

GOODYEAR DUNLOP: A WELCOME REFINEMENT OF THE
LANGUAGE OF GENERAL PERSONAL JURISDICTION

by
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In its 2011 decision in Goodyear Dunlop Tires v. Brown, the United States Supreme Court directly addressed the constitutional permissibility of general personal jurisdiction for only the third time since its landmark personal jurisdiction decision in International Shoe v. Washington in 1945. The language of pre-Goodyear opinions on general jurisdiction, jurisdiction based on a defendant's contacts with the forum state regardless of their relationship to the plaintiff's claim, suggested that it was constitutionally permissible if the defendant had "continuous and systematic general business contacts" with the forum state. The Court had held that contacts such that the forum was the corporate defendant's principal place of business satisfied this test, yet millions of dollars of purchases and training by the defendant from the forum state over a seven year period did not. The wide gray area in between these two factual circumstances and the generality of the Court's "continuous and systematic contacts" test has led lower courts to reach very divergent results on the issue.

In a unanimous opinion in Goodyear Dunlop, the Court clarified that using regular sales in the forum as a basis for general personal jurisdiction, a basis that had been held sufficient by a minority of lower courts, fell "far short" of the types of contacts necessary for general jurisdiction. And significantly, the Court's opinion introduced a question, drawn from language in International Shoe but not previously stressed in its general jurisdiction opinions, asking whether the defendant's contacts were such "as to render them essentially at home in the forum state." This Article argues that this refinement of the language of general personal jurisdiction is a welcome addition, as it should assist in marking more clearly the outer bounds of general jurisdiction and in limiting the forum shopping mischief and added costs of litigation that can occur with more expansive and ill defined borders.

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I. INTRODUCTION

In its 2011 decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*,¹ the United States Supreme Court directly addressed the propriety of assertions of general personal jurisdiction over corporations after a twenty-seven year period of silence on the topic.² The decision was only the third time the Court has addressed the issue since *International Shoe v. Washington*,³ the landmark twentieth century Supreme Court case on modern assertions of personal jurisdiction. The issue is one on which lower courts were sorely in need of clarification.

Courts in the United States today address the constitutional permissibility of personal jurisdiction by discussing two subtypes, “specific jurisdiction” and “general jurisdiction.” “Specific jurisdiction” may exist “in a suit arising out of or related to the defendant’s contacts with the forum.”⁴ “General jurisdiction” may exist “in a suit not arising out of or related to the defendant’s contacts with the forum.”⁵ This terminology was first proposed by Professors Arthur T. von Mehren and Donald T. Trautman in 1966,⁶ and was first embraced by the United States Supreme Court in 1984 in *Helicopteros Nacionales de Colombia v. Hall*.⁷ The

¹ 131 S. Ct. 2846 (2011).

² The most recent preceding Supreme Court case to discuss the issue was *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984).

³ 326 U.S. 310 (1945).

⁴ *Helicopteros*, 466 U.S. at 414 n.8.

⁵ *Id.* at n.9.

⁶ Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966). As is discussed by Professor Friedrich Juenger, “[a]lthough the terminology is of recent vintage, the distinction between general and specific jurisdiction is ancient.” Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. CHI. LEGAL F. 141, 143.

⁷ 466 U.S. at 414 nn.8–9.

distinction, however, was clearly recognized in *International Shoe*⁸ as well as earlier jurisdictional decisions.⁹

Specific jurisdiction may be constitutionally permissible based on a single purposeful contact the defendant has with the forum state if that contact has a strong enough relationship to the claim.¹⁰ The phrasing of the test for general jurisdiction, on the other hand, at least the Court's most recent formulation before *Goodyear Dunlop*, required that a corporate defendant have "continuous and systematic general business contacts" with the forum state.¹¹

The unanimous opinion in *Goodyear Dunlop* provides a welcome refinement of earlier case law on general personal jurisdiction, shifting the focus slightly to ask where the defendant "is fairly regarded as at home."¹²

