No. 10-___

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 Petition for a Writ of Certiorari to the North Carolina Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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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 placed in the stream of commerce by the defendant.

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Petitioners-Defendants Goodyear Luxembourg Tires, 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, 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, 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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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 discretionary review (Pet. App. 37a-38a) is reported at 364 N.C. 128, and is available at 2010 WL 1643255.

JURISDICTION

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

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.

INTRODUCTION

This case squarely presents an important and recurring federal constitutional question that is in

need of resolution by this Court—whether a foreign corporation becomes subject to general personal jurisdiction in a state's courts, 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 placed in the "stream of commerce" by the defendant. In this case, claims arising out of a bus accident in France were asserted against French, Luxembourgian, and Turkish corporations in North Carolina state court. Citing North Carolina's "interest in providing a forum" for North Carolina plaintiffs, the court below erroneously held—contrary to the precedents of the multiple federal courts of appeals and state supreme courts that have addressed the issue—that mere placement in the stream of commerce of products ultimately distributed by others in North Carolina was sufficient to support general jurisdiction in North Carolina over any and all claims against these foreign defendants.

Unlike "specific jurisdiction"—which applies only in suits "arising out of or related to the defendant's contacts with the forum"—"general jurisdiction," where applicable, permits a defendant to be haled into court in the state on any claim whatsoever. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-15 nn.8-9 (1984). Because general jurisdiction gives a state unlimited authority to adjudicate claims against a defendant, it applies only when the defendant's activities in a state 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." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). Under these principles, the Third, Fifth, and Seventh

Circuits and the highest courts of Alabama, Kansas, and Texas have uniformly held that a defendant's mere placement of products into the stream of commerce cannot support an assertion of general jurisdiction over that defendant, by a state in which those products are ultimately distributed, on claims unrelated to the products distributed in the state. The decision below irreconcilably conflicts with these holdings, and therefore merits this Court's review.

This Court's review is also necessary because the North Carolina Court of Appeals' decision cannot be squared with this Court's precedents. The decision obliterates the narrow limits this Court has placed on general jurisdiction in cases like *International Shoe*, and it conflicts as well with the basis of this Court's stream of commerce doctrine, which is inherently limited to claims arising out of products distributed in the forum state. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Finally, this Court's intervention is also required because of the negative practical consequences of the decision below. By threatening to subject corporations whose products are distributed in the "stream of commerce" to unlimited jurisdiction wherever other entities distribute those products, the decision gives rise to vast opportunities for forum-shopping; creates economic disincentives to engaging in interstate and international commerce with the United States; and constitutes precisely the type of over-aggressive assertion of authority over foreign entities that, as this Court has previously recognized, jeopardizes important international relations interests of the United States.

STATEMENT

This case arises out of an April 18, 2004 bus accident in France that took the lives of two North Carolina residents who were traveling in Europe. The decedents' estates ("Respondents") filed suit in North Carolina state court against multiple defendants, including Petitioners Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear France"), and their corporate affiliate, The Goodyear Tire & Rubber Company.[1] The suit seeks damages from Petitioners on theories arising from the design, manufacture, testing, and sale of an allegedly defective tire on the bus in question.

Petitioners are tire manufacturers incorporated in Luxembourg, Turkey, and France, respectively. They make and sell tires primarily for sale in European and Asian markets, which differ substantially from the American tire market, and there is very limited use for their products in the United States. Donn P. Kramer Dep. Tr. at 9-10. The record reflects that approximately 45,000 of Petitioners' tires were distributed in North Carolina in the years 2004-2007, Pet. App. 26a, as compared with Petitioners' total manufacturing capacity in that period—according to the Global Tire Report—of more than 90 million tires.[2] Petitioners have no presence in North

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[1] Respondents also alleged and then voluntarily dismissed claims against additional Goodyear subsidiaries. The remaining defendants did not contest personal jurisdiction and are not before this Court.

[2] The Global Tire Report is published semi-annually in three Crain Communications publications—Tire Business, Rubber &

Carolina and took no affirmative action to cause their tires to be marketed in North Carolina. Pet. App. 22a. To the limited extent that Petitioners' tires reached North Carolina, "other entities were responsible for" that distribution. *Id.* The type of tire at issue in the accident was never distributed in North Carolina. Kramer Dep. Tr. at 17, 20.

Petitioners moved to dismiss the complaint in this case, arguing that asserting personal jurisdiction over them violated the Due Process Clause, in that they lacked any presence in North Carolina and the allegedly defective tire was manufactured in Turkey, sold and used in France, and involved in an accident in France.[3] The trial court denied the motion, emphasizing that other tires manufactured by Petitioners were distributed in North Carolina by other Goodyear corporations; that accordingly Petitioners "knew or should have known that some of th[eir] tires were distributed for sale to North Carolina residents"; and that "North Carolina has a substantial interest in allowing its citizens a forum for the redress of grievances." Pet. App. 33a, 35a. In view of these facts, the court held, Petitioners "have continuous and systematic contacts with North Carolina and are conducting substantial activity

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Plastic News and European Rubber Journal. Its figures for the individual Petitioners for the period in question add up to approximately 56.1 million tires for Goodyear France, 30.5 million for Goodyear Turkey, and 7 million for Goodyear Luxembourg.

[3] North Carolina's long-arm statute, like those of a majority of the states, confers personal jurisdiction to the full extent permitted by due process. Pet. App. 10a.

within North Carolina," such that they "could reasonably anticipate being haled into court in North Carolina" even on a claim arising elsewhere. Pet. App. 34a.

On appeal to the North Carolina Court of Appeals, Petitioners argued that they could not constitutionally be subjected to general personal jurisdiction in North Carolina—based on their mere placement of goods into the stream of commerce and the ultimate sale by others of some of those goods in North Carolina—on a claim not arising from those contacts. Petitioners explained, citing federal authority, that "the stream of commerce theory, which is based on notions of specific jurisdiction, may not provide grounds for personal jurisdiction when the product at issue in the litigation is not the product that entered the forum jurisdiction through the stream of commerce."

The Court of Appeals affirmed. The court acknowledged that "this case involves general rather than specific jurisdiction," because "[t]he present dispute is not related to, nor did it arise from, Defendants' contacts with North Carolina," Pet. App. 12a-13a, and 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." *Id.* at 22a. Petitioners, rather, had placed their products in the stream of commerce by providing them to separate (if affiliated) corporate entities, and those "other 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." *Id.*

The Court of Appeals 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." *Id.* at 20a (internal quotation marks and alterations omitted). Here, Petitioners "knew or should have known that a Goodyear affiliate obtained tires manufactured by [Petitioners] and sold them in the United States in the regular course of business"; "several thousand tires manufactured by each of the [Petitioners] eventually found their way into North Carolina markets" in this fashion; 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." *Id.* at 27a. On this reasoning, the court expressly rejected Petitioners' argument "that 'stream of commerce' analysis simply does not apply in instances involving general, as compared to specific, jurisdiction." *Id.* at 28a. It chose not to address the federal authority cited by Petitioners, observing only that Petitioners "have not cited a North Carolina case" rejecting placement of products in the stream of commerce as a basis for general jurisdiction. *Id.*

Petitioners timely sought discretionary review from the North Carolina Supreme Court, repeating their argument that placement of goods into the stream of commerce could not support general jurisdiction, and citing, *inter alia*, decisions of three federal circuits that have so held. *See* Petition for Discretionary Review at 11. On April 14, 2010, the

North Carolina Supreme Court denied review without opinion.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF MULTIPLE FEDERAL COURTS OF APPEALS AND STATE SUPREME COURTS.

The decision below dramatically departs from the precedents of the other federal and state courts that have considered the question presented. Contrary to the North Carolina Court of Appeals—which held that Petitioners' mere injection of products into the stream of commerce sufficed to support general personal jurisdiction over Petitioners in North Carolina on legal claims unrelated to the distribution of those products in North Carolina—numerous federal courts of appeals and state supreme courts have uniformly held that a company's injection of products into the stream of commerce cannot establish general jurisdiction.

This Court's cases addressing due process limits on personal jurisdiction draw a distinction between "specific jurisdiction" and "general jurisdiction." "Specific jurisdiction" is the exercise of "jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum," whereas "general jurisdiction" permits jurisdiction over a defendant on any and all claims, even those "not arising out of or related to the defendant's contacts with the forum." *Helicopteros*, 466 U.S. at 414-15 nn.8-9. General jurisdiction over a corporation applies when "the continuous corporate operations within a state" 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." *Int'l Shoe Co.*, 326 U.S. 310 at 318.

