small quantity" was available for United States distribution in the winter of 2006-2007, when an employee strike disrupted domestic tire production by Goodyear in the United States. JA 237-38. Almost all of these Goodyear Regional RHS tires were eventually shipped back to Europe, as they were not designed for the United States market. JA 238.

world, without need of any connection between the claim and North Carolina. Pet. App. 36a. The trial court emphasized, among other things, that Petitioners "knew or should have known that some of th[eir] tires were distributed for sale to North Carolina residents," Pet. App. 33a, and termed this "substantial activity within North Carolina" that should have led Petitioners to "reasonably anticipate being haled into court [there]" on claims arising anywhere in the world, Pet. App. 34a.

C. The North Carolina Court Of Appeals' Decision

The North Carolina Court of Appeals affirmed. Pet. App. 2a. It acknowledged that "this case involves general rather than specific jurisdiction," because "[t]he present dispute is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina." Pet. App. 12a-13a. And the court further recognized that there was no "evidence that [Petitioners] took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina." Pet. App. 22a. Rather, separate (if affiliated) "entities were responsible for the shipment of tires manufactured by [Petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina." Pet. App. 22a.

The court nonetheless upheld the exercise of general personal jurisdiction over Petitioners, holding that the key "question . . . is whether [Petitioners] have purposefully injected their products into the stream of commerce without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina." Pet. App. 20a (internal quotation marks

and alterations omitted). Here, the court found, Petitioners "knew or should have known" that some of their tires were ultimately distributed in the United States; "several thousand tires manufactured by each of the [Petitioners] eventually found their way into North Carolina markets"; and North Carolina had a "well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained." Pet. App. 27a.

Petitioners timely sought review from the North Carolina Supreme Court, which denied review without opinion. Pet. App. 38a.

SUMMARY OF ARGUMENT

The exercise of general jurisdiction over Petitioners, simply because their products reached North Carolina through the stream of commerce, violates the Due Process Clause. Such tenuous contacts with the forum, on the part of defendants lacking any physical presence there, fall far short of the high threshold ordinarily required for general jurisdiction: to wit, "continuous corporate operations within a state" that are "so substantial and of such a nature," *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945), as to justify global judicial authority over all of a defendant's conduct. The decision below vastly expands the limited scope of general jurisdiction, embracing a standard under which any substantial seller of goods would be amenable to suit, on any cause of action, wherever its products are distributed.

This unrecognizably broad vision of general jurisdiction must be rejected for two principal reasons. First, longstanding pre-*International Shoe* case law—which has continuing vitality under

International Shoe in limiting general jurisdiction—rejected mere sales in a state as a basis for jurisdiction. Second, even aside from that history, the modern personal-jurisdiction analysis of *International Shoe* and its progeny is equally inconsistent with the expansive scope of general jurisdiction adopted below.

I. This Court has treated pre-*International Shoe* cases as restricting the circumstances in which corporate activities in a state may be deemed sufficient to justify general jurisdiction. Under those earlier cases, a corporation could not be deemed "present" in a state—as was then required for jurisdiction—without, at a minimum, significant physical presence in the state. In particular, this Court held that sales of an absent corporation's products in the state, even by a corporate affiliate, did not establish the necessary corporate "presence." *E.g., Consol. Textile Corp. v. Gregory*, 289 U.S. 85, 88 (1933). Under these cases, due process does not permit general jurisdiction on the basis relied upon below.

Further, *International Shoe* and its progeny confirm these longstanding minimum requirements for general jurisdiction. Indeed, this Court's only modern case upholding general jurisdiction over a corporation involved the corporation's principal place of business. And the Court's only other corporate general jurisdiction case found that pre-*International Shoe* case law concerning corporate "presence" precluded general jurisdiction.

II. The decision below equally violates the more contemporary due-process standards of *International Shoe*.

A.1. Due-process restrictions on jurisdiction prevent states from asserting judicial authority over a non-resident defendant absent a basis for the assertion of power sufficient to make it "reasonable, in the context of our federal system of government." *Int'l Shoe*, 326 U.S. at 317. For specific jurisdiction, the state's power stems from its authority over conduct by the defendant that occurs within or affects the state. But general jurisdiction, by definition, involves conduct *un*related to the state, and it therefore must be justified solely on the relationship between the *defendant* and the state.

The only established basis for such broad authority is the close relationship of a state with its citizens and residents, which suggests narrow limits for the extraordinary authority represented by general jurisdiction. At a minimum, the mere distribution of an out-of-state corporation's products in a forum state cannot justify the state's assertion of general authority over that corporation analogous to its authority over citizens and residents.

2. This Court has often emphasized the importance of whether a defendant can "reasonably anticipate" being haled into the courts of the forum. Here, in light of the unprecedented nature of general jurisdiction over a defendant without any physical presence in the forum—compounded by the even greater novelty of establishing general jurisdiction based solely on stream-of-commerce contacts—this factor weighs heavily against jurisdiction.

3. Likewise, the notion of "reciprocity" or "exchange"—that a defendant which obtains the benefits of doing business in a state is subject to reciprocal obligations—further demonstrates the

overreaching nature of the assertion of jurisdiction in this case. Subjecting Petitioners to general jurisdiction over all of their global conduct is vastly disproportionate to the limited benefits they received from North Carolina as one of the destinations of their products in the stream of commerce.

4. While convenience cannot justify an otherwise improper assertion of jurisdiction, *in*convenience is relevant to the due-process calculus. And, unlike general jurisdiction over a corporation in a state in which it has significant operations, subjecting corporations to suit in states where they have no physical presence, on claims arising across the globe, is presumptively inconvenient and unfair.

5. The negative consequences of the rule adopted below further demonstrate its inconsistency with the vision of limited state power embodied in this Court's personal-jurisdiction decisions. Allowing general jurisdiction wherever one's products are distributed would result in virtually universal jurisdiction in every state's courts over every significant foreign or domestic seller. The attendant invitation to rampant forum shopping is inconsistent with both basic fairness and "the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Int'l Shoe*, 326 U.S. at 319. Moreover, the rule of expansive general jurisdiction adopted below—creating widespread amenability to suit resulting from limited contacts—is likely to significantly deter interstate and (particularly) foreign commerce.

B. Further, even if general jurisdiction could be based on stream-of-commerce contacts in some cases, this would not be such a case. There is no evidence

that Petitioners even knew their tires were sold in North Carolina, let alone that they purposefully directed their products at North Carolina. *See Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987). Nor are the quantities of Petitioners' tires distributed in North Carolina sufficient to meet any plausible standard for general jurisdiction.

C. Lastly, the assertion of jurisdiction in this case fails *Asahi*'s alternative "reasonableness" prong. As in *Asahi*, the unique burden on Petitioners, as foreign corporations, is severe. Additionally, North Carolina has little legitimate interest in out-of-state conduct; much of the evidence is located overseas; and the international setting, again as in *Asahi*, militates against the aggressive expansion of personal jurisdiction adopted below.

III. Respondents' Brief in Opposition to certiorari suggested that they may seek to rely on specific jurisdiction, but they have waived any such argument. In any event, their claims plainly do not arise out of or relate to Petitioners' contacts with North Carolina—as required for specific jurisdiction—and fail to satisfy the requirements of this Court's stream-of-commerce doctrine.

ARGUMENT

The familiar formulation of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)—premising jurisdiction over foreign corporations on the existence of sufficient corporate "contacts" with a state, *id.* at 316-17—protects defendants against state assertions of judicial authority that "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292

(1980). The decision below erases many of those limits, as it would subject every significant seller of goods, foreign or domestic, to general jurisdiction in every state of the Union, over its conduct anywhere in the world. Not only would "[e]very seller of chattels . . . in effect appoint the chattel his agent for service of process"—a result this Court warned against in *World-Wide Volkswagen*, 444 U.S. at 296—but those chattels would subject the seller to unlimited jurisdiction over entirely unrelated causes of action.

This Court has long implicitly—and since *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), explicitly—recognized two methods for establishing the basis needed to justify haling a defendant into the courts of a particular state: "specific jurisdiction" and "general jurisdiction." *Id.* at 414 & nn.8-9. Specific jurisdiction—the dominant form since *International Shoe*—refers to the assertion of jurisdiction over cases that "aris[e] out of or relate[] to" the defendant's particular contacts with the state, *Helicopteros*, 466 U.S. at 414 & n.8, giving the state authority based on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). As the court below recognized, specific jurisdiction is inapplicable here, because the claim "is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina." Pet. App. 12a.

Instead, this case concerns general jurisdiction, which refers to the assertion of jurisdiction over cases that are *not* related to the defendant's forum activities. *Helicopteros*, 466 U.S. at 414 & n.9.

Because general jurisdiction gives the state authority over all of a defendant's conduct—wherever it occurs, and without need of any connection to the state—it is limited to circumstances in which a corporation maintains "continuous corporate operations within a state" that are "so substantial and of such a nature," as to justify such a global assertion of authority over the defendant. *Int'l Shoe*, 326 U.S. at 318. Only one post-*International Shoe* case—*Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952)—has upheld general jurisdiction over a non-domiciliary corporation, and in that case the forum state was "the corporation's principal, if temporary, place of business." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984).