Part II of this Article will discuss the development of standards for general personal jurisdiction in Supreme Court case law prior to *Goodyear Dunlop*. Part III will then discuss how the vagueness of those standards has led to wide variations in results in lower court decisions purporting to apply them. Part III will also discuss how application of the standards has not only resulted in a lack of predictability of results, but also has created problems in the area of Conflict of Laws that might be avoided with clearer standards. Part IV will then discuss the unanimous opinion in *Goodyear Dunlop* and describe how it appears to provide an incremental shift of focus in determining the constitutional permissibility of general personal jurisdiction. Part V will discuss how this shift of focus has the potential to create more consistency and predictability in this area of the law. It will also discuss how the decision may constitute a welcome check on decisions applying relatively broad conceptions of general personal jurisdiction, alleviating some of the Conflict of Laws problems described in Part III.

⁸ 326 U.S. at 317–19 (distinguishing suits where the claims are unconnected with the defendant's activities in the forum from cases where the obligations sued upon "arise out of or are connected with the activities within the state").

⁹ See, e.g., *Hutchinson v. Chase & Gilbert, Inc.*, 45 F.2d 139, 141 (2d Cir. 1930) (distinguishing suits "arising out of a legal transaction entered into where the suit was brought" from "suits arising out of foreign transactions").

¹⁰ See, e.g., *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 221–23 (1957).

¹¹ *Helicopteros*, 466 U.S. at 416.

¹² *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2854 (2011).

II. GENERAL PERSONAL JURISDICTION IN THE UNITED STATES SUPREME COURT¹³

A. *Early Cases*

The first personal jurisdiction case read by most law students in the United States is the 1878 case of *Pennoyer v. Neff*.¹⁴ In *Pennoyer*, the Supreme Court established that states could assert personal jurisdiction over individuals who were served with process while present in the state or who voluntarily appeared to defend the action.¹⁵ Process sent to an individual outside of the state was insufficient.¹⁶ In today's terminology, such jurisdiction was "general" personal jurisdiction. The opinion gave no indication that the nature of the claim needed some relationship with the forum state.¹⁷ Dicta in the case indicated that corporations could be subject to such jurisdiction in their state of incorporation.¹⁸

The 1940 decision in *Milliken v. Meyer* held that individuals are also subject to general personal jurisdiction in the state of their domicile.¹⁹ The Court's early decisions on other bases for the assertion of general jurisdiction over corporations, however, are few in number and sometimes appeared to reach inconsistent results.²⁰

Goldey v. Morning News, decided in 1895, clearly held that service on a corporation's president while he was temporarily in the state was not

¹³ I have published on this topic in greater detail elsewhere. See James R. Pielemeier, *Why General Personal Jurisdiction over "Virtual Stores" Is a Bad Idea*, 27 QUINNIPIAC L. REV. 625, 628–39 (2009) [hereinafter Pielemeier, "Virtual Stores"]. My focus here will be on aspects of Supreme Court case law that I think are most relevant to a discussion of *Goodyear Dunlop*.

¹⁴ 95 U.S. 714 (1878).

¹⁵ *Id.* at 733–34 ("[F]or any other purpose than to subject the property of a non-resident to valid claims against him in the State, 'due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered.'" (quoting THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 405 (1868))).

¹⁶ *Id.* at 727 ("Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability.").

¹⁷ *Id.* at 733–34. The constitutional validity of general personal jurisdiction over individuals served within the forum state was reaffirmed in *Burnham v. Superior Court*, 495 U.S. 604, 607–08, 628 (1990).

¹⁸ *Pennoyer*, 95 U.S. at 735 ("Nor do we doubt that a State, on creating corporations or other institutions for pecuniary or charitable purposes, may provide a mode in which their conduct may be investigated, their obligations enforced, or their charters revoked, which shall require other than personal service upon their officers or members.").

¹⁹ *Milliken v. Meyer*, 311 U.S. 457, 463 (1940) ("Certainly then Meyer's domicile in Wyoming was a sufficient basis for that extraterritorial service. As in case of the authority of the United States over its absent citizens, the authority of a state over one of its citizens is not terminated by the mere fact of his absence from the state." (citation omitted)).