This is a general jurisdiction case, because the "dispute is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina." Pet. App. 12a. The court below held that North Carolina could properly assert general jurisdiction over Petitioners—notwithstanding Petitioners' lack of presence in North Carolina and the absence of any "evidence that [Petitioners] took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina," *id.* at 22a—because Petitioners "purposefully injected their product 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." *Id.* at 29a.

This holding squarely conflicts with the uniform decisions of the Third, Fifth, and Seventh Circuits and the highest courts of Alabama, Kansas, and Texas, all of which have held that mere injection of products into the stream of commerce cannot support an assertion of general jurisdiction.

In *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375-76 (5th Cir. 1987), for example, the Fifth Circuit expressly "disagree[d] with the district court's conclusion that the 'stream of commerce' will support a finding of general jurisdiction," and held that—in contrast to specific jurisdiction—even the flow of substantial quantities of a defendant's products into the forum state through the stream of commerce cannot establish the type of "general presence in th[e] state" required for an assertion of general jurisdiction. *Id.*; *accord Alpine View Co. v. Atlas Copco AB*, 205 F.3d 208, 216 (5th Cir. 2000) ("We

have specifically rejected a party's reliance on the stream-of-commerce theory to support asserting general jurisdiction over a nonresident defendant.").

Likewise, the Seventh Circuit has held that "the stream of commerce theory . . . provides no basis for exercising general jurisdiction over a nonresident defendant," *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 788 (7th Cir. 2003), explaining that the "stringent" requirements of general jurisdiction "'require[] that the defendant's contacts be of the sort that approximate physical presence.'" *Id.* at 787 & n.16 (quoting *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000)). And the Third Circuit has held that "treat[ing] the stream-of-commerce theory as a source of general jurisdiction" would be "unjustifiabl[e]." *D'Jamoos v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 106 (3d Cir. 2009); *see also Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1075 (8th Cir. 2004) (rejecting claim "that the district court had the power to exercise general personal jurisdiction over [defendant] because [defendant] placed its products in the stream of commerce.").[4]

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[4] Numerous federal district court holdings are to the same effect. *See, e.g.*, *Fisher v. Prof'l Compounding Ctrs. of Am., Inc.*, 318 F. Supp. 2d 1046, 1050 (D. Nev. 2004) ("[T]he stream of commerce theory does not apply to a general jurisdiction analysis."), *aff'd sub nom. Fisher v. Alfa Chems. Italiana*, 258 F. App'x 150 (9th Cir. 2007); *DP Envtl. Servs., Inc. v. Bertlesen*, 834 F. Supp. 162, 166 (M.D.N.C. 1993) ("The stream of commerce theory for asserting personal jurisdiction is inapplicable in a case such as this where the cause of action did not arise from the manufacturer's products in the forum state."); *Eli Lilly & Co. v. Mayne Pharma (USA) Inc.*, 504 F. Supp. 2d 387, 393 & n.8 (S.D. Ind. 2007) ("[T]his 'stream of commerce'

Moroever, the state high courts that have addressed the issue have reached the same conclusion. As the Texas Supreme Court recently explained, "stream-of-commerce analysis 'is relevant only to the exercise of specific jurisdiction; it provides no basis for exercising general jurisdiction over a nonresident defendant.' If sales alone created general jurisdiction, a foreign manufacturer . . . could be sued in Texas for labor practices occurring in Germany even though they had nothing to do with Texas." *Spir Star AG v. Kimich*, 310 S.W.3d 868, 874 (Tex. 2010) (citations omitted) (quoting *Purdue Research*, 338 F.3d at 778); *accord Brown v. Abus Kransysteme GmbH*, 11 So.3d 788, 795 (Ala. 2008) (stream-of-commerce theory "is widely regarded as a basis for asserting *specific* jurisdiction") (emphasis in original); *Merriman v. Crompton Corp.*, 146 P.3d 162, 185 (Kan. 2006) ("The stream of commerce theory does not apply to a general jurisdiction analysis.").

The decision below, which held that North Carolina could permissibly assert general personal jurisdiction over Petitioners based on their mere "inject[ion of] their product into the stream of

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theory cannot serve as a basis for an exercise of *general* jurisdiction." (emphasis in original)); *XL Specialty Ins. Co. v. Melexis GmbH*, No. 07-1018 (DRD), 2007 WL 3026683, at *3 n.2 (D.N.J. Oct. 16, 2007) ("The stream of commerce theory has been developed for the purpose of asserting specific jurisdiction over a defendant, not general jurisdiction."); *Simplicity Inc. v. MTS Prods., Inc.*, No. 05-3008, 2006 WL 924993, at *4 n.4 (E.D. Pa. Apr. 6, 2006) ("The stream of commerce theory, however, is relevant only to the exercise of specific jurisdiction; it provides no basis for exercising general jurisdiction over a nonresident defendant.").

commerce," is in direct and irreconcilable conflict with the decisions of the multiple other courts to have addressed the issue. This Court's review is necessary to resolve that conflict.

II. THE DECISION BELOW IS WRONG AND SHOULD BE REVERSED.

This Court's review is also necessary to correct the serious error committed by the lower court. The decision below vastly exceeds the scope of general jurisdiction permitted by this Court's decisions and threatens to subject corporations whose products are distributed in the "stream of commerce" to universal jurisdiction, even over entirely unrelated claims, wherever their products are distributed by other entities.

1. Because general jurisdiction permits a state to assert authority even over claims that have no relationship to the forum, its application is strictly limited. As this Court stated in *International Shoe* in describing this form of jurisdiction, the defendant's connection to the state must be "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. Only certain types of relationships between the defendant and a state—typically involving, at a minimum, the defendant's actual presence or its equivalent—can give the state legitimate authority over *all* of a defendant's activities, regardless of where they occur. Thus, as Professor Brilmayer has explained, "general jurisdiction depends on the fairness of regulating the activities of *insiders*, regardless of where the activities occur," and accordingly "the paradigm bases for general adjudicative jurisdiction" are "domicile,

place of incorporation, and principal place of business." Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 782-83 (1988) (emphasis added).[5]

The only post-*International Shoe* case in which this Court has upheld the exercise of general jurisdiction, *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 438 (1952), is illustrative. In *Perkins*, the defendant was a Philippine mining company whose business was interrupted by the Japanese occupation of the Philippines during World War II. The company relocated its headquarters operations during that occupation—including preparation of correspondence, distribution of paychecks, directors' meetings, and purchase of machinery, among other things—to Ohio. *Id.* at 447-48. Citing *International Shoe*'s description of general jurisdiction, this Court held that these "continuous and systematic" activities in Ohio were "sufficiently substantial and of such a nature as to permit Ohio" to exercise general jurisdiction. *Id.* at 446-48.

In this Court's only post-*Perkins* general jurisdiction case, *Helicopteros*, the company's chief executive officer had negotiated a contract in Texas, and it had accepted checks drawn on a Texas bank,

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[5] Similarly, Professors von Mehren and Trautman, who first coined the phrases "specific jurisdiction" and "general jurisdiction," viewed general jurisdiction as appropriate only in "the common arena of the defendant's activities," which, for a corporation, is the state of "the corporate headquarters—presumably both the place of incorporation and the principal place of business." Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1179 (1966).

purchased products and services from a Texas-based company "for substantial sums," and sent personnel to Texas for training. 466 U.S. at 416. The Court found that these contacts, unlike the "continuous and systematic" contacts at issue in *Perkins*, could not support general jurisdiction. *Id.* Thus, the only post-*International Shoe* case in which this Court has found general jurisdiction proper was one in which the corporation was physically present, and conducted its headquarters operations, in the forum state.

Under the principles of these cases, a state may assert general jurisdiction over a defendant only when the defendant's contacts with the state are "so extensive to be tantamount to [the defendant] being constructively present in the state to such a degree that it would be fundamentally fair to require it to answer in [the state's] court[s] in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world." *Purdue Research*, 338 F.3d at 787 (emphasis in original); *see also Tamburo v. Dworkin*, 601 F.3d 693, 701 (7th Cir. 2010) ("[T]he contacts must be sufficiently extensive and pervasive to approximate physical presence."); *Bird v. Parsons*, 289 F.3d 865, 873 (6th Cir. 2002) (same); *Bancroft & Masters*, 223 F.3d at 1086 (same).