This Court has never precisely defined how substantial the "continuous corporate operations within a state" must be to justify general jurisdiction under *International Shoe*. But the North Carolina Court of Appeals' holding here—that a corporation with no physical presence in the forum state is subject to general jurisdiction simply because its products reached the state through the stream of commerce, Pet. App. 27a-29a—cannot be justified under any of the "'traditional notions of fair play and substantial justice'" that have marked the boundaries of personal jurisdiction since *International Shoe*. 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

There are at least two reasons why the novel exercise of general jurisdiction in this case "offend[s]" these notions of fairness. *Int'l Shoe*, 326 U.S. at 316. First, longstanding historical precedent holds that the distribution to and sale in the forum state of a

foreign corporation's products do not suffice to establish jurisdiction; and this Court held in *Helicopteros* that, within the *International Shoe* framework, such prior precedent continues to limit the permissible exercise of general jurisdiction. *See infra* Part I.

Second, under the more modern principles of *International Shoe*, it is equally clear that the decision below must be reversed. A state has no legitimate basis for treating the mere distribution of some of a corporation's products in the state as providing it with global judicial authority over that corporation's worldwide conduct. The holding below expands general jurisdiction far beyond the bounds set by *International Shoe*, and defies any conceivable justification under the Due Process Clause. *See infra* Part II.

I. THIS COURT'S PRE-*INTERNATIONAL SHOE* CASES REJECTING JURISDICTION BASED ON THE MERE SALE OF A DEFENDANT'S PRODUCTS IN A FORUM PRECLUDE—OR AT LEAST MAKE HIGHLY SUSPECT—ANY EXERCISE OF GENERAL JURISDICTION ON THAT BASIS.

In contrast to specific jurisdiction—as to which *International Shoe* largely superseded prior case law—this Court has made clear that its prior cases remain highly relevant within the *International Shoe* framework in setting boundaries on when "continuous corporate operations within a state" are "so substantial and of such a nature," *Int'l Shoe*, 326 U.S. at 318, as to justify the state's exercise of general jurisdiction over the corporation. *See Helicopteros*, 466 U.S. at 417-18.

Those prior cases establish that a foreign corporation could not be deemed "present" in the forum—as required for personal jurisdiction under the regime of *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877)—unless the corporation had a significant physical presence there. In particular, the Court repeatedly held that the mere sales of a corporation's products in the state—or other in-state business conducted by others on its behalf—did not suffice to establish the necessary corporate "presence." The holding below is thoroughly inconsistent with these principles.

A. General Jurisdiction Is Unavailable—Or At A Minimum Highly Suspect—When A Corporation's Activities In The Forum Do Not Even Rise To The Level Of "Presence" Historically Required For Jurisdiction.

This Court's modern general-jurisdiction cases establish that pre-*International Shoe* case law remains relevant in setting boundaries on general jurisdiction. Indeed, this Court's cases suggest that "presence" in the forum under historical standards remains a *sine qua non* of a permissible exercise of general jurisdiction.

In *Helicopteros*, for example, this Court relied on the pre-*International Shoe* case of *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923), as precluding an argument that a corporation's regular "purchases and related trips" in the forum state justified general jurisdiction. 466 U.S. at 417. In doing so, the Court indicated that general jurisdiction could not exist over a corporation unless it had the "presence" in the state required under pre-*International Shoe* standards, quoting *Rosenberg* for

the decisive proposition that "'[v]isits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the jurisdiction.'" *Helicopteros*, 466 U.S. at 417 (quoting *Rosenberg*, 260 U.S. at 518). In short, the Court held that in-state activities that "'would not warrant the inference that the corporation was present within the jurisdiction'" under pre-*International Shoe* standards were necessarily insufficient as a basis for general jurisdiction today. *Helicopteros*, 466 U.S. at 417 (quoting *Rosenberg*, 260 U.S. at 518).[3]

Similarly, in *Burnham v. Superior Court*, 495 U.S. 604 (1990)—which involved an assertion of general jurisdiction over an individual based on service of process in the forum state—Justice Scalia's plurality opinion explained that *International Shoe* expanded historical standards of jurisdiction *only* with respect to specific jurisdiction: "We have held . . . deviations [from those historical standards] permissible, but only with respect to *suits arising out of the absent defendant's contacts* with the State." *Id.* at 610 (emphasis added); *see also id.* at 618 (*International Shoe* permits "a State [to] dispense with in-forum personal service on nonresident defendants *in suits arising out of their activities in the State*") (emphasis added).

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[3] As discussed below, *see infra* Part II, general jurisdiction under *International Shoe* may well require considerably more than was required for corporate "presence" under historical standards; it was never established that corporate "presence" was a sufficient constitutional basis for jurisdiction over anything other than claims arising out of the corporation's in-state activities. *See infra* Part I.B.

Further, Justice Brennan's concurrence in *Burnham*—while disagreeing that historical standards were dispositive—agreed that "history is an important factor" in the due-process calculus, because it is relevant to a defendant's "reasonable expectations" as to whether he "'is subject to suit' in the forum." *Id.* at 629, 636-37 (quoting *World-Wide Volkswagen*, 444 U.S. at 297). Justice Brennan's point follows from the principle—one "critical to due process"—that jurisdiction is absent unless "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297; *see also id.* (important that potential defendants have some "assurance as to where [their] conduct will and will not render them liable to suit").

Lastly, and more generally, the Court has repeatedly looked to "traditional practice" as a "touchstone" for the rights set forth in the Due Process Clause. *Honda Motor Co. v. Oberg*, 512 U.S. 415, 430 (1994); *see Tumey v. Ohio*, 273 U.S. 510, 523-24 (1927). An assertion of general jurisdiction that goes beyond the circumstances historically recognized as a valid basis for personal jurisdiction is, at a minimum, suspect. *See Oberg*, 512 U.S. at 430.

B. Under Historical Standards, The Mere Sale Of A Corporation's Products In A State Was Insufficient To Establish Its "Presence" For Jurisdictional Purposes.

Before *International Shoe*, a state's jurisdiction over a non-resident defendant depended on the defendant's presence in the forum when served with

process. Under this approach, state courts had jurisdiction only "over nonresidents who [were] physically present in the State," *Burnham*, 495 U.S. at 610 (plurality opinion); *see Pennoyer*, 95 U.S. at 722; Joseph Story, Commentaries on the Conflict of Laws § 539 (4th ed. 1852).

Under this paradigm, the Court was frequently called upon to determine whether a corporation's activities rendered it "present" in the forum. And this Court's cases made clear that a corporation could *not* be considered "present" based on the mere sale of the defendant's products in the state.

1. Before *International Shoe*, there was never any settled tradition allowing general jurisdiction over non-domiciliary corporations.

As an initial matter, it is significant that there was no "firmly established principle[] of personal jurisdiction in American tradition," *Burnham*, 495 U.S. at 610 (plurality opinion), allowing what would today be called general jurisdiction over foreign corporations "doing business" in a state. In this respect, corporations differed from individuals, as to whom it was established that in-state service did confer what amounted to general jurisdiction. *Id.* at 611-15.

The common-law rule deemed a corporation "present" only in its state of incorporation, and thus it could be sued only in that state. *See St. Clair v. Cox*, 106 U.S. 350, 357-58 (1882); *Bank of Augusta v.*

Earle, 38 U.S. 519, 588 (1839).[4] By the mid-1800s, aided by state statutes departing from this rule, courts began to permit suits where a foreign corporation conducted substantial business, if the suit arose out of that in-state business. *See, e.g.*, *Lafayette Ins. Co. v. French*, 59 U.S. 404, 407-09 (1855). These statutes primarily reflected the need to assert jurisdiction over corporations whose activities in a state gave rise to legal claims there. *See Developments in the Law—State-Court Jurisdiction*, 73 Harv. L. Rev. 911, 919 (1960).

Accordingly, near the time of the Fourteenth Amendment's adoption, many courts found it "well settled . . . that no action *in personam* [could] be maintained against a foreign corporation, unless the contract sued on was made, or the injury complained of was suffered, in the State in which the action [was] brought." *Cent. R.R. & Banking Co. v. Carr*, 76 Ala. 388, 1884 WL 419, at *4 (1884); *see also* Edward Quinton Keasbey, *Jurisdiction Over Foreign Corporations*, 12 Harv. L. Rev. 1, 22 (1898).[5] By the

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[4] *See also, e.g.*, *Middlebrooks v. Springfield Fire Ins. Co.*, 14 Conn. 301, 1841 WL 361, at *4-6 (1841); *Clarke v. N.J. Steam Nav. Co.*, 5 F. Cas. 974, 976 (C.C.R.I. 1841) (No. 2,859) (Story, J.); *Peckham v. Inhabitants of the N. Parish in Haverhill*, 33 Mass. (16 Pick.) 274, 286-87 (1834); *M'Queen v. Middletown Mfg. Co.*, 16 Johns. 5, 5 (N.Y. Sup. Ct. 1819); *see also* Edward Quinton Keasbey, *Jurisdiction Over Foreign Corporations*, 12 Harv. L. Rev. 1, 2 (1898); Joseph K. Angell & Samuel Ames, *A Treatise on the Law of Private Corporations Aggregate* 336 (2d ed. 1843).