²⁰ See generally Pielemeier, "Virtual Stores," *supra* note 13, at 629–34.

sufficient for jurisdiction over a corporation “neither incorporated nor doing business within the State.”²¹ But if service on the corporation’s president while present in the state was insufficient, what would suffice for general jurisdiction over the corporation? Supreme Court cases in the early 1900s asked whether the corporation *itself* was “present” in the state.²² This was clearly an analogy to *Pennoyer’s* rule that individual defendants could be subject to jurisdiction if they were served while present in the state.

But because a corporation has no physical body, the Court needed to go further and define what activity would suffice to warrant a conclusion that the corporation was present for purposes of general jurisdiction. The catchphrase test the Court often used was to inquire into whether the corporation was “doing business” in the state.²³

“Doing business,” however, was also a very vague and malleable test. What sort of business would qualify to satisfy the standard? It certainly wasn’t just any business. Two Supreme Court cases in the early 1900s had fact patterns such that today, the only plausible theory of personal jurisdiction would be general jurisdiction, not specific jurisdiction.

In the first, *Green v. Chicago, Burlington, & Quincy Railway Co.*, suit was brought in federal court in Pennsylvania to recover for injuries incurred in Colorado through the negligence of the corporate defendant.²⁴ The defendant’s contacts with Pennsylvania consisted of an office, a person at the office designated as district freight and passenger agent, other employees, advertising, and solicitation of passengers and freight to be transported on the defendant’s railroad line outside of the state.²⁵ Rephrasing the inquiry from “presence” to whether the facts show that the defendant was “doing business” in the state, the Court said it was “obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers.”²⁶ Nevertheless, the Court found no jurisdiction, saying:

The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute “doing business” in the sense that liability to service is incurred, we think that this is not

²¹ *Goldey v. Morning News*, 156 U.S. 518, 521–22 (1895).

²² *See, e.g., People’s Tobacco Co. v. Am. Tobacco Co.*, 246 U.S. 79, 86–87 (1918).

²³ *See, e.g., Phila. & Reading Ry. Co. v. McKibbin*, 243 U.S. 264, 265 (1917) (“A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the state in such manner and to such extent as to warrant the inference that it is present there.”); *Green v. Chi., Burlington & Quincy Ry. Co.*, 205 U.S. 530, 532 (1907) (finding jurisdiction based on service on a corporate agent in Pennsylvania “depends upon whether the corporation was doing business [in Pennsylvania] in such a manner and to such an extent as to warrant the inference that through its agents it was present there”).

²⁴ *Green*, 205 U.S. at 531.

²⁵ *Id.* at 532–33.

²⁶ *Id.* at 533.

enough to bring the defendant within the district so that process can be served upon it.²⁷

Similarly, in *Philadelphia & Reading Railway Co. v. McKibbin*, plaintiff sued a Pennsylvania corporation for injuries incurred at one of defendant's New Jersey freight yards, in a federal district court in New York.²⁸ The Court noted that like other railroads, the defendant sent into New York, over connecting carriers, loaded freight cars, which over the course of time were returned.²⁹ Another railroad also sold in New York "customary coupon tickets" over its own and connecting lines, including defendant's line, for which the defendant would receive an "ultimate accounting."³⁰ In addition, there were signs in the terminal and a telephone listing with defendant's name, directing persons to the railroad that sold the coupon tickets.³¹ Asking whether the defendant was "doing business within the State in such manner and to such extent as to warrant the inference that it is present there,"³² and citing *Green* favorably, the Court again answered in the negative:

The finding that the defendant was doing business within the State of New York is disproved by the facts thus established. The defendant transacts no business there; nor is any business transacted there on its behalf, except in the sale of coupon tickets. Obviously the sale by a local carrier of through tickets does not involve a doing of business within the State by each of the connecting carriers. If it did, nearly every railroad company in the country would be "doing business" in every State.³³

Unfortunately, however, application of the "presence" and "doing business" tests became confusing because they found their way into decisions involving what we would call today specific jurisdiction. In using the terminology in both types of cases, the Court seemed to reach inconsistent results.³⁴ And during this period, the Court never articulated a way to reconcile the cases. Instead, in one case, it stressed that "[e]ach case depends upon its own facts," and continued with a fully conclusory test:

The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the

²⁷ *Id.* at 533–34.