The decision below obliterates these strict limits on general jurisdiction. Under the rule adopted below, corporations that "purposefully inject[] their product[s] into the stream of commerce," Pet. App. 29a, face the threat of suit—on any claim arising anywhere in the world—in *every* jurisdiction in which their products are distributed by others. This raises the prospect, for example, that Goodyear

Turkey—or any other company whose products are regularly distributed in the stream of commerce—may be required to defend itself in court in North Carolina (or in an array of other jurisdictions) over an Istanbul lease dispute, an alleged patent infringement in Shanghai, or an alleged libel published in Nigeria. Such an approach defeats a key purpose of the due process limits on personal jurisdiction, which is to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.*, 444 U.S. at 297. Due Process does not permit states to assert such untrammeled adjudicatory power.

2. The decision below is also inconsistent with the principles set forth in this Court's stream of commerce cases, the reasoning of which is *necessarily* limited to specific jurisdiction. An essential consideration underlying the stream of commerce approach is the fairness of (and legitimate state interest in) subjecting a defendant to suit in a state in which its product is marketed *when the product so marketed causes injury in that state*. As this Court's classic statement of the stream of commerce approach put it:

> Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other 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 owner or to others.

World-Wide Volkswagen, 444 U.S. at 297 (emphasis added); *see also, e.g.*, *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987) (state's "legitimate interests" relate to the safety of the product shipped into the state).

This reasoning simply does not apply to the assertion of general jurisdiction, because the key to the reasoning is the occurrence of injury *resulting from the distribution of the defendant's product in the forum state*. Absent that nexus, a corporation's placement of its products in the stream of commerce gives a state ultimately receiving some of those products no legitimate interest in adjudicating all claims against that corporation "in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world," *Purdue Research*, 338 F.3d at 787 (emphasis in original)—nor does it make it fundamentally fair for the state to do so.

In sum, the decision below conflicts with both this Court's general jurisdiction cases and its specific jurisdiction cases. It should be reversed.

III. THE QUESTION PRESENTED IS AN IMPORTANT ONE THAT REQUIRES THIS COURT'S IMMEDIATE ATTENTION.

The importance of the question presented, its growing salience in an ever-more-globalized economy, and the radical expansion of jurisdiction embodied in the decision below, make the need for this Court's review particularly urgent.

As an initial matter, the implications of the decision below go far beyond North Carolina, because well over half the states have long-arm statutes authorizing the exercise of jurisdiction to the full extent permitted by due process. *See, e.g.*, Allyson W. Haynes, *The Short Arm of the Law: Simplifying Personal Jurisdiction over Virtually Present Defendants*, 64 U. Miami L. Rev. 133, 162 n.189 (2009); Jeffrey J. Utermohle, *Maryland's Diminished Long-Arm Jurisdiction in the Wake of* Zavian v. Foudy, 31 U. Balt. L. Rev. 1, 10 & n.68 (2001). Accordingly, the rule adopted below, if accepted, would authorize similarly expansive assertions of personal jurisdiction in all of these states. This is problematic for multiple reasons.

First, the decision below invites rampant forum shopping. As explained above, the decision threatens essentially unlimited jurisdiction over corporations wherever their products are distributed by others—even if, as here, the forum state is only one of many states receiving the products. Under this approach, plaintiffs will routinely have a broad array of potential forum states from which to choose in suing such a corporation, without regard to any connection between the forum and the cause of action. A more open invitation to forum shopping would be hard to imagine.

Second, the issue is of tremendous importance to the economy—an economy that increasingly involves the shipment of products in the stream of commerce to and from all corners of the world—both because of the burden (and deterrent effect) of forcing businesses to defend claims in adverse fora where they have no presence, and because the threat of

being haled into court wherever one's products are shipped will necessarily act as a disincentive to engaging in interstate and international commerce with the United States. As Professor Brilmayer has warned, "predicating jurisdiction on interstate conduct provides disincentives to engage in it," and such disincentives "are particularly problematic in general jurisdiction cases because they affect innocent conduct, not conduct that gives rise to the litigation and that the state may legitimately seek to discourage." Brilmayer, *supra*, 66 Tex. L. Rev. at 743.

Third, the rule adopted below fundamentally undermines the predictability and fairness that are at the core of due process constraints on personal jurisdiction. A key function of such constraints is to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Yet, under the decision below, a company will not be able to make use of the stream of commerce without thereby potentially subjecting itself to suit, on any cause of action, wherever its products are sold.

Finally, the decision threatens to interfere with important international relations interests of the United States. As Professor Born observed—in an article cited by this Court in *Asahi*—"exorbitant assertions of judicial jurisdiction [over foreign entities] by United States courts" give rise to a host of international relations problems; "can frustrate diplomatic initiatives by the United States, particularly in the private international law field";

and "[m]ost significantly . . . can interfere with United States efforts to conclude international agreements providing for mutual recognition and enforcement of judgments or restricting exorbitant jurisdictional claims by foreign states." Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 Ga. J. Int'l & Comp. L. 1, 29 (1987) (citing failure of United States-initiated negotiations on proposed U.S.-U.K. Convention on the Reciprocal Recognition and Enforcement of Judgments in Civil Matters). To this day, according to the U.S. Department of State, the United States lacks international agreements on reciprocal recognition and enforcement of judgments in significant part because foreign countries have often "objected to the extraterritorial jurisdiction asserted by courts in the United States." U.S. Dep't of State, Enforcement of Judgments.[6]

This Court in *Asahi* recognized the important foreign relations consequences of aggressive assertions of jurisdiction over foreign corporations, emphasizing that United States "foreign relations policies, will be best served by . . . 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." 480 U.S. at 115. Permitting the assertion of general jurisdiction over foreign defendants based upon their mere placement of products in the stream of commerce goes well beyond even prior "exorbitant assertions of judicial jurisdiction" by United States courts, and directly

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[6] *See* http://travel.state.gov/law/judicial/judicial_691.html (last visited July 12, 2010).

threatens the important foreign relations interests recognized by *Asahi*.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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JULY 13, 2010

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APPENDIX

APPENDIX A

Court of Appeals of North Carolina.

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, Plaintiffs,

v.

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., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France, SA., Defendants.

No. COA08-944.

Aug. 18, 2009.

Appeal by Defendants from order entered 1 May 2008 by Judge Gary E. Trawick in Onslow County Superior Court. Heard in the Court of Appeals 10 February 2009.

Bell, Davis & Pitt, P.A., by William K. Davis, Charlot F. Wood, and Kevin G. Williams, Winston-Salem, for Defendants-Appellants.

Kirby & Holt, L.L.P., by David F. Kirby and William B. Bystrynski, Raleigh, for Plaintiffs-Appellees.

ERVIN, Judge.

Goodyear Luxembourg Tires SA (Goodyear Luxembourg), Goodyear Lastikleri T.A. (Goodyear Turkey), and Goodyear Dunlop Tires France SA (Goodyear France) (collectively, Defendants) appeal from an order entered 1 May 2008 denying their motions to dismiss for lack of personal jurisdiction and concluding that the "[e]xercise of general jurisdiction over defendants comports with Due Process and does not offend traditional notions of fair play and justice." After a thorough review of the record and the applicable law, we affirm the trial court's order.

Matthew Helms and Julian Brown (Decedents), two thirteen-year-old soccer players who resided in North Carolina, died from injuries suffered in a bus wreck on 18 April 2004 outside Paris, France. Decedents were traveling to Charles de Gaulle Airport in preparation for returning to North Carolina at the time of the accident. According to the amended complaint filed by Edgar D. Brown and Pamela Brown, co-administrators of the estate of Julian Brown, and Karen M. Helms, Administratrix of the estate of Matthew Helms (together, Plaintiffs), on 17 April 2006, one of the bus tires "designed, manufactured and distributed" by Defendants failed when its plies separated. The tire that failed was a Goodyear Regional RHS tire manufactured by Goodyear Turkey, which operates a manufacturing plant located in that country. Plaintiffs sought relief from a series of Goodyear affiliates, including Goodyear France, Goodyear Luxembourg, and Goodyear Turkey on a number of theories arising from an alleged negligent "design, construction, testing, and inspection" of and a failure to warn

about alleged latent defects in the Goodyear Regional tire in question.[1]

On 9 March 2007, Defendants filed motions to dismiss predicated on an alleged lack of personal jurisdiction pursuant to N.C. Gen.Stat. § 1A-1, Rule 12(b)(2).[2] The dismissal motions filed by Defendants and other Goodyear affiliates were supported by affidavits executed by Philippe Degeer, the Director and Vice President Consumer Tires E.U. of Goodyear Dunlop Tires Europe B.V.; Hermann Lange, the Finance Director of Goodyear Luxembourg Tires SA and Goodyear SA; Ersin Özkan, Sales and Marketing Director of Goodyear Lastikleri T.A., and Korhan Ul'un Beyani, Corporate Secretary of Goodyear Lastikleri T.A.; and Olivier Rousseau, General Manager of Goodyear Dunlop Tires France S.A. On 7 June 2007, Plaintiffs filed the affidavit of Robert C. Ochs, P.E., P.C. (Ochs). The trial court heard arguments on Defendants' dismissal motions on 11 June 2007, after which it took Defendants' dismissal motions under advisement. On 28 September 2007, Plaintiffs took the deposition of Donn P. Kramer, Director of Product and Supply Chain Management for Commercial Systems for Goodyear Tire and Rubber Company, pursuant to N.C. Gen.Stat. § 1A-1, Rule 30(b)(6). On 6 December 2007, an affidavit executed by Kramer containing additional information relating to the delivery of tires manufactured by Defendants into North Carolina was filed. A final hearing on

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[1] In addition to Goodyear France, Goodyear Luxembourg, and Goodyear Turkey, Plaintiffs initially sought relief from the Goodyear Tire and Rubber Company, Goodyear SA, and Goodyear Dunlop Tires Europe B.V. in the amended complaint.