[5] *See, e.g.*, *Aetna Ins. Co. v. Black*, 80 Ind. 513, 1881 WL 7163, at *3 (1881); *Bawknight v. Liverpool & London & Globe Ins. Co.*, 55 Ga. 194, 1875 WL 3197, at *2 (1875), *overruled by Reeves v. S. Ry. Co.*, 49 S.E. 674, 676 (Ga. 1905); *Sawyer v. N.*

twentieth century, however, disagreement had emerged, with several courts now taking the view that a corporation doing sufficient business in a state could be sued there on any cause of action. *See Tauza v. Susquehanna Coal Co.*, 115 N.E. 915, 917-18 (N.Y. 1917); *State-Court Jurisdiction*, *supra*, 73 Harv. L. Rev. at 921 (observing that "cases were divided" on this issue).

This Court, however, never resolved the issue. It expressly left the question open in *Philadelphia & Reading Railway Co. v. McKibbin*, 243 U.S. 264, 265 (1917), and several decisions affirmatively suggested that "doing business" in a state would *not* permit jurisdiction over causes of action arising elsewhere. For example, while it approved statutes deeming corporations doing business in a state to have implicitly "consented" to service of process on state officials, *see Ex parte Schollenberger*, 96 U.S. 369, 376 (1877), the Court twice held that this principle could not reach "causes of action arising in other states." *Simon v. S. Ry. Co.*, 236 U.S. 115, 130 (1915); *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8, 22 (1907).[6] Further, in *Louisville &*

(continued…)

Am. Life Ins. Co., 46 Vt. 697, 1874 WL 6574, at *1 (1874); *Camden Rolling Mill Co. v. Swede Iron Co.*, 32 N.J.L. 15, 1866 WL 3638, at *2 (N.J. 1866); *Parke v. Commonwealth Ins. Co.*, 44 Pa. 422, 1863 WL 4820, at *1 (1863); *Merrill v. Knickerbocker Life Ins. Co. of N.Y.*, 4 Ky. L. Rptr. 729, 1883 WL 7123, at *1 (Ky. Super. Ct. 1883).

[6] By contrast, if a corporation had *expressly* consented to general jurisdiction through designation of an agent to receive service of process, the Court viewed that consent as

Nashville Railroad Co. v. Chatters, 279 U.S. 320 (1929), then-Associate Justice Stone summarized prior decisions as suggesting that a foreign corporation could not "be sued on transitory causes of action arising elsewhere which are unconnected with any corporate action by it within the jurisdiction." *Id.* at 325; *see also Robert Mitchell Furniture Co. v. Selden Breck Constr. Co.*, 257 U.S. 213, 216 (1921); Restatement (First) of Conflict of Laws § 92 cmt. c (1934).[7]

In short, this Court's pre-*International Shoe* cases "never openly espoused" the view that a foreign corporation's "presence" in the forum state could support general jurisdiction over the corporation, Philip B. Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 583 (1958), and

(continued…)

sufficient to satisfy due process. *Pa. Fire Ins. Co. of Phila. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 95 (1917).

[7] Chief Justice Stone's later observation on this topic in *International Shoe*—that "there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify" jurisdiction over suits "arising from dealings entirely distinct from those activities," 326 U.S. at 318—highlights the paucity of support for that view in this Court's opinions. The three "instances" cited were *Tauza*, an opinion of the New York Court of Appeals; a "cf." citation to *St. Louis Southwestern Railway Co. v. Alexander*, 227 U.S. 218 (1913), which involved a case related to the defendant's in-state conduct, *see id.* at 224-25; and *Missouri, Kansas & Texas Railway Co. v. Reynolds*, 255 U.S. 565 (1921) (per curiam), a one-sentence opinion affirming a state decision "upon the authority of" *Alexander*.

at times questioned that view, *see Chatters*, 279 U.S. at 325. Thus, there was no "firmly established principle[]," *Burnham*, 495 U.S. at 610 (plurality opinion), that a foreign corporation's "doing business" in a state could subject it to jurisdiction on cases unrelated to that business.

2. Jurisdiction based on corporate "presence," even when the cause of action arose out of the defendant's forum contacts, required significant physical presence in the forum state.

At the same time, and leaving aside jurisdiction over out-of-state causes of action, until *International Shoe* *any* exercise of jurisdiction over an unconsenting foreign corporation required a significant degree of physical presence in the state. Thus, due process required that the corporation *both* be served with process in the forum and be "doing business within the state . . . in such manner . . . as to warrant the inference that it was present there." *Rosenberg*, 260 U.S. at 517. These requirements followed from the traditional principle that "a court simply could not exercise *in personam* jurisdiction over a nonresident who had not been personally served with process in the forum." *Burnham*, 495 U.S. at 616 (plurality opinion).[8]

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[8] The Court sometimes justified jurisdiction on the theory that a foreign corporation doing business in a state "impliedly consented" to jurisdiction. *St. Clair*, 106 U.S. at 356. But this "implied consent," like corporate "presence," required a corporation to have significant physical presence in the state. *See id.* at 359 (finding it "essential" "that the corporation [was] engaged in business in the state").

State courts, therefore, "regarded [it] as settled . . . that if a foreign corporation . . . d[id] not do business, and ha[d] not any office or place of business in [the forum] state," the corporation, "[could not] be brought within the jurisdiction of [the state's courts]." *Camden Rolling Mill Co. v. Swede Iron Co.*, 32 N.J.L. 15, 1866 WL 3638, at *2 (N.J. 1866). This standard imposed a significant threshold before the corporation could be considered "present"; it did not permit jurisdiction to attach, for example, through "service upon an officer of a foreign corporation, when he happen[ed] to be temporarily in [the] state." Charles T. Boone, *A Manual of the Law Applicable to Corporations Generally* § 74 (1887); *see, e.g.*, *Camden*, 1866 WL 3638, at *3 ("[I]t is difficult to believe that it was the design to place within the jurisdiction of our courts, all the corporations of the world, merely from the fact that a director, clerk, or other subordinate officer happened to come upon the territory of the state.").[9]

After *Pennoyer*, this Court adopted the same rule that the actual physical presence of corporate agents in the state carrying on substantial corporate business there—and service of process on them within the state—was a *sine qua non* of the "presence" necessary to confer jurisdiction over a foreign corporation. *See, e.g.*, *McKibbin*, 243 U.S. at

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[9] *See also, e.g.*, *Aldrich v. Anchor Coal & Dev. Co.*, 24 Or. 32, 33-35 (1893); *Midland Pac. Ry. Co. v. McDermid*, 91 Ill. 170, 1878 WL 10249, at *2 (1878); *Newell v. Great W. Ry. Co. of Can.*, 19 Mich. 336, 1869 WL 3648, at *5 (1869); *Latimer v. Union Pac. Ry.*, 43 Mo. 105, 1868 WL 4854, at *3-4 (1868); *Parke v. Commonwealth Ins. Co.*, 44 Pa. 422, 1863 WL 4820, at *1 (1863); *Libbey v. Hodgdon*, 9 N.H. 394, 1838 WL 1260, at *3 (1838).

265; *Rosenberg*, 260 U.S. at 517; *Riverside & Dan River Cotton Mills, Inc. v. Menefee*, 237 U.S. 189, 194 (1915); *Green v. Chi., Burlington & Quincy Ry. Co.*, 205 U.S. 530, 533-34 (1907); *Goldey v. Morning News of New Haven*, 156 U.S. 518, 522 (1895).

In *Rosenberg*, for example, the corporate president was served with process while in the state to make purchases for its out-of-state store. 260 U.S. at 517-18. The Court found it "clearly correct" that "[v]isits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the jurisdiction of the state." *Id.*; *see People's Tobacco Co. v. Am. Tobacco Co.*, 246 U.S. 79, 87 (1918) (corporation was not "present" in Louisiana despite its "continued practice of advertising its wares in Louisiana, and sending its soliciting agents [there]").

Furthermore, of particular relevance, personal jurisdiction over an absent corporate defendant could not exist merely because its products were sold in the state. In *Consolidated Textile Corp. v. Gregory*, 289 U.S. 85 (1933), for example, the corporate defendant sold goods in Wisconsin through a subsidiary acting as its agent, and this Court rejected the notion that these in-state sales could suffice to establish that the defendant was "present" there. *Id.* at 88. The Court explained that it was necessary "that [the corporation be] carrying on business there," and "'the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district where service is attempted.'" *Id.* (quoting *People's Tobacco*, 246 U.S. at 87). Because mere sales in the

state through a subsidiary did not meet these requirements, the defendant "was not present within the jurisdiction of Wisconsin as required." *Gregory*, 289 U.S. at 88.

Reflecting a similar view of what "presence" required was *Bank of America v. Whitney Central National Bank*, 261 U.S. 171 (1923), an opinion by Justice Brandeis holding that the defendant's transaction from out of state of considerable New York business could not overcome its lack of physical presence in the state:

> The Whitney Central had what would popularly be called a large New York business. The transactions were varied, important, and extensive. But it had no place of business in New York. None of its officers or employees was resident there. . . . The jurisdiction taken of foreign corporations . . . flows from the fact that the corporation itself does business in the state or district in such a manner and to such an extent that its actual presence there is established. That the defendant was not in New York, and hence was not found within the district, is clear.

Id. at 173.