²⁸ *McKibbin*, 243 U.S. at 266.

²⁹ *Id.*

³⁰ *Id.* at 267.

³¹ *Id.*

³² *Id.* at 265.

³³ *Id.* at 268.

³⁴ See Pielemeier, "Virtual Stores," *supra* note 13, at 632–33. Professor Robert Casad, discussing the early cases, concludes that "the results were inconsistent, with one exception: A corporation was not considered to be doing business if its only activity within the state was 'mere solicitation' for interstate commerce." 16 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 108.23(1)(b)(iv) (3d ed. 2011) (footnotes omitted).

inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the State or district where service is attempted.³⁵

The confusion generated by these cases was reflected in *Hutchinson v. Chase & Gilbert*, a decision by the Circuit Court of Appeals for the Second Circuit that clearly articulated what we understand today to be the difference between specific and general jurisdiction.³⁶ Writing for the court, after describing several of the Supreme Court cases, Judge Learned Hand lamented, “It is quite impossible to establish any rule from the decided cases; we must step from tuft to tuft across the morass.”³⁷ His opinion concluded, “[O]ne may look from one end of the decisions to the other and find no vade mecum [handbook].”³⁸

B. International Shoe and Later Supreme Court Decisions

The 1945 decision in *International Shoe v. Washington* shifted the conceptual basis of personal jurisdiction from physical power to “traditional notions of fair play and substantial justice.”³⁹ It also appeared to signal a fresh start after the confusion engendered by the Court’s earlier decisions.

International Shoe was a suit by the state of Washington in Washington courts to recover unpaid contributions to the state unemployment compensation fund.⁴⁰ The required contributions were a percentage of the wages paid for the services of the defendant’s employees in the state.⁴¹ The defendant’s employees in Washington displayed shoe samples and transmitted orders to the defendant’s headquarters “for acceptance or rejection.”⁴²

The Court rejected the defendant’s argument that there was no jurisdiction because its activities within the state of Washington were not sufficient to manifest its “presence.”⁴³ In doing so, the Court appeared to

³⁵ *People’s Tobacco Co. v. Am. Tobacco Co.*, 246 U.S. 79, 87 (1918).

³⁶ *Hutchinson v. Chase & Gilbert, Inc.*, 45 F.2d 139, 140 (2d Cir. 1930). “Process was served in New York upon the defendant’s vice president, who chanced to be there, and the only question is whether the defendant was ‘present’ in such sense that it could be reached in a cause of action arising upon a contract, made in the course of the same activities on which the defendant’s supposed ‘presence’ depends. For this reason we have not before us the question . . . whether without express consent a foreign corporation may be sued upon transactions arising outside the state of the forum.” *Id.*

³⁷ *Id.* at 142.

³⁸ *Id.*

³⁹ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

⁴⁰ *Id.* at 311.

⁴¹ *Id.* at 312.

⁴² *Id.* at 313–14.

⁴³ *Id.* at 315.

reject the propriety of using a test of “presence” in any analysis of personal jurisdiction. The Court said:

To say that the corporation is so far “present” there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms “present” or “presence” are used merely to symbolize those activities of the corporation’s agent within the state which courts will deem to be sufficient to satisfy the demands of due process. Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there.⁴⁴

With language that reflects our modern day distinctions of specific and general jurisdiction, the Court continued:

“Presence” in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation’s behalf are not enough to subject it to suit on causes of action unconnected with the activities there. . . .