[2] Dismissal motions were also filed on behalf of Goodyear SA and Goodyear Dunlop Tires Europe B.V.

Defendants' dismissal motion was held at the 10 December 2007 session of the Onslow County Superior Court.[3]

On 1 May 2008, the trial court entered an order denying Defendants' dismissal motions. In denying Defendants' motions, the trial court made the following findings of fact:

> 1. Matthew Helms of Jacksonville and Julian Brown of Charlotte, two 13-year-old youth soccer players, died from injuries suffered in a bus wreck that occurred on April 18, 2004, near Paris, France. Plaintiffs have alleged that as the decedents rode on a bus headed to the airport in Paris to return home to North Carolina, one of the bus' tires, designed, manufactured and distributed by the Goodyear defendants, failed when its plies separated, causing the bus to leave the highway and overturn.
>
> 2. Defendants Goodyear [Luxembourg]; Goodyear [Turkey]; and Goodyear [France] (hereinafter "defendants") moved to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the N.C. Rules of Civil Procedure and N.C.G.S. § 1-75.4.
>
> 3. The subject tire that allegedly failed was a Goodyear Regional tire, which was manufactured by defendant Goodyear [Turkey].
>
> 4. The subject tire contained information that was written entirely in English, including warnings and directions, U.S. Department of Transportation markings placed on the tire to

[3] Plaintiffs voluntarily dismissed their claims against Goodyear SA and Goodyear Dunlop Tires Europe B.V. on 12 December 2007.

allow it to be sold in the United States, and markings to show it was manufactured as qualified for sale in the United States.

5. The subject Goodyear Regional tire has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. The tire also contains a "Safety Warning," written in English, which conforms to the warnings found on all tires for sale in the United States.

6. During the period from 2004 through a portion of 2007, at least 5906 tires made by Goodyear [Turkey] were shipped into North Carolina for sale, although not by the original manufacturer.

7. During the period from 2004 through a portion of 2007, at least 33,923 tires made by Goodyear [France] were shipped into North Carolina for sale, although not by the original manufacturer.

8. During the period from 2004 through a portion of 2007, at least 6402 tires made by Goodyear [Luxembourg] were shipped into North Carolina for sale, although not by the original manufacturer.

9. The number of tires shipped into North Carolina from each of these manufacturers may actually be substantially higher, in that The Goodyear Tire and Rubber Company (hereinafter "Goodyear"), after being noticed for a 30(b)(6) deposition, failed to determine how many vehicles equipped with tires from these foreign defendant

manufacturers are imported into the U.S. and shipped into North Carolina for sale each year.

10. The defendants, on a continuous and systematic basis, caused tires to be sent into the United States for sale, and knew or should have known that some of those tires were distributed for sale to North Carolina residents, and the defendants continue to send tires for sale into the United States and know or should know that some of those tires continue to be sold to North Carolina residents on a continuous and systematic basis.

11. The sale of these tires generates substantial revenue for Goodyear, these defendant companies and its related companies.

12. The defendants, as manufacturers, did not have their own distribution system for the sale of their tires, but instead used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina.[4]

13. The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear

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[4] According to Kramer, the ties between the Goodyear Tire and Rubber Company and Goodyear France, Goodyear Luxembourg, and Goodyear Turkey, respectively were "indirect[.]" For example, Goodyear has "sales marketing offices that develop business plans, sales plans" and determine how the needs associated with those plans would be met. Goodyear's sales marketing office would decide how to obtain the needed product, including whether any needed product would be obtained from a European affiliate. After making this determination, the needed tires would be manufactured, shipped to the United States, and distributed to retailers and similar entities using Goodyear's existing distribution system.

parent and affiliated companies and sold in North Carolina on a continuous and systematic basis.

14. The defendants purposefully and deliberately availed themselves of the North Carolina market for tires and substantially profited from sales of their tires in North Carolina.

15. The defendant companies have continuous and systematic contacts with North Carolina and are conducting substantial activity within North Carolina.

16. Defendant Goodyear [Turkey] is a wholly owned subsidiary of defendant, [t]he Goodyear Tire and Rubber Company, which is based in the United States. All three of the foreign defendant companies are subsidiaries of Goodyear in the United States and as such have additional, abundant ties to the United States.

17. The defendant companies have deliberately attempted to take advantage of the tire market in North Carolina by designing, manufacturing and causing tires to be distributed for sale to the North Carolina market, and those tires are sold in North Carolina.

18. Because all three companies have manufactured tires shipped into North Carolina for sale that by clear implication and inference are used on thousands of vehicles throughout North Carolina, they could reasonably anticipate being haled into court in North Carolina.

19. The quantity of the defendants' contacts with North Carolina, which includes sales of between 5,900 and 34,000 tires within the state, generating substantial revenues and substantial

commercial activity in North Carolina, weighs in favor of a finding of general jurisdiction over the defendants.

20. The quality of those contacts, which include systematic and repeated contacts with the state of North Carolina for the purpose of commerce, along with the defendants' ownership by U.S. corporations doing substantial business in North Carolina, weighs in favor of a finding of general jurisdiction over the defendants.

21. The cause of action in this case is closely related to the contacts with the defendants, in that the defendants are causing substantial quantities of tires they manufactured to be sold in North Carolina, and plaintiffs seek to exercise jurisdiction related to a defect in a tire designed, manufactured, distributed or sold by the defendants.

22. North Carolina has a substantial interest in allowing its citizens a forum for the redress of grievances, especially where two of its citizens have been killed, allegedly by the negligence of the defendants.

23. The foreign Goodyear defendants are not inconvenienced by the trial of this action in North Carolina, in that they do substantial and continuous business in North Carolina, they are subsidiaries of a United States corporation that does substantial and continuous business in North Carolina, and they are represented by the same attorneys as are representing their U.S. parent corporation.

24. The plaintiffs, parents of the deceased boys, would be substantially inconvenienced by litigating this case in foreign countries.

Based on the foregoing findings of fact, the trial court concluded as a matter of law that:

> 1. The defendants have continuous and systematic ties with the State of North Carolina.
>
> 2. The defendants' activities in North Carolina are substantial.
>
> 3. The quantity of the defendants' contacts with North Carolina; the nature and quality of those contacts; the source and connection of the cause of action to the contacts; the interest of North Carolina in this cause of action and the convenience of the parties, all weigh in favor of the exercise of general jurisdiction over the defendants.
>
> 4. Exercise of general jurisdiction over the defendants comports with Due Process and does not offend traditional notions of fair play and justice.

Based on these findings and conclusions, the trial court denied Defendants' dismissal motions. Defendants have noted an appeal to this Court from the trial court's ruling.

On appeal, Defendants contend that the trial court erred in denying their motion for lack of personal jurisdiction. We disagree.