And, in *McKibbin*, the Court held that jurisdiction was lacking over a railroad that "sen[t] into [New York], over connecting carriers, loaded freight cars," notwithstanding that tickets for carriage on its railroad were regularly sold in New York by connecting carriers. 243 U.S. at 266-67. The Court emphasized that "[n]o part of [the defendant's] railroad is situated within the State of New York [and it] has no dock, or freight or passenger ticket

office or any other office or any agent or property therein," *id.* at 266, and that if the regular sale of its tickets in the state sufficed "nearly every railroad company in the country would be 'doing business' in every State," *id.* at 268.

Lastly, the Court held that the presence of a corporate subsidiary marketing its parent's products could not establish that the parent was "present" in the state, even where "the defendant dominate[d] the [local] corporation, immediately and completely, and exerts its control both commercially and financially." *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 335 (1925); *see Gregory*, 289 U.S. at 88; *McKibbin*, 243 U.S. at 268 ("Nor would the fact . . . that 'subsidiary companies' did business within the state, warrant a finding that the defendant did business there."); *People's Tobacco*, 246 U.S. at 87 (same); *Peterson v. Chi., Rock Island, & Pac. R.R. Co.*, 205 U.S. 364, 391-92 (1907) (same).

In sum, the pre-*International Shoe* case law (1) provided no clear historical practice permitting a state to exercise general jurisdiction over a foreign corporation; (2) required significant physical presence in the state as a prerequisite for jurisdiction over a foreign corporation even with respect to in-state causes of action; (3) concluded that mere sales of a foreign corporation's products in a state were inadequate to establish the presence necessary for jurisdiction; and (4) held that the in-state presence of subsidiaries or affiliates did not amount to presence on the part of an out-of-state corporation.

3. *International Shoe* and its progeny confirm these principles.

International Shoe and its progeny reaffirm these established principles. *International Shoe* itself recognized that general jurisdiction over a foreign corporation can exist only when it is engaged in "continuous corporate operations *within a state*" that are "*so substantial and of such a nature* as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U.S. at 318 (emphasis added). And all three of the cases *International Shoe* cited as examples involved defendants who were operating an office within the forum, staffed with their own employees and agents. *See Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 586 n.1 (1st Cir. 1970) (describing facts of the cases). Further, that *International Shoe* approved only the state's exercise of *specific* jurisdiction, 326 U.S. at 320, illustrates that the "substantial" "continuous corporate operations" necessary for *general* jurisdiction, *id.* at 318, must be at a higher level than the continuous employment of in-state salesmen and rental of business space at issue there, *id.* at 313-14.

The Court's cases after *International Shoe* provide further support for the historical principles. In *Perkins,* the corporate defendant's "president, while engaged in . . . business in Ohio, ha[d] been served with summons" in the state. 342 U.S. at 438. The defendant, which was incorporated in the Philippines, had "halted" all operations there after the Japanese invasion during World War II. *Id.* at 447. The president returned to Ohio, and ran the corporate operations from that state, which included keeping the corporate files, drafting its

correspondence, distributing its employees' pay, and holding board meetings. *Id.* at 447-48. Given these facts, "Ohio was the corporation's principal, if temporary, place of business." *Keeton*, 465 U.S. at 779 n.11 (discussing *Perkins*).

In *Helicopteros*, by contrast, plaintiffs (representatives of decedents who died in a helicopter accident in Peru) brought a Texas lawsuit against the Colombian corporation that had operated the crashed helicopter. 466 U.S. at 409-11. The defendant had purchased about 80% of its helicopter fleet in Texas, and regularly sent employees there for training. *Id.* at 411. Further, its CEO had visited the state to negotiate the contract under which the company had provided the helicopter involved in the accident. *Id.* These contacts were held insufficient for general jurisdiction, with the Court relying on *Rosenberg*'s holding that the "purchases and related trips . . . are not a sufficient basis for . . . jurisdiction." *Id.* at 417.

In addition, *Helicopteros* used language suggesting that general jurisdiction *requires* that a foreign corporation's presence rise to the high level of that found in *Perkins*. *Helicopteros* framed the relevant question as whether the defendant's contacts with Texas "constitute[d] the kind of continuous and systematic general business contacts the Court *found to exist* in *Perkins*," 466 U.S. at 416 (emphasis added), suggesting that *Perkins*—in which the forum was the corporation's "principal . . . place of business," *Keeton*, 465 U.S. at 779 n.11—sets the general-jurisdiction floor.

Finally, *Keeton* further illustrates that the principles announced in cases like *Gregory* and *McKibbin*—that the in-state sales of an absent

defendant's products do not suffice to establish the defendant's presence, *see Gregory*, 289 U.S. at 88; *McKibbin*, 243 U.S. at 266-68—remain controlling law for general jurisdiction. *Keeton*, which was decided just one month before *Helicopteros*, strongly suggested in dicta that "respondent's activities in the forum may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities," 465 U.S. at 779, notwithstanding that the in-state "activities" "consist[ed] of the sale of some 10 to 15,000 copies of *Hustler* magazine in [the forum] State each month." *Id.* at 772. General jurisdiction thus may not exist even where the absent defendant makes its own in-state sales, let alone when the sales of the defendant's products are made by another.

In addition, *Keeton* reaffirmed the longstanding corporate-separateness principle, citing *Gregory* for the proposition that the actions of a subsidiary may not establish jurisdiction over its corporate parent, and noting that "[e]ach defendant's contacts with the forum State must be assessed individually." *Keeton*, 465 U.S. at 781 n.13.

In sum, neither historical practice nor the Court's modern general-jurisdiction case law applying it can be squared with the holding below that the mere distribution of a corporation's goods in the forum, unaccompanied by any physical presence of the corporation, can suffice for general jurisdiction.

II. GENERAL JURISDICTION BASED ON THE STREAM-OF-COMMERCE DISTRIBUTION OF A DEFENDANT'S PRODUCTS IN THE FORUM STATE EQUALLY OFFENDS MODERN DUE-PROCESS STANDARDS.

Aside from its inconsistency with historical standards, the rule adopted below equally violates "'traditional notions of fair play and substantial justice'" when measured against contemporary due-process standards. *Int'l Shoe*, 326 U.S. at 316 (quoting *Milliken*, 311 U.S. at 463).

As noted earlier, under the decision below, essentially universal jurisdiction would exist in every state's courts over every significant seller of goods, foreign or domestic. *International Shoe* and subsequent cases provide no support for such unconstrained general jurisdiction. To the contrary, *International Shoe* limits general jurisdiction to narrow circumstances—indeed, it appears to require a considerably *greater* connection between the defendant and the forum than was necessary to establish "presence" prior to *International Shoe*. *Cf.* Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1143-44, 1178-79 (1966) (explaining that *International Shoe*'s approach and the growth of specific jurisdiction support a narrow scope for general jurisdiction).

In all events, general jurisdiction over a defendant with no physical presence in the forum—let alone over a defendant whose only contacts consist of the mere stream-of-commerce distribution of its products there—cannot be justified under *International Shoe*.

A. The Mere Distribution Of A Defendant's Products In A State Cannot Satisfy The Substantial Threshold Required For General Jurisdiction Under *International Shoe*.

The decision below dramatically departs from the modern due-process standards identified and applied by *International Shoe* and its progeny.

1. A state has no valid basis for exercising global authority over a defendant whose only connection with the state is that its products are distributed there.

The due-process restrictions on personal jurisdiction set forth in *International Shoe* "are a consequence of territorial limitations on the power of the respective States," and they protect a defendant against a state's "exercise of power over him" without legitimate basis. *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). A state's judicial authority over non-resident defendants is therefore measured not merely by convenience, but by whether the state has a legitimate basis making its exercise of authority "reasonable, in the context of our federal system of government." *Int'l Shoe*, 326 U.S. at 317.

a. The limits on personal jurisdiction protect defendants against excessive assertions of state judicial authority, "ensur[ing] that the States[,] through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292. Thus, the central principle of personal jurisdiction is that a state "does not have jurisdiction in the absence of some reasonable basis for exercising it." Restatement (Second) of Conflict of Laws § 24 cmt. b (1971).

The necessary "reasonable basis" for jurisdiction must arise from either the state's authority over the conduct at issue or the state's authority over the defendant itself. In this respect, due-process limits on personal jurisdiction echo the due-process limits imposed elsewhere. For example, a state may of course regulate activities in or affecting the state, and may regulate out-of-state activities of its citizens, *see Skiriotes v. Florida*, 313 U.S. 69, 77 (1941); *cf. Blackmer v. United States*, 284 U.S. 421, 436 (1932), but it may not "reach[] beyond her borders to regulate a subject which was none of her concern," or "impos[e] . . . conditions upon [a party's] privilege of engaging in local business which would bring within the orbit of state power matters unrelated to any local interests." *Osborn v. Ozlin*, 310 U.S. 53, 62, 65 (1940); *see BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996); *cf. Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989) ("[A] statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority.").