When evaluating personal jurisdiction, the trial court must engage in a two-step inquiry: first, the trial court must determine whether a basis for jurisdiction exists under the North Carolina "long-arm statute," N.C. Gen.Stat. § 1-75.4 (2007), and second, if so, the trial court must determine whether the assertion of personal jurisdiction over the defendant is consistent with applicable due process

standards. *Cameron-Brown Co. v. Daves*, 83 N.C.App. 281, 283, 350 S.E.2d 111, 113 (1986). "When personal jurisdiction is alleged to exist pursuant to the long-arm statute, the question of statutory authority collapses into one inquiry[,]" which is whether defendant has the "minimum contacts necessary to meet the requirements of due process." *Filmar Racing, Inc. v. Stewart*, 141 N.C.App. 668, 671, 541 S.E.2d 733, 736 (2001). Specifically, this Court has held that, "when evaluating the existence of personal jurisdiction pursuant to G.S. § 1-75.4(1)(d)," "the question of statutory authorization 'collapses into the question of whether [the defendant] has the minimum contacts with North Carolina necessary to meet the requirements of due process.'" *Bruggeman v. Meditrust Acquisition Co.*, 138 N.C.App. 612, 617, 532 S.E.2d 215, 218, *disc. review denied and appeal dismissed*, 353 N.C. 261, 546 S.E.2d 90 (2000) (quoting *Hanes Companies v. Ronson*, 712 F.Supp. 1223, 1226 (M.D.N.C.1988)).

In examining the legal sufficiency of the trial court's order, our review on appeal focuses initially on "whether the findings are supported by competent evidence in the record[.]" *Better Bus. Forms, Inc. v. Davis*, 120 N.C.App. 498, 500, 462 S.E.2d 832, 833 (1995). "If the findings of fact are supported by competent evidence, we conduct a *de novo* review of the trial court's conclusions of law and determine whether, given the facts found by the trial court, the exercise of personal jurisdiction would violate defendant's due process rights." *Deer Corp. v. Carter*, 177 N.C.App. 314, 322-23, 629 S.E.2d 159, 166 (2006) (citing *Banc of Am. Secs. LLC v. Evergreen Int'l Aviation, Inc.*, 169 N.C.App. 690, 694-95, 611 S.E.2d 179, 183 (2005) (stating that "it is this

Court's task to review the record to determine whether it contains any evidence that would support the trial judge's conclusion that the North Carolina courts may exercise jurisdiction over defendants without violating defendant's due process rights")). Except as discussed in detail below, Defendants do not dispute that the majority of the trial court's findings of fact are supported by adequate evidentiary support; therefore, we will base the factual component of our analysis on the undisputed information contained in the trial court's order.

According to N.C. Gen.Stat. § 1-75.4(1)(d), "[a] court of this State . . . has jurisdiction over a person" "[i]n any action, whether the claim arises within or without this State, in which a claim is asserted against a party" who "[i]s engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise." *Id.* N.C. Gen.Stat. § 1-75.4(1)(d) was "intended to make available to the North Carolina courts the full jurisdictional powers permissible under federal due process." *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 676, 231 S.E.2d 629, 630 (1977). "[B]y its plain language the statute requires some sort of 'activity' to be conducted by the defendant within this state." *Skinner v. Preferred Credit*, 361 N.C. 114, 119, 638 S.E.2d 203, 208 (2006), *rehearing denied*, 361 N.C. 371, 643 S.E.2d 591 (2007).

Similarly, "[d]ue process [considerations] prohibit[ ] our state courts from exercising [personal] jurisdiction unless the defendant has had certain 'minimum contacts' with the forum state such that 'traditional notions of fair play and substantial justice' are not offended by maintenance of the suit." *Cameron-Brown*, 83 N.C.App. at 284, 350 S.E.2d at

114 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). Although a determination of whether the required minimum contacts are present necessarily hinges upon the facts of each case, there are several factors a trial court typically evaluates in determining whether the required level of contacts exists: "(1) quantity of the contacts between the defendant and the forum state, (2) quality and nature of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest in the forum state, and (5) convenience of the parties." *Cameron-Brown*, 83 N.C.App. at 284, 350 S.E.2d at 114.

Jurisdiction exercised under North Carolina's long-arm statute can be classified as either specific or general. "Specific jurisdiction exists when the cause of action arises from or is related to defendant's contacts with the forum." *Id.*, 361 N.C. at 122, 638 S.E.2d at 210. "General jurisdiction exists when the defendant's contacts with the state are not related to the cause of action but the defendant's activities in the forum are sufficiently continuous and systematic" to permit the General Court of Justice to exert personal jurisdiction over that defendant. *Skinner*, 361 N.C. at 122, 638 S.E.2d at 210 (quotation omitted). "[G]eneral personal jurisdiction" may be exercised pursuant to N.C. Gen.Stat. § 1-75.4(1)(d). *Lang v. Lang*, 157 N.C.App. 703, 706, 579 S.E.2d 919, 921 (2003). "The threshold level of minimum contacts sufficient to confer general jurisdiction is significantly higher than for specific jurisdiction." *Woods Intern., Inc.*, 436 F.Supp.2d at 748 (quotation omitted).

The present dispute is not related to, nor did it arise from, Defendants' contacts with North Carolina.

As a result, the issue raised in this case involves general rather than specific jurisdiction. For that reason, the relevant question before both the trial court and this Court is whether Defendants' "activities in the forum are sufficiently continuous and systematic[,]" *Skinner*, 361 N.C. at 122, 638 S.E.2d at 210, a "higher threshold" than that required to support the exercise of specific jurisdiction. *Bruggeman*, 138 N.C.App. at 618, 532 S.E.2d at 219. As a result, we must determine on appeal whether the trial court's findings of fact support its legal conclusion that Defendants had "continuous and systematic contacts with North Carolina," thereby justifying the exercise of general personal jurisdiction over Defendants.

The "continuous and systematic contacts" required for the assertion of general personal jurisdiction must result from actions by Defendant rather than from mere happenstance or coincidence or the actions of others. In order for nonresidents like Defendants to be subject to the general personal jurisdiction of the General Court of Justice, they "must engage in acts by which they purposely avail themselves of the privilege of conducting activities within the forum State[.]" *Lulla v. Effective Minds, LLC*, 184 N.C.App. 274, 279, 646 S.E.2d 129, 133 (2007) (quotation omitted). "The purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or unilateral activity of another party or a third person." *Adams, Kleemeier, Hagan, Hannah & Fouts, PLLC v. Jacobs*, 158 N.C.App. 376, 381, 581 S.E.2d 798, 802, *rev'd on other grounds*, 357 N.C. 651, 588 S.E.2d 465 (2003) (quotation omitted). A "critical factor" in assessing "whether a nonresident defendant has made purposeful

availment of the privilege of conducting activities within the forum State" is whether the party "initiat[ed] the contact[.]" *Banc of Am. Secs. LLC v. Evergreen Int'l Aviation, Inc.*, 169 N.C.App. 690, 698, 611 S.E.2d 179, 185 (2005), *motion denied*, 2006 NCBS 2 (2006). (quotation omitted).

The necessary "purposeful availment" has been found where a corporation "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S.Ct. 559, 567-68, 62 L.Ed.2d 490, 502 (1980). In such cases, the United States Supreme Court has reasoned that:

> [I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other 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 owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen, 444 U.S. at 297-98, 100 S.Ct. at 567-68, 62 L.Ed.2d at 501-502. However, the Supreme Court disagreed over the proper interpretation of the principle enunciated in *World-Wide Volkswagen in Asahi Metal Ind. Co. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).

In *Asahi Metal*, Justice O'Connor writing for herself, Chief Justice Rehnquist, and Justices Powell and Scalia, stated that:

> The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state.

Asahi Metal, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92. On the other hand, in a concurrence joined by Justices White, Marshall, and Blackmun, Justice Brennan stated that:

> A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether the participant directly conducts business in the forum State, or engages in additional conduct directed toward that State.

Asahi Metal, 480 U.S. at 117, 107 S.Ct. at 1034-35, 94 L.Ed.2d at 108, *Brennan, J., concurring in part and concurring in the judgment*. Justice Brennan described Justice O'Connor's stream of commerce "plus" standard as "a marked retreat from the analysis in *World-Wide Volkswagen* [.]" *Id.*, 480 U.S. at 118, 107 S.Ct. at 1035, 94 L.Ed.2d at 107. According to Justice Brennan, a "forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Asahi Metal*, 480 U.S. at 119, 107 S.Ct. at 1035-36, 94 L.Ed.2d at 107. As a result, Justice Brennan concluded that sufficient minimum contacts existed in *Asahi Metal* because "Asahi was aware of the distribution system's operation, and it knew that it would benefit economically from the sale in California of products incorporating its components." *Asahi Metal*, 480 U.S. at 121, 107 S.Ct. at 1036-37, 94 L.Ed.2d at 107.[5] This Court has addressed the issue debated in *Asahi Metal* on several occasions, and has expressly declined in those cases to follow

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[5] Justice Stevens also concluded that California lacked the authority to assert jurisdiction over the person of the defendant in *Asahi Metal* on the basis of a number of factors, such as the fact that all parties to the litigation in question were foreign nationals, that it would be highly inconvenient for the defendant to be haled into court in California, that all of the relevant events occurred outside the forum state, and that the forum state had no interests that would be protected by an assertion of jurisdiction. However, Justice Stevens did not join the approach adopted by Justice O'Connor in reaching this conclusion. Needless to say, the facts in *Asahi Metal* are distinguishable from the facts at issue here in a number of respects.

the approach to the "purposeful availment" issue advocated by Justice O'Connor in that case.

In *Bush v. BASF Wyandotte Corp.*, 64 N.C.App. 41, 306 S.E.2d 562 (1983), this Court addressed a case brought by a North Carolina plaintiff who was injured while operating a washing machine in connection with her employment. The machine had been manufactured by a Swedish corporation which sold several such machines to a New York distributor, which then, in turn, sold a washing machine to the plaintiff's employer. *Bush*, 64 N.C.App. 41, 306 S.E.2d 562. The defendant corporation made no attempt to exclude North Carolina from the area in which its products were distributed. The Court concluded in *Bush* that, because the defendant corporation "purposefully injected [its] product into the stream of commerce without any indication that it desired to limit the area of distribution of its product so as to exclude North Carolina[,] . . . the courts of North Carolina may lawfully assert personal jurisdiction over" the defendants. *Id.*, 64 N.C.App. at 51, 306 S.E.2d at 568.[6] Thus, the rule applicable in North Carolina prior to *Asahi Metal* was not consistent with the position enunciated in Justice O'Connor's opinion.

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[6] The trial court exercised jurisdiction in *Bush* pursuant to N.C. Gen.Stat. § 1-75.4(4)(b), which provides that personal jurisdiction is proper "in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury" that "[p]roducts, materials or thing processed, serviced or manufactured by the defendant were used or consumed, within this State in the ordinary course of trade[.]" N.C. Gen.Stat. § 1-75.4(4)(b) does not apply to this case because the accident in which Decedents were killed did not occur within North Carolina.

A few years later, in *Warzynski v. Empire Comfort Systems, Inc.*, 102 N.C.App. 222, 229, 401 S.E.2d 801, 805 (1991), this Court noted that "[a] majority of the [United States Supreme] Court did not join in the section of the *Asahi* opinion that attempts to question the stream of commerce doctrine;" for that reason, we concluded that "Asahi does not overrule previous cases that follow the stream of commerce theory, including *Bush v. BASF*." *Warzynski*, 102 N.C.App. at 228, 401 S.E.2d at 805. As a result, the *Warzynski* Court concluded that, because the defendant manufacturer, a Spanish company, gave the defendant seller "an exclusive right to sell the heaters in the United States with no limit as to North Carolina[,]" the defendant manufacturer therefore "injected its product into the stream of commerce and subjected itself to the jurisdiction of the courts of this state." *Id.*, 102 N.C.App. at 227-29, 401 S.E.2d at 804.

Similarly, in *Cox v. Hozelock, Ltd.*, 105 N.C.App. 52, 57, 411 S.E.2d 640, 643, *disc. review denied*, 331 N.C. 116, 414 S.E.2d 752, *cert. denied*, 506 U.S. 824, 113 S.Ct. 78, 121 L.Ed.2d 42 (1992), this Court stated that:

> [W]e cannot agree that the impact of *World-Wide* has been significantly lessened due to the recent Supreme Court decision in *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987)[,]" because "[t]he Court was evenly split . . . as to the ramifications of *World-Wide* and whether intentionally placing a product in the stream of commerce, without more, provided a sufficient basis for jurisdiction over a foreign defendant."

Hozelock, 105 N.C.App. at 57, 411 S.E.2d at 644 (1992). In light of that determination, we held that "the sole act of a manufacturer's intentional injection of his product into the stream of commerce provides sufficient grounds for a forum state's exercise of personal jurisdiction over the foreign manufacturer defendant," thus allowing "the North Carolina court [to] properly invoke personal jurisdiction[.]" *Id.*, 105 N.C.App. at 57, 411 S.E.2d at 644.[7]

In *Carswell Distrib. Co. v. U.S.A.'s Wild Thing*, 122 N.C.App. 105, 107-108, 468 S.E.2d 566, 568-69 (1996), this Court stated:

> Minimum contacts can be found when the out-of-state defendant injects products into the "stream of commerce" with the expectation that the products will reach the forum state. *World-Wide Volkswagen Corp.*, 444 U.S. at 298, 100 S.Ct. at 567-68, 62 L.Ed.2d at 502. North Carolina courts have applied stream of commerce analysis to support the exercise of personal jurisdiction in defective product cases. E.g., *Warzynski v. Empire Comfort Systems*, 102 N.C.App. 222, 228-29, 401 S.E.2d 801, 805 (1991) (holding a corporation subject to the jurisdiction of our courts when it has "purposefully injected" a product into "the stream of commerce" without limiting the area of distribution "so as to exclude North Carolina"). North Carolina cases that use stream of commerce analysis have not been overruled by the United States Supreme Court's decision in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).

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[7] Personal jurisdiction in Hozelock was also determined to be proper pursuant to N.C. Gen.Stat. § 1-75.4(4)(b).

> *Cox v. Hozelock, Ltd.*, 105 N.C.App. 52, 57, 411 S.E.2d 640, 644, *disc. review denied*, 331 N.C. 116, 414 S.E.2d 752, *cert. denied*, 506 U.S. 824, 113 S.Ct. 78, 121 L.Ed.2d 42 (1992); Warzynski, 102 N.C.App. at 229, 401 S.E.2d at 805.

U.S.A.'s Wild Thing, 122 N.C.App. at 107-108, 468 S.E.2d at 568-69. In *U.S.A.'s Wild Thing*, the defendant "entered into a manufacturing agreement with . . . a company that served as the distributor for [a product manufactured by the defendant] throughout the United States, Mexico, and Canada." *Id.*, 122 N.C.App. at 108, 468 S.E.2d at 568. According to this Court, "[b]y shipping [its product] to plaintiff in North Carolina pursuant to this agreement [the distributor] intentionally injected its [product] into the stream of commerce and purposefully availed itself of the benefit of North Carolina markets." *Id.*

After reviewing these decisions, we conclude that the appropriate question that must be answered in order to determine whether Defendants are "subject to the jurisdiction of the courts of this state" is whether Defendants have "purposefully injected [their] product 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." *Bush*, 64 N.C.App. at 51, 306 S.E.2d at 568; *but see Putnam v. Triangle Publications, Inc.*, 245 N.C. 432, 96 S.E.2d 445 (1957) (holding that personal jurisdiction could not be exercised over a foreign defendant who sold magazines to distributors within this State, but delivered and surrendered title to the magazines to carriers outside North Carolina); *Moss v. City of Winston-Salem*, 254 N.C. 480, 119 S.E.2d 445 (1961) (holding that personal jurisdiction

was not present, even though the Illinois defendant lawn mower manufacturer intentionally placed a lawn mower in the stream of interstate commerce and sold it to an unrelated distributor, which then sold the mower to a business in North Carolina).[8] Thus, we must evaluate the validity of the trial court's decision that Goodyear France, Goodyear Luxembourg, and Goodyear Turkey were subject to the jurisdiction of the Onslow County Superior Court by examining whether the trial court's findings of fact, considered in their entirety, provide an adequate basis for a conclusion that Defendants had "continuous and systematic contacts with North Carolina" in light of the well-established legal principle outlined above.

As an initial matter, we note that several of the trial court's "findings of fact" are improperly classified, at least in part, as findings of fact rather than conclusions of law. In these improperly classified findings of fact, the trial court stated that:

> 14. The defendants purposefully and deliberately availed themselves of the North Carolina market for tires and substantially profited from sales of their tires in North Carolina.
>
> 15. The defendant companies have continuous and systematic contacts with North Carolina and are conducting substantial activity within North Carolina.

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[8] *Putnam* and *Moss* antedate *World-Wide Volkswagen*; as a result, this Court has stated that "[t]he precedential value of both *Moss* and *Putnam*, by their own reasoning, must therefore yield to the rationale of *World-Wide*." *Hozelock*, 105 N.C.App. at 57, 411 S.E.2d at 643.