The due-process limits on jurisdiction and choice of law are by no means identical. *Cf. Hanson*, 357 U.S. at 254 ("The issue is personal jurisdiction, not choice of law."). But they both reflect the general principles limiting the scope of a state's sovereign authority, as well as the more specific proposition that such authority ordinarily does not extend to activities of non-residents that are unrelated to the state.

b. In specific-jurisdiction cases, any cause of action, by definition, "arise[s] out of or relate[s] to" the defendant's contacts with the state, *Helicopteros,*

466 U.S. at 414, and the state's legitimate authority over that purposeful conduct provides the necessary predicate for jurisdiction. Even these cases, however, weigh "the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Shaffer*, 433 U.S. at 204 (internal quotation marks omitted). There must be an adequate "relationship among the defendant, the forum, and the litigation" under this standard, *id.*, so that the state cannot be said to be "reach[ing] out beyond the limits imposed on [it]" by the Due Process Clause. *World-Wide Volkswagen*, 444 U.S. at 292.

c. For general jurisdiction, however, a different justification is necessary. Because such cases, by definition, do *not* arise out of or relate to contacts with the state, there is no "relationship among the defendant, the forum, *and the litigation*." *Shaffer*, 433 U.S. at 204 (emphasis added). Instead, the state's assertion of jurisdiction must be justified solely on the basis of its relationship with the defendant. To be sure, the state also has some interest in providing a forum for state-resident plaintiffs. But absent sufficient contacts between the defendant and the forum, the plaintiff's residence does not provide an independent basis for jurisdiction. *Kulko v. Superior Court*, 436 U.S. 84, 93-94 (1978); *see also Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (rejecting test that made "plaintiff's contacts with the forum . . . decisive" for jurisdiction). The due-process right protects a defendant's "liberty interest," *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985), and thus it is the defendant's

contacts with the state that matter, not the plaintiff's. *Hanson*, 357 U.S. at 254.[10]

Because general jurisdiction must be justified solely by reference to the relationship between the state and the defendant, that relationship must be so significant—"sufficiently substantial and of such a nature," *Perkins*, 342 U.S. at 447—as to give the state a basis for global judicial authority over *all* of the defendant's conduct, wherever it occurs. The only universally recognized basis for such plenary state authority over out-of-state conduct is the unique relationship between a state and its citizens or residents. *See Milliken*, 311 U.S. at 462-64 (upholding jurisdiction over absent citizen); *cf. Skiriotes*, 313 U.S. at 77 (state may regulate citizens' conduct "on the high seas"). This suggests that general jurisdiction should be available only with respect to defendants who are so closely tied to the state that the state "posses[es] equivalent authority to that which it possesses over its own citizens." Allan R. Stein, *Styles of Argument and Interstate Federalism in the Law of Personal Jurisdiction*, 65 Tex. L. Rev. 689, 726 (1987).[11]

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[10] A further reason general jurisdiction cannot be justified by reference to the plaintiff's residence is that such jurisdiction, where permissible, is equally available to non-resident plaintiffs. *See Perkins*, 342 U.S. at 438 (permitting general jurisdiction in Ohio on behalf of "nonresident of Ohio").

[11] Indeed, the authors who coined the phrase "general jurisdiction" believed that it should be limited to a corporation's place of incorporation and principal place of business. *See* von Mehren & Trautman, *supra*, 79 Harv. L. Rev. at 1179. Others have similarly recognized that general jurisdiction is appropriate only with respect to state "insider[s]," with the

Be that as it may, this case does not require the Court to decide whether due-process principles limit general jurisdiction to a corporation's state of incorporation or principal place of business. This case involves a state's assertion of general jurisdiction over foreign corporations with no physical presence in the forum and whose only contacts with the forum result from the movement of their products through the stream of commerce. Such contacts come nowhere close to making a corporation the equivalent of an "insider" or domiciliary, *Milliken*, 311 U.S. at 463-64, over which the state may legitimately assert global authority.

d. This Court's general-jurisdiction case law supports this analysis. *Perkins*, the Court's only case since *International Shoe* to permit general jurisdiction over a corporation, involved a corporation with its "principal . . . place of business" in the forum state. *Keeton*, 465 U.S. at 779 n.11. *Helicopteros*, in turn, framed the due-process inquiry for general jurisdiction as whether a state's contacts with a corporation "constitute the kind of continuous and systematic general business contacts . . . *found to exist* in *Perkins*." 466 U.S. at 416 (emphasis added); *see* Restatement (Second) of Conflict of Laws § 47 cmt. e (citing *Perkins* as the standard for jurisdiction based on a corporation "doing business" in a state,

(continued…)

paradigm cases being "domicile, place of incorporation, and principal place of business." Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 728, 742 (1988).

and saying only that "[s]uch jurisdiction is particularly likely to exist in situations where the corporation's principal place of business is in the state"); 1 Robert C. Casad & William M. Richman, *Jurisdiction in Civil Actions* § 2-5[3][a] (3d ed. 2004) (courts usually require "at least, that defendant have an office in the forum" to sustain general jurisdiction under the continuous and systematic contacts standard). None of these cases suggests that a legitimate state interest in general jurisdiction over a non-resident defendant can be based on the mere stream-of-commerce distribution of that defendant's products.

e. Finally, additional confirmation comes from cases under the Commerce Clause, which establish that a defendant's engagement in interstate commerce within a state—and distribution of products through the stream of commerce is necessarily interstate commerce—may not be leveraged by the state into a basis for general jurisdiction over the defendant. In particular, this Court has held that a state may not condition such interstate commerce on consent "to the general jurisdiction of [the state's] courts over transactions in which [the state] ha[s] no interest." *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 895 (1988); *see also Davis v. Farmers' Co-Op. Equity Co.*, 262 U.S. 312, 315-17 (1923). Such compelled consent constitutes "an unreasonable burden on commerce," *Bendix*, 486 U.S. at 895, as North Carolina's own statutes implicitly recognize. *See* N.C. Gen. Stat. § 55-15-01(b)(8) (exempting from North Carolina's business-registration requirements corporations "[t]ransacting business in interstate commerce"); *see also* Restatement (Second) of Conflict of Laws § 47

cmt. h; *cf. Simon*, 236 U.S. at 130-32; *Old Wayne*, 204 U.S. at 22-23. Likewise, a state may not "require a foreign corporation to qualify to do business" in the state as a condition of engaging in interstate commerce within the state. *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20, 32-34 (1974).

In short, if a corporation's engagement in interstate commerce within a state does not permit the state to require *consent* to general jurisdiction, it necessarily follows that mere engagement in interstate commerce equally cannot provide a valid basis for exercising general jurisdiction without need of consent.

2. The novel basis of jurisdiction adopted below violates the "reasonable anticipation" prong of personal-jurisdiction analysis.

In determining the validity of a state's exercise of jurisdiction, the Court has repeatedly asked whether "the defendant's conduct and connection with the forum State are such that he should *reasonably anticipate* being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added); *see also Kulko*, 436 U.S. at 97-98.

In light of the long-established limits on general jurisdiction—and the unprecedented nature of the basis for jurisdiction adopted below—no corporation could reasonably "have anticipated being haled before a [state] court" on out-of-state causes of action, *Kulko*, 436 U.S. at 97-98 (internal quotation marks omitted), in a state in which it has never had any physical presence, simply because its products were distributed there. As Justice Brennan has explained, deeply rooted practice is highly relevant to the

"reasonable expectations" of defendants. *Burnham*, 495 U.S. at 637.

This point is particularly striking with respect to the stream-of-commerce basis of the decision below. Prior to this case, at least since *Helicopteros*, no reported appellate decision—let alone any of the decisions of this Court—had held that a manufacturer's mere participation in the stream of commerce could create general jurisdiction wherever the manufacturer's products were distributed. To the contrary, courts have repeatedly indicated that "[i]njecting a product, even in substantial volume, into a forum's 'stream of commerce,' without more, does not support general jurisdiction." *Jackson v. Tanfoglio Giuseppe, S.R.L.*, 615 F.3d 579, 584 (5th Cir. 2010); *see, e.g.*, *D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 106 (3d Cir. 2009); *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1075 (8th Cir. 2004); *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 778 (7th Cir. 2003); *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375-76 (5th Cir. 1987); *see also Spir Star AG v. Kimich*, 310 S.W.3d 868, 874 (Tex. 2010); *Merriman v. Crompton Corp.*, 146 P.3d 162, 185 (Kan. 2006). Indeed, this Court has yet to resolve whether participation in the stream of commerce, without more, even satisfies the lesser showing required for *specific* jurisdiction. *See Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112-13 (1987) (O'Connor, J., plurality opinion).

In addition, the concern for reasonable expectations makes particularly problematic the court's suggestion below—in rejecting a bright-line rule against basing general jurisdiction on stream-of-

commerce contacts—that jurisdiction must depend upon a standardless assessment of "the extent to which [Petitioners'] products were, in fact, distributed in North Carolina markets." Pet. App. 28a. To be sure, in the specific-jurisdiction context, the Court has at times eschewed "clear-cut jurisdictional rules." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 486 & n.29 (1985). However, it has insisted on others, such as the rule that there can be no jurisdiction absent "purposeful availment" by the defendant. *Id.* at 475 (internal quotation marks omitted).

Moreover, unlike specific jurisdiction—which inherently must adapt to the permutations raised by varying claims—general jurisdiction, which does not vary from claim to claim, is more susceptible to precise rules. Indeed, one of its primary functions is to provide "a certain and predictable place where a person can be reached by those having claims against him." von Mehren & Trautman, *supra*, 79 Harv. L. Rev. at 1137. In addition, it places a "significant[ly]" greater "burden" on defendants than specific jurisdiction, *Bendix*, 486 U.S. at 893, creating a greater need for "predictability" as to "where [their] conduct will and will not render them liable to suit" on any cause of action. *World-Wide Volkswagen*, 444 U.S. at 297. "Simple jurisdictional rules . . . promote [that] greater predictability." *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010); *see also Burnham*, 495 U.S. at 626 (plurality opinion) (advocating for bright-line rule in context of general jurisdiction).