See State ex rel. Utilities Com. v. Eddleman, 320 N.C. 344, 351, 358 S.E.2d 339, 346 (1987), *later proceeding,* 322 N.C. 689, 370 S.E.2d 567 (1988) (stating that "[f]indings of fact are statements of what happened in space and time"). In light of the fact that these findings involve statements that Defendants "purposefully and deliberately availed themselves of the North Carolina market," "have continuous and systematic contacts with North Carolina," and "are conducting substantial activity within North Carolina," and the fact that these statements amount to determinations that the applicable legal standards have been met rather than "statements of what happened in space and time," we will not include these portions of finding of fact numbers 14 and 15 in our analysis of the sufficiency of the factual findings in the trial court's order to support its conclusion that Defendants were subject to the jurisdiction of the Onslow County Superior Court.

In addition, as another preliminary matter, the trial court stated in finding of fact numbers 17 and 21 that Defendants "caused" a certain number of tires to be shipped into North Carolina. However, the record appears to be devoid of evidence that Defendants took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina. On the contrary, the available evidence tends to show that other entities were responsible for the shipment of tires manufactured by Defendants to the United States and, as a part of that process, the tires arrived in North Carolina. As a result, our analysis of the trial court's findings is informed by our understanding that Defendants, as separate corporate entities, were not directly responsible for

the presence in North Carolina of tires that they had manufactured.

Defendants also argue that finding of fact numbers 4 and 5 are not supported by competent evidence because they were "based solely on incompetent statements in Mr. Och's affidavit[.]" We disagree. Findings of fact numbers 4 and 5 state the following:

> 4. The subject tire contained information that was written entirely in English, including warnings and directions, U.S. Department of Transportation markings placed on the tire to allow it to be sold in the United States, and markings to show it was manufactured as qualified for sale in the United States.
>
> 5. The subject Goodyear Regional tire has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. The tire also contains a "Safety Warning," written in English, which conforms to the warnings found on all tires for sale in the United States.

Ochs's affidavit reveals that he "traveled to France and personally inspected the tire that is at issue in this case." Ochs discovered the following pertinent information as a result of his inspection of the tire: (1) "[b]ased on the serial number on the tire, which is required by the U.S. Department of Transportation for tires sold in the United States, the tire was manufactured at a Goodyear plant in Izmit, Turkey, owned by Goodyear Lastikleri T.A.S."; (2) "[t]he tire at issue contained additional U.S. Department of Transportation markings that were

placed there to allow the tire to be sold in the United States"; (3) "[t]he tire at issue contained information showing that it was manufactured as qualified for sale in the United States"; (4) "[t]he tire at issue had a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States"; (5) "[t]he tire at issue contains a 'Safety Warning,' written in English, that conforms to the warnings found on every tire for sale in the United States"; (6) "[a]ll of the information found printed on the tire is written in English, and the tire was manufactured and labeled in such a way as to allow it to be sold in the United States"; (7) "[b]ased on my knowledge of tire manufacturing and the European tire market, this tire was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina." These excerpts from Ochs' affidavit contain competent evidence to support the trial court's finding of fact numbers 4 and 5. *See Fox v. Gibson*, 176 N.C.App. 554, 558, 626 S.E.2d 841, 844 (2006) (upholding findings of fact in the context of personal jurisdiction as supported by competent evidence based on information contained in various affidavits). The associated dispute the validity of the remaining findings of fact on appeal, we must now "conduct a *de novo* review of the trial court's conclusions of law and determine whether, given the facts found by the trial court, the exercise of personal jurisdiction would violate defendant's due process rights." *Deer Corp.*, 177 N.C.App. at 322, 629 S.E.2d at 166.

The trial court's factual findings which were either undisputed by Defendant or supported by competent evidence indicate that the tire that

Plaintiffs allege was involved in the accident resulting in Decedents' deaths "contained additional U.S. Department of Transportation markings that were placed there to allow the tire to be sold in the United States" and also "contained information showing that it was manufactured as qualified for sale in the United States." More particularly, the tire had "a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States." Moreover, the tire contained "a 'Safety Warning,' written in English[.]" Although Kramer opined that the presence of "DOT specifications" on the relevant Goodyear Regional RHS tire "doesn't necessarily mean that the tire is destined to be used in the United States," the existence of these markings does indicate, as the trial court found, that the tire in question was manufactured in such a manner that it could, if business conditions supported such a move, be sold in the United States. Thus, at an absolute minimum, the manufacturer contemplated that the tire might be sold in this country.

Furthermore, the trial court's findings establish that tires manufactured by Defendants were shipped to the United States for sale and that there was no attempt to keep these tires from reaching the North Carolina market. The evidence tends to show that the extent to which tires manufactured by Defendants were sold in the United States depended on the extent to which Goodyear affiliates responsible for distributing tires in the United States exercised the option that was available to them of having tires needed for sale in the United States manufactured by one of the Defendants. In addition, the trial court

found that tires manufactured by each Defendant were actually sold in North Carolina. From 2004 to 2007, 6,402 tires manufactured by Goodyear Luxembourg were ultimately shipped to locations in North Carolina. Similarly, 33,923 tires manufactured by Goodyear France reached North Carolina during the same period. Finally, 4,059 tires manufactured by Goodyear Turkey were shipped into North Carolina for sale during this interval. Furthermore, as the trial court noted, other tires manufactured by Defendants may have reached North Carolina during this time, since the figures set forth above do not include "vehicles equipped with tires from [Defendants] imported into the [United States] and shipped into North Carolina for sale each year." According to the trial court's findings, the distribution chain through which tires manufactured by Defendants were shipped into the United States and, eventually, into North Carolina, was "a continuous and systematic" process rather than a sporadic or episodic one. As a result, the trial court's findings indicated that, through a regular process employed within the Goodyear organization, a substantial number of tires manufactured by the Defendants were imported into the United States and distributed to various entities in North Carolina.

In addition to the evidence reflecting Defendants' contacts with North Carolina, the trial court's findings reflect that North Carolina has an interest in this proceeding given that Plaintiffs seek redress for injuries sustained by North Carolina citizens. In addition, the record reflects that requiring Plaintiffs, who have no ties to France, to litigate their claims in the French courts would impose a considerable burden on them. Although there is no question but that requiring Defendants to defend an action in the

General Court of Justice would be burdensome as well, that burden is alleviated to some extent by the fact that Defendants have corporate affiliates in the United States with business interests in North Carolina, a fact which is simply not true of Plaintiffs.

As in *Bush, Warzynski, Hozelock*, and *U.S.A.'s Wild Thing*, Defendants have, without question, purposefully and intentionally manufactured tires and placed them in the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina. Defendants also knew or should have known that a Goodyear affiliate obtained tires manufactured by Defendants and sold them in the United States in the regular course of business. The record further demonstrates that several thousand tires manufactured by each of the Defendants eventually found their way into North Carolina markets through the operation of a continuous and highly-organized distribution process. The number of tires at issue in this case is much greater than the number of sales that have been deemed sufficient in other cases, such as *Dillon*, 291 N.C. 674, 231 S.E.2d 629 (deeming 27 sales in North Carolina sufficient to support a finding of general jurisdiction), and *Hankins v. Somers*, 39 N.C.App. 617, 251 S.E.2d 640, *cert. denied*, 297 N.C. 300, 254 S.E.2d 920 (1979) (deeming sales of "wire art" in North Carolina to a "substantial extent" sufficient to support a finding of general personal jurisdiction). Finally, North Carolina has a well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained, and a greater burden would be imposed upon Plaintiffs in the event that they were required to litigate their claims in France compared to the burden that would be imposed upon

Defendants in the event that they are required to defend Plaintiffs' claims in the General Court of Justice. In light of all these facts, Defendants could, consistently with considerations of due process and fundamental fairness, reasonably expect to be subject to the jurisdiction of the North Carolina courts, so that the exercise of personal jurisdiction over Defendants would not violate the due process clause.

Defendants' principal challenge to the trial court's order rests on the assertion that "stream of commerce" analysis simply does not apply in instances involving general, as compared to specific, jurisdiction. Defendants have not cited a North Carolina case to this effect, and we know of none. On the other hand, *U.S.A.'s Wild Thing* does not appear to involve an exercise of specific jurisdiction. Instead of adopting a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction, we believe that the real issue is the extent to which Defendants' products were, in fact, distributed in North Carolina markets. Although we might agree with Defendants' contention in the event that the record demonstrated that only a few tires reached North Carolina through a limited distribution process, that is not the situation present here. Instead, the trial court's findings reflect that thousands of tires manufactured by each of the Defendants were distributed in North Carolina as the result of a highly organized distribution process that involved Defendants and other Goodyear affiliates. Thus, we believe that, on the facts of this case, sufficient basis exists to support a finding of general personal jurisdiction under N.C. Gen.Stat. § 1-75.4(1)d and the due process clause.