Accordingly, the established concern for reasonable expectations weighs strongly against the decision below.

3. The limited "benefits" provided by North Carolina cannot justify the disproportionate burden of general jurisdiction in the state.

The assertion of jurisdiction on the basis adopted below is equally invalid when viewed through the lens of this Court's cases analyzing assertions of jurisdiction in light of "reciprocal" benefits that the state provides the defendant. *E.g.*, *Milliken*, 311 U.S. at 463. Thus, "to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state," which in turn "may give rise to obligations." *Int'l Shoe*, 326 U.S. at 319. Under this reasoning, "requir[ing] the corporation to respond to a suit brought to enforce" "obligations [that] *arise out of or are connected with [those] activities*" "can, in most instances, hardly be said to be undue." *Id.* (emphasis added). In other words, the benefits provided to a corporation that conducts business activities in a state make it fair for the state's courts to exercise authority over the corporation in disputes arising from those activities.

By contrast, an assertion of global authority over all of a defendant's conduct simply because its products have reached the state through the stream of commerce exceeds any reasonable notion of reciprocity. Indeed, to date, this Court has found the benefits that a state provides to justify general jurisdiction as a "reciprocal dut[y]" only for those domiciled in the state. *Milliken*, 311 U.S. at 463. That follows because the state "accords [its citizens] privileges and affords protection to [them] and [their] property by virtue of [their] domicile." *Id.* By

comparison, for a state to impose global amenability to jurisdiction in exchange for the mere distribution of products in the state would, as Justice Scalia suggested in a related context, not even "survive the 'unconscionability' provision of the Uniform Commercial Code." *Burnham*, 495 U.S. at 623 (plurality opinion). The limited benefits provided by the state fall far short of what would be necessary to "make fair the assertion of [the] State's judicial jurisdiction" over entirely unrelated causes of action. *Kulko*, 436 U.S. at 101.

4. The presumptive inconvenience of the forum further weighs against North Carolina's claim to general jurisdiction over Petitioners.

Nor can the decision below satisfy any convenience rationale. Although mere convenience for a defendant is not enough to justify an otherwise improper assertion of jurisdiction—because due-process limits on jurisdiction represent "more than a guarantee of immunity from inconvenient or distant litigation," *Hanson*, 357 U.S. at 251—unjustified *in*convenience to a defendant may defeat jurisdiction. *See World-Wide Volkswagen*, 444 U.S. at 292. As such, "[a]n 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant" to whether it is "reasonable . . . to require the corporation to defend the particular suit" in the state in which it is brought. *Int'l Shoe*, 326 U.S. at 317.

Thus, one justification that has been offered for general jurisdiction in fora in which the defendant has a significant physical presence is that a

defendant with that presence may be presumed able to defend itself there without great expense or hardship. *See* Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 741 (1988). The rule adopted below, however, vitiates this rationale by extending general jurisdiction to states in which the defendant has *no* physical presence, thereby subjecting the defendant to suit on any and all claims in a state in which it is presumptively *in*convenient to defend—and further highlighting the due-process deficiencies of that rule.

5. The consequences of the rule endorsed below demonstrate that jurisdiction on this basis is not "reasonable, in the context of our federal system of government."

The extraordinary consequences of the rule adopted below illustrate that rule's dramatic inconsistency with *International Shoe*'s goal of ensuring that assertions of jurisdiction be limited to those "reasonable, in the context of our federal system of government." 326 U.S. at 317.

a. Under the approach followed below—allowing general jurisdiction wherever a manufacturer's products are distributed—there would be virtually universal jurisdiction in every state's courts over every significant foreign or domestic manufacturer. *Cf. World-Wide Volkswagen*, 444 U.S. at 296 (rejecting rule under which "[e]very seller of chattels would in effect appoint the chattel his agent for service of process"); *McKibbin*, 243 U.S. at 268 (rejecting approach under which "nearly every railroad company in the country would be 'doing business' in every state").

Moreover, because general jurisdiction is *general*, it exists without regard to the nature of the claim. Thus, this jurisdiction would be available not only in every state, but "in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world." *Purdue*, 338 F.3d at 787. For example, North Carolina residents who took a job with Goodyear Turkey while traveling overseas could sue over their employment in any forum that receives Goodyear Turkey tires through the stream of commerce. And any other claim, regardless of where it arose and how unconnected to the forum or even to the United States as a whole, could likewise be filed in any state in the Union.

A more open invitation to forum shopping would be difficult to imagine. And the availability of such unlimited choice of forum is problematic for at least two reasons. First, by funneling cases to the most plaintiff-friendly forum rather than to a forum connected with the dispute, the rule endorsed by the court below defeats "the interstate judicial system's interest in obtaining the most efficient resolution of controversies." *World-Wide Volkswagen*, 444 U.S. at 292. Second, and even more troubling, it creates endemic procedural unfairness, in part "because [the] final outcomes [of cases] often turn on the choice-of-law rules that the forum applies." Linda J. Silberman, *Reflections on* Burnham v. Superior Court*: Toward Presumptive Rules of Jurisdiction and Implications for Choice of Law*, 22 Rutgers L.J. 569, 584 (1991). In addition, "[i]n international cases . . . the use of American discovery devices, the potential of an American jury award, and the availability of contingent fees" provide powerful

incentives for plaintiffs to seek out an American forum. *Id.* at 584 n.75.

Both this Court and Congress have expressed concern over such forum shopping. This Court has repeatedly recognized the benefit of rules that "serve[] the important purpose of preventing forum shopping," and the unjust "inconvenience" and "expense" that result from it. *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004); *see Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508-09 (2001). And Congress, for example, passed the Class Action Fairness Act in part because of the opportunities for forum shopping that arose with class actions in state courts. S. Rep. No. 109-14, at 22 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 23; *see* 28 U.S.C. § 1332(d).

A rule permitting general jurisdiction wherever a corporation's products are found, and the resulting opportunities for "rampant," fifty-state "forum shopping" sprees, *Rumsfeld*, 542 U.S. at 447, are manifestly at cross purposes with the "fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Int'l Shoe*, 326 U.S. at 319.

b. The expansive general jurisdiction adopted below is also likely to significantly deter interstate and foreign commerce, because "predicating jurisdiction upon interstate conduct provides disincentives to engage in it," by "requiring the corporate defendant to litigate claims unrelated to its forum activities in distant and perhaps unpredictable forums." Brilmayer, *supra*, 66 Tex. L. Rev. at 743, 746. As noted earlier, this Court has expressly recognized the burden on commerce created by such

exercises of jurisdiction based on activity in interstate commerce. *E.g.*, *Bendix*, 486 U.S. at 893.

This burden is potentially even greater as applied to international commerce. Many foreign corporations view the potential for liability in the American legal system as a considerable deterrent, taking the view that "[a]s a moth is drawn to the light, so is a litigant drawn to the United States. If he can only get his case into their courts, he stands to win a fortune." *Smith Kline & French Labs., Ltd. v. Bloch*, [1984] E.C.C. 103, 104 (C.A. 1982) (Denning, M.R.); *see also* Silberman, *supra*, 22 Rutgers L.J. at 584 n.75. Whatever the underlying merits of this view, its potential effect on commerce is undeniable. As the Solicitor General noted in an *amicus* brief in *Helicopteros*, citing "the critical importance of foreign trade to our national economy," a "foreign firm that finds itself subject to suit in a state court on an unrelated cause of action" based on insubstantial contacts with the forum "may well find it more expedient to do its foreign trading with firms in other countries." Brief for the United States at 10, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (No. 82-1127).

c. Finally, while perhaps obvious, it should not be overlooked that a system of effective universal jurisdiction over manufacturers would be a fundamental departure from the traditional premise that "state lines" are *not* "irrelevant for jurisdictional purposes," and that personal jurisdiction restrictions preserve a federal structure in which "[t]he sovereignty of each State, in turn, implie[s] a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen*, 444 U.S. at 293.

The brave new jurisdictional world portended by the decision below diverges dramatically from the traditional "federal system," 326 U.S. at 317, of limited state jurisdiction that *International Shoe* contemplates.

6. The reasoning of the decision below is fundamentally flawed.

In addition to the deficiencies already described, the decision below suffers from two further flaws.

a. *First*, the reasoning below was based on a mistaken understanding of the governing legal standard. The court repeatedly framed that standard as requiring only a showing that Petitioners' contacts with North Carolina were "continuous and systematic," Pet. App. 13a, 21a, 26a, thereby omitting the critical requirements (1) that general jurisdiction be based on corporate activities *within* the state, and (2) that such activities be not only "continuous and systematic," but "so substantial, and of such a nature" as to justify general jurisdiction.

International Shoe itself indicated that general jurisdiction required "*substantial*" "continuous corporate operations *within* a state." 326 U.S. at 318 (emphasis added). Indeed, it used the "continuous and systematic" language employed by the decision below to describe the contacts that met the very different test for specific jurisdiction, *id.* at 317, necessarily suggesting that general jurisdiction required something more.

Similarly, *Perkins* did not suggest that "continuous and systematic" contacts alone would suffice. Rather, it adopted *International Shoe*'s focus on the substantiality of in-state activities verbatim, noting that general jurisdiction required corporate

operations "'so substantial and of such a nature'" as to justify a state's global adjudicative power. *Perkins*, 342 U.S. at 446 (quoting *Int'l Shoe*, 326 U.S. at 318); *see Perkins*, 342 U.S. at 447. And *Helicopteros* indicated that not just any "continuous and systematic" contacts would do. Rather, the necessary corporate activity must be such as "the Court found to exist in *Perkins*." *Helicopteros*, 466 U.S. at 416.

Further, the Court in *Keeton* suggested in dicta that thousands of monthly sales in a forum would not suffice for general jurisdiction, 465 U.S. at 772, 779-80, even though such sales were most certainly "continuous and systematic" in the way that the court below used that phrase. Pet. App. 13a, 21a, 26a. In short, the court below opted for a general-jurisdiction test that does not adhere to this Court's demanding standards since *International Shoe*.

b. *Second*, this Court's stream-of-commerce cases themselves defeat the purpose to which the court below sought to put them. As an initial matter, those decisions illustrate that the attenuated nature of stream-of-commerce contacts place even *specific* jurisdiction under such a theory at the outer limits of due process. *Compare Asahi*, 480 U.S. at 112-13 (plurality opinion), *with id.* at 121 (Brennan, J., concurring in judgment). Such inherently attenuated contacts cannot establish the far more substantial connection with the forum required for general jurisdiction.

In addition, as confirmed by *World-Wide Volkswagen*—the case from which this Court's stream-of-commerce jurisprudence emerged—the theory is necessarily limited to specific jurisdiction.

There, plaintiffs injured in a car accident in Oklahoma brought a suit in that state against the New York retailer that sold them the car and its distributor. 444 U.S. at 288. The suit arose out of the defendants' only state contact—the "fortuitous circumstance" that the car they sold "happened to suffer an accident while passing through [the state]." *Id.* at 295. The Court found this contact insufficient because the plaintiffs had taken the car to Oklahoma and the defendants had not purposefully availed themselves of that forum. *Id.* at 298-99. In dicta, however, it set forth the classic statement of the stream-of-commerce approach for proving purposeful availment:

> Hence if the *sale of a product* of a manufacturer. . . arises from the efforts of the manufacturer . . . 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 owners or to others.

Id. at 297 (emphasis added).

This reasoning simply does not apply to the assertion of general jurisdiction, because the key to the reasoning is the occurrence of *injury arising out of the distribution of the defendant's product in the forum state*. Where there is no such in-state injury—as here, or in any other case of general jurisdiction—the entire basis of jurisdiction under this theory disappears.

In sum, the due-process principles established by *International Shoe* and its progeny preclude a state from exercising general jurisdiction over a defendant

who has no physical presence in the state, and, *a fortiori*, from exercising general jurisdiction based on contacts that occur solely through the stream of commerce

B. Even If General Jurisdiction Could Be Premised On Stream-Of-Commerce Contacts, Petitioners' Connection With North Carolina Falls Short Of The Constitutional Minimum.

Even assuming *arguendo* the possibility of circumstances in which general jurisdiction over a defendant may be satisfied through stream-of-commerce contacts, this is not such a case.

1. Although this Court in *Asahi* evenly divided over what a plaintiff must prove to establish "purposeful availment" under a stream-of-commerce theory, at least eight Justices indicated that this approach required, at a minimum, a showing that the defendant knew its products were being distributed in the forum state. *See Asahi*, 480 U.S. at 111-12 (plurality opinion) (siding with courts that "have understood the Due Process Clause to require something more than that the defendant was aware of its product's entry into the forum State"); *id.* at 117 (Brennan, J., concurring in the judgment) (sufficient if defendant "is aware that the final product is being marketed in the forum State").

Respondents did not even make this minimal showing. The evidence indicates only that Petitioners sold some of their tires to an affiliate in Europe; that The Goodyear Tire & Rubber Company purchased a small percentage of those tires from the European affiliate; and that some of the tires thus obtained were distributed to independent dealers in

North Carolina. JA 243-44, 256-60, 293-94. No evidence suggests that Petitioners were aware of the subsequent destinations of the tires that they sold to the European affiliate, let alone that some of the tires ended up in North Carolina.

The court below apparently thought this knowledge requirement unnecessary, suggesting that jurisdiction existed because Petitioners "knew or *should have known*" that their tires were sold in North Carolina. Pet. App. 27a (emphasis added); *see* Pet. App. 33a. That holding—which transforms the purposeful-availment test's intent requirement into one commonly used as a negligence standard—departs from the view of the Court in *Asahi*. *See* 480 U.S. at 111-12 (plurality opinion); *id.* at 117 (Brennan, J. concurring in the judgment). On these facts, Petitioners cannot be said to have availed themselves of the North Carolina forum to the extent necessary to satisfy stream-of-commerce principles.

2. Furthermore, that lack of knowledge aside, Petitioners' mere placement of their tires into the stream of commerce fails to satisfy the standard set forth in Justice O'Connor's plurality opinion in *Asahi*, which Petitioners submit is the correct one.

Under that approach, a plaintiff must prove not only the defendant's knowledge that its products will be distributed in the forum, but also "[a]dditional conduct" showing that "*the defendant purposefully directed [its conduct] toward the forum State*." *Asahi*, 480 U.S. at 112 (plurality opinion). No such "[a]dditional conduct" exists here. *Id.* As the North Carolina Court of Appeals found, the record is "devoid of evidence that [Petitioners] took any affirmative action to cause tires which they had

manufactured to be shipped to North Carolina." Pet. App. 22a. Petitioners did not "advertis[e]" in North Carolina, "establish[] channels for providing regular advice to customers" in North Carolina, or "market[] [their tires] through a distributor who has agreed to serve as the sales agent [there]." *Asahi*, 480 U.S. at 112 (plurality opinion); JA 155-56, 165-66, 184-85.

Respondents sought to satisfy the "purposeful availment" requirement below by arguing that the specific tire involved in the French accident bore English markings, including U.S. Department of Transportation markings. JA 478-79. But the markings in no way suggest that the tires were specifically designed for the United States, let alone for North Carolina. Many tires designed for other markets contain such markings (after all, the markings in this case were on a tire sold in Europe, JA 142), because those markings may satisfy overlapping standards of U.S. regulators and those of European, Asian, South American, or other standards-setters. *See, e.g.*, Motor Vehicle Tire Safety Regulations, SOR/95-148, § 8 (Can.) (expressly requiring the same tire identification as well as certain other markings prescribed by U.S. regulators).

Indeed, only a small portion of Petitioners' tires has been distributed in the United States precisely because Petitioners do not design them for U.S. markets. JA 229. "[T]he constructions and materials and compounding are different" in Europe "than what [domestic Goodyear manufacturing] would utilize in the States." JA 235. And it is clear that the type of tire at issue in this case was not distributed in North Carolina. JA 237-40. In short, there is no

basis for any conclusion that Petitioners purposefully availed themselves of North Carolina

3. Finally, even if Petitioners had met the lower level of purposeful availment required for specific jurisdiction, they still lacked the "substantial," *Int'l Shoe*, 326 U.S. at 318, "continuous and systematic," *Helicopteros*, 466 U.S. at 416, contacts necessary for general jurisdiction. This Court has already suggested that thousands of monthly sales in a forum state alone "may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities." *Keeton*, 465 U.S. at 779. There is no reason the conclusion should be any different here.

C. In The Alternative, The Assertion Of General Jurisdiction Over Petitioners Is Unconstitutional Under *Asahi*'s "Reasonableness" Prong.

The decision below also must be reversed under the separate prong of *Asahi* addressing whether the assertion of jurisdiction, even where the threshold level of contacts is satisfied, is reasonable under the facts of the particular case.[12] 480 U.S. at 113. The factors that led eight Justices to agree that the assertion of jurisdiction in *Asahi* was unreasonable require the same conclusion here.

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[12] Although *Asahi* applied this "reasonableness" step in cases invoking specific jurisdiction, several lower courts have recognized that it applies for determining whether a state may assert general jurisdiction over a defendant. *See* 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1067.5, at 523 (3d ed. 2002) (noting that "[a] number of . . . federal courts" "have held that the fair play and substantial justice factors are applicable to questions of general, as well as specific, jurisdiction").

1. As noted in *Asahi*, the "unique burden[]" on a defendant who must not only "traverse the distance between [its overseas] headquarters" and the forum, but also submit to "a foreign nation's judicial system" is "severe," and "should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." 480 U.S. at 114. That burden is little different here.

2. The interests of North Carolina in this case are also less than those of California in *Asahi*. In that case, this Court recognized (although it downplayed) the pertinence of California's interest in regulating the safety of products sold in the state, and that "[t]he possibility of being haled into a California court as a result of an accident involving Asahi's components undoubtedly creates an additional deterrent to the manufacture of unsafe components." *Id.* at 115. This case, by contrast, involves a product that was never sold in North Carolina, and there is no substantial North Carolina interest in regulating the safety of products that are not distributed in the state. *See supra* Part II.A.1.