As a result, after a thorough review of the record, and consistent with the principles outlined by this Court in *U.S.A.'s Wild Thing*, 122 N.C.App. 105, 468 S.E.2d 566, *Hozelock*, 105 N.C.App. 52, 411 S.E.2d 640, *Warzynski*, 102 N.C.App. 222, 401 S.E.2d 801, and *Bush*, 64 N.C.App. 41, 306 S.E.2d 562, we hold that the facts found in the trial court's order support its conclusion that Defendants "purposefully injected [their] product 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," *Bush*, 64 N.C.App. at 51, 306 S.E.2d at 568, and thereby purposefully availed themselves of the protection of the laws of this State. The trial court's findings are supported by competent evidence, and the findings in turn support the conclusion that the exercise of general personal jurisdiction over Goodyear Luxembourg, Goodyear Turkey, and Goodyear France was appropriate pursuant to N.C. Gen.Stat. § 1-75.4(1)(d) and the due process clause. As a result, the trial court did not err in exercising general jurisdiction over Defendants and denying their dismissal motions pursuant to N.C. Gen.Stat. § 1A-1, Rule 12(b)(2). Thus, the trial court's order should be, and hereby is, affirmed.

AFFIRMED.

Judges WYNN and STEPHENS concur.

APPENDIX B

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	SUPERIOR COURT DIVISION
	05 CVS 1922

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,	)	
Plaintiffs,	)	
v.	)	**ORDER**
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., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and	)	

GOODYEAR DUNLOP TIRES FRANCE SA.,	)
	)
	)
Defendants.	)

THIS CAUSE coming on to be heard and being heard before the undersigned Judge presiding over the December 10, 2007, term of the Onslow County Superior Court, upon motions of the defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA., (hereinafter "the defendants") to dismiss for lack of personal jurisdiction, and the Court having considered the pleadings and all affidavits, depositions and other documents on file at the hearing, and having heard arguments of counsel, finds the following facts:

1. Matthew Helms of Jacksonville and Julian Brown of Charlotte, two 13-year-old youth soccer players, died from injuries suffered in a bus wreck that occurred on April 18, 2004, near Paris, France. Plaintiffs have alleged that as the decedents rode on a bus headed to the airport in Paris to return home to North Carolina, one of the bus' tires, designed, manufactured and distributed by the Goodyear defendants, failed when its plies separated, causing the bus to leave the highway and overturn.

2. Defendants Goodyear Luxembourg Tires, SA; Goodyear Lastikleri T.A.S.; and Goodyear Dunlop Tires France SA (hereinafter "defendants") moved to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the N.C. Rules of Civil Procedure and N.C. G.S. § 1-75.4.

3. The subject tire that allegedly failed was a Goodyear Regional tire, which was manufactured by defendant Goodyear Lastikleri T.A.S., located in Turkey.

4. The subject tire contained information that was written entirely in English, including warnings and directions, U.S. Department of Transportation markings placed on the tire to allow it to be sold in the United States, and markings to show it was manufactured as qualified for sale in the United States.

5. The subject Goodyear Regional tire has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. The tire also contains a "Safety Warning," written in English, which conforms to the warnings found on all tires for sale in the United States.

6. During the period from 2004 through a portion of 2007, at least 5906 tires made by Goodyear Lastikleri T.A.S. were shipped into North Carolina for sale, although not by the original manufacturer.

7. During the period from 2004 through a portion of 2007, at least 33,923 tires made by Goodyear Dunlop Tires France SA were shipped into North Carolina for sale, although not by the original manufacturer.

8. During the period from 2004 through a portion of 2007, at least 6402 tires made by Goodyear Luxembourg Tires SA were shipped into North Carolina for sale, although not by the original manufacturer.

9. The number of tires shipped into North Carolina from each of these manufacturers may actually be substantially higher, in that The Goodyear Tire and Rubber Company (hereinafter "Goodyear"), after being noticed for a 30(b)(6) deposition, failed to determine how many vehicles equipped with tires from these foreign defendant manufacturers are imported into the U.S. and shipped into North Carolina for sale each year.

10. The defendants, on a continuous and systematic basis, caused tires to be sent into the United States for sale, and knew or should have known that some of those tires were distributed for sale to North Carolina residents, and the defendants continue to send tires for sale into the United States and know or should know that some of those tires continue to be sold to North Carolina residents on a continuous and systematic basis.

11. The sale of these tires generates substantial revenue for Goodyear, these defendant companies and its related companies.

12. The defendants, as manufacturers, did not have their own distribution system for the sale of their tires, but instead used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina.

13. The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear parent and affiliated companies and sold in North Carolina on a continuous and systematic basis.

14. The defendants purposefully and deliberately availed themselves of the North Carolina market for

tires and substantially profited from sales of their tires in North Carolina.

15. The defendant companies have continuous and systematic contacts with North Carolina and are conducting substantial activity within North Carolina

16. Defendant Goodyear Lastikleri T.A.S. is a wholly owned subsidiary of defendant The Goodyear Tire and Rubber Company, which is based in the United States. All three of the foreign defendant companies are subsidiaries of Goodyear in the United States and as such have additional, abundant ties to the United States.

17. The defendant companies have deliberately attempted to take advantage of the tire market in North Carolina by designing, manufacturing and causing tires to be distributed for sale to the North Carolina market, and those tires are sold in North Carolina.

18. Because all three companies have manufactured tires shipped into North Carolina for sale that by clear implication and inference are used on thousands of vehicles throughout North Carolina, they could reasonably anticipate being haled into court in North Carolina.

19. The quantity of the defendants' contacts with North Carolina, which includes sales of between 5,900 and 34,000 tires within the state, generating substantial revenues and substantial commercial activity in North Carolina, weighs in favor of a finding of general jurisdiction over the defendants.

20. The quality of those contacts, which include systematic and repeated contacts with the state of North Carolina for the purpose of commerce, along

with the defendants' ownership by U.S. corporations doing substantial business in North Carolina, weighs in favor of a finding of general jurisdiction over the defendants.

21. The cause of action in this case is closely related to the contacts with the defendants, in that the defendants are causing substantial quantities of tires they manufactured to be sold in North Carolina, and plaintiffs seek to exercise jurisdiction related to a defect in a tire designed, manufactured, distributed or sold by the defendants.

22. North Carolina has a substantial interest in allowing its citizens a forum for the redress of grievances, especially where two of its citizens have been killed, allegedly by the negligence of the defendants.

23. The foreign Goodyear defendants are not inconvenienced by the trial of this action in North Carolina, in that they do substantial and continuous business in North Carolina, they are subsidiaries of a United States corporation that does substantial and continuous business in North Carolina, and they are represented by the same attorneys as are representing their U.S. parent corporation.

24. The plaintiffs, parents of the deceased boys, would be substantially inconvenienced by litigating this case in foreign countries.

Based on the foregoing findings of fact, the Court concludes as a matter of law:

1. The defendants have continuous and systematic ties with the State of North Carolina.

2. The defendants' activities in North Carolina are substantial.

3. The quantity of the defendants' contacts with North Carolina; the nature and quality of those contacts; the source and connection of the cause of action to the contacts; the interest of North Carolina in this cause of action and the convenience of the parties, all weigh in favor of the exercise of general jurisdiction over the defendants.

4. Exercise of general jurisdiction over the defendants comports with Due Process and does not offend traditional notions of fair play and justice.

THEREFORE, The Court finds that this court can properly exercise general jurisdiction over the defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA. Defendants' motions to dismiss for lack of personal jurisdiction are hereby DENIED.

This the 25th day of April 2008.

s/ Gary Trawick

The Honorable Gary E. Trawick

Superior Court Judge Presiding

APPENDIX C

Supreme Court of North Carolina

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

v.

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., Goodyear Luxembourg Tires, SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires Frances, SA.

No. 392P09.

April 14, 2010.

William K. Davis, for Goodyear Luxembourg Tires SA, et al.

Charlot F. Wood.

Kevin G. Williams.

Michael D. Phillips.

David F. Kirby, for Edgar D. Brown, et al.

William B. Bystrynski.

Ronald C. Dilthey, for NCYSL.

Dan J. McLamb, for Meter, Eric R.

Jonathan A. Berkelhammer.

C. Fredric Marcinak, III.

Andrew S. Chamberlin.

Stephen D. Feldman.

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendants (Goodyear Luxembourg Tires, et al.) on the 22nd of September 2009 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Plaintiffs, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 14th of April 2010."

Upon consideration of the petition filed on the 22nd of September 2009 by Defendants (Goodyear Luxembourg Tires, et al) in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 14th of April 2010."