To be sure, unlike in *Asahi*, this case involves plaintiffs who are residents of the forum state and therefore have an interest in proceeding there. But even when plaintiffs were harmed by the defendant's conduct in their home forum, courts have suggested that "[a] mere preference on the part of the plaintiff for its home forum does not affect the balancing." *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1490 (9th Cir. 1993). That is all the more true in this case because Respondents' decedents voluntarily traveled to, and suffered injury in, a different forum. JA 122-27; *cf. Hanson*, 357 U.S. at 253 (The

"unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."). And they have not shown that they could not seek suitable relief in France or any other forum more closely connected to their injury.

3. *Asahi* also considered "the interstate [and international] judicial system's interest in obtaining the most efficient resolution of controversies." 480 U.S. at 113 (internal quotation marks omitted); *see id.* at 115. It is surely relevant that this case—unlike *Asahi*, which arose out of a California accident—focuses on a tire that was manufactured in Turkey and involved in an accident in France. That much of the relevant evidence is likely to be located overseas is highly pertinent. *See Pac. Atl. Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1331 (9th Cir. 1985) ("The site where the injury occurred and where evidence is located usually will be the most efficient forum."). Indeed, this sort of inefficiency is likely to be an endemic problem if manufacturers are routinely subject to general jurisdiction wherever their products are distributed. Unlike specific jurisdiction, which is inherently limited to states connected to the controversy, broad assertions of general jurisdiction will lead many plaintiffs to seek whichever forum provides the greatest litigation advantages, without regard to the forum's connection to the dispute and the efficiency that results from such a connection.

4. The Court also considers "the procedural and substantive policies of other *nations*" and "the Federal interest in [the] Government's foreign relations policies," both of which counsel "an

unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." *Asahi*, 480 U.S. at 115. As a result of these factors, "'[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.'" *Id.* (quoting *United States v. First Nat'l City Bank*, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting)).

This is particularly true in general-jurisdiction cases, as many foreign nations view the exercise of such jurisdiction as exorbitant in all but limited circumstances. For example, European Union laws suggest that a corporation may be sued on any cause of action only in its domicile, which is defined in terms analogous to its place of incorporation or principal place of business. *See* Council Regulation 44/2001, 2001 O.J. (L 12), Articles 2(1), 60(1) (Dec. 22, 2000).[13] Allowing the exercise of overreaching state assertions of general jurisdiction raises the risk of retaliation abroad against U.S. companies and threatens to interfere with the federal government's conduct of foreign relations. Indeed, according to the U.S. Department of State, the United States lacks international agreements on the reciprocal

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[13] *See* Jens Dammann, *Adjudicative Jurisdiction and the Market for Corporate Charters*, 82 Tul. L. Rev. 1869, 1873 (2008) (noting that European corporations may be sued on any cause of action in their domicile or "general forum"); Nicola M.C.P. Jägers & Marie-José van der Heijden, *Corporate Human Rights Violations: The Feasibility of Civil Recourse in the Netherlands*, 33 Brook. J. Int'l L. 833, 845 (2008) (noting that the "*forum rei* principle" is "the controlling jurisdictional principle in most European countries").

recognition of civil judgments partially because of other countries' concerns about what they view as excessive instances of "extraterritorial jurisdiction asserted by courts in the United States." U.S. Dep't of State, Enforcement of Judgments, *available at* http://travel.state.gov/law/judicial/judicial_691.html (last visited Nov. 11, 2010).

5. Finally, assertions of jurisdiction like the one in this case also threaten interstate "substantive . . . policies," *Asahi*, 480 U.S. at 113 (internal quotation marks omitted), by deterring interstate and international commerce. If a corporation cannot engage in interstate or international commerce without subjecting itself to general jurisdiction in each state where its products are sold, the inevitable result is to "provide[] disincentives to engage in" such commerce. Brilmayer, *supra*, 66 Tex. L. Rev. at 743. That is especially problematic "in general jurisdiction cases," like this one, "because they affect innocent conduct, not conduct that gives rise to the litigation and that the state legitimately may seek to discourage." *Id.*

III. RESPONDENTS CANNOT SALVAGE THE JUDGMENT BELOW BY SHIFTING TO A SPECIFIC-JURISDICTION THEORY.

Respondents' Brief in Opposition to certiorari—which claimed that "there is a very significant nexus between the contacts with North Carolina and the cause of action"—suggested that Respondents may attempt to shift to a theory of specific jurisdiction in this Court. Opp. at 11. For three reasons, they may not do so.

First, Respondents waived any reliance on specific jurisdiction because they conceded below that they

must establish general jurisdiction. Specifically, Respondents agreed that Petitioners' "contacts [did] not directly relate to the event giving rise to the cause of action" and that they were "alleg[ing] that general jurisdiction" existed. JA 472. Not surprisingly, the court below held that "[t]he present dispute is not related to, nor did it arise from, Defendants' contacts with North Carolina," and that Respondents must show that general jurisdiction exists. Pet. App. 12a-13a. They should not be able to argue the opposite in this Court. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002) (finding that because an "argument was not raised below, it [was] waived"); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 360 n.5 (1994) (same).

Second, Respondents had good reasons to concede that they must satisfy the test for general jurisdiction, because their claims do "not aris[e] out of or relate[] to [Petitioners'] contacts with the forum," as required for specific jurisdiction. *Helicopteros*, 466 U.S. at 414 n.9. Petitioners' only relationship with North Carolina is the distribution there of a limited number of tires, and it is undisputed that those tires had nothing to do with the bus accident in France at issue here. This Court has never decided whether there is a "distinction between controversies that 'relate to' a defendant's contacts with a forum and those that 'arise out of' such contact." *Id.* at 415 n.10; *cf. Burnham*, 495 U.S. at 610 (plurality opinion) (describing specific jurisdiction as about "suits *arising out of* the absent defendant's contacts with the State" (emphasis added)). But there is no plausible theory under which the claim in this case could be said to "arise out of or relate to" Petitioners' North Carolina contacts.

In particular, despite a lack of consensus in lower courts on the definition of "arising out of or related to," even "the broadest test" requires "but for" causation, i.e., that "the plaintiff's claim would not have arisen in the absence of the defendant's contacts" with the forum. 16 Moore's Federal Practice § 108.42[7][b] (3d ed. 2010); *see Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995); *Lanier v. Am. Bd. of Endodontics*, 843 F.2d 901, 908-09 (6th Cir. 1988). And even this test—which has been described as "vastly overinclusive," *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 322 (3d Cir. 2007)—would not be satisfied here. There is no theory on which Petitioners' contacts with North Carolina were a "but for" cause of the accident in France.

A fortiori, under the more restrictive tests of "arising out of or related to"—such as this Court's suggestion that specific jurisdiction can be appropriate when a defendant's forum contacts are "related to the operative facts" of the action, *Rush*, 444 U.S. at 329—there is no specific jurisdiction here. The distribution of Petitioners' tires in North Carolina has no bearing on the "operative facts" of Respondents' claims, all of which relate to a European accident involving a tire designed and manufactured overseas.

Respondents' Brief in Opposition nonetheless suggests that the occurrence of the injury in France rather than North Carolina was mere happenstance, and that it should be sufficient that the claim grew out of the same product that was also sold in North Carolina. Opp. at 17. As a factual matter, however, it was *not* the same product, because it is undisputed

that the type of tire at issue in this litigation was not distributed in North Carolina. JA 237-40. As a legal matter, moreover, there is no authority for the notion that the mere fact that a claim arises from foreign conduct *similar* to the defendant's forum state conduct is sufficient to satisfy the "arises out of or relates to" requirement.[14]

Third, even if Respondents' causes of action could be said to relate to the distribution of Petitioners' tires—through the stream of commerce—in North Carolina, there would be no specific jurisdiction because the requirements of the stream-of-commerce theory are not satisfied here. As detailed earlier, *see supra* Part II.B, Respondents failed to proffer evidence that Petitioners even knew their tires were distributed in North Carolina, and failed to identify a cognizable "plus factor" that would turn such mere knowledge into purposeful targeting of North Carolina as required by Justice O'Connor's opinion in *Asahi*. 480 U.S. at 112 (plurality opinion).

Even under Justice Brennan's more expansive approach in *Asahi*, Respondents cannot prove purposeful availment. For one thing, his opinion requires that the "product" at issue be "regularly *sold*" in the forum, *id.* at 119 (Brennan, J., concurring in judgment), and here the type of tire at issue was *never* sold in North Carolina. For another thing, the

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[14] This novel "similarity" theory of specific jurisdiction amounts to the view that in *Keeton* the defendant's sale of magazines in New Hampshire would have been sufficient to create New Hampshire jurisdiction even over an alleged libel published by the defendant in a different magazine sold only in Europe. *Cf.* 465 U.S. at 772.

injury occurred in France, not North Carolina. JA 126-27. Petitioners' "allegedly defective merchandise," therefore, "has [not] . . . been the source of injury" in the forum state. *World-Wide Volkswagen*, 444 U.S. at 297. Respondents thus have not proved either of the two elements that even Justice Brennan's *Asahi* opinion would require for establishing specific jurisdiction through the stream of commerce.

CONCLUSION

The judgment of the North Carolina Court of Appeals should be reversed.

Respectfully submitted,

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