While it has been held, in cases on which appellant relies, that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.⁴⁵

The ultimate result in *International Shoe* was that the defendant was subject to jurisdiction, but under today’s terminology it was specific, not general jurisdiction. “The obligation which is here sued upon arose out of those very activities [carried on in behalf of appellant in the State of Washington].”⁴⁶

The language quoted above, however, appeared to suggest a new way of phrasing what activity would suffice for general jurisdiction. Apparently replacing a “presence” test, it referred to “continuous and

⁴⁴ *Id.* at 316–17 (citations omitted). The Court also noted that some earlier cases had found jurisdiction over foreign corporations on the “legal fiction” of implied consent. *Id.* at 318. As it had with “presence,” the Court also discounted this terminology as a conclusionary label, explaining that “more realistically” the acts of authorized corporate agents in the state “were of such a nature as to justify the fiction.” *Id.*

⁴⁵ *Id.* at 317–18 (citations omitted).

⁴⁶ *Id.* at 320.

systematic” activities,⁴⁷ as well as “continuous corporate operations within a state . . . so substantial and of such a nature to justify suit against it on causes of action arising from dealings entirely distinct from those activities.”⁴⁸

But if this language was intended to supercede the earlier “presence” and “doing business” tests, it was only slightly less vague. It would seem to exclude general jurisdiction based on isolated contacts as well as “insubstantial” contacts. But what type of contacts would be deemed to be sufficiently continuous and systematic? That remained to be seen.

Before *Goodyear Dunlop*, the Court decided only two more cases on general personal jurisdiction. In 1952, in *Perkins v. Benguet Consolidated Mining Co.*, the defendant was sued in Ohio, where it carried on “a continuous and systematic, but limited, part of its general business.”⁴⁹ The plaintiff’s claim “did not arise in Ohio and does not relate to the corporation’s activities there.”⁵⁰

The Court purported to apply the “tests” of *International Shoe*, saying that “[t]he essence of the issue here, at the constitutional level, is . . . one of general fairness to the corporation.”⁵¹ It held that the assertion of jurisdiction would not violate due process,⁵² with little further reasoning beyond quotation of *International Shoe*’s discussion of suits on causes of action arising from dealings distinct from forum activities,⁵³ and a lengthy factual description of the defendant’s activities in Ohio.⁵⁴

⁴⁷ *Id.* at 317.

⁴⁸ *Id.* at 318.

⁴⁹ *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 438 (1952).

⁵⁰ *Id.*

⁵¹ *Id.* at 445.

⁵² *Id.* at 448.

⁵³ *Id.* at 446–47 (quoting *Int’l Shoe Co.*, 326 U.S. at 318–19).

⁵⁴ *Id.* at 447–48. “The company’s mining properties were in the Philippine Islands. Its operations there were completely halted during the occupation of the Islands by the Japanese. During that interim the president, who was also the general manager and principal stockholder of the company, returned to his home in Clermont County, Ohio. There he maintained an office in which he conducted his personal affairs and did many things on behalf of the company. He kept there office files of the company. He carried on there correspondence relating to the business of the company and to its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who worked there with him. He used and maintained in Clermont County, Ohio, two active bank accounts carrying substantial balances of company funds. A bank in Hamilton County, Ohio, acted as transfer agent for the stock of the company. Several directors’ meetings were held at his office or home in Clermont County. From that office he supervised policies dealing with the rehabilitation of the corporation’s properties in the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation. Thus he carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company. He there discharged his duties as president and general manager, both during the occupation of the company’s properties by the Japanese and immediately thereafter. While no mining properties in Ohio were owned or

The Court made no significant reference to *Perkins*' jurisdictional holding until 1984, in *Keeton v. Hustler Magazine, Inc.*⁵⁵ In *Keeton*, the Court found that specific personal jurisdiction was permissible in a suit for defamation arising from a magazine distributed throughout the nation, where ten to fifteen thousand copies were sold monthly in the forum.⁵⁶ In reaching this conclusion, the Court contrasted *Perkins*, saying that "respondent's activities in the forum may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities."⁵⁷ In an accompanying footnote, the Court summarized the *Perkins* defendant's activities in Ohio and stated, "[i]n those circumstances, Ohio was the corporation's principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State."⁵⁸

The Court's second post-*International Shoe* decision passing directly on the permissibility of general jurisdiction was decided the same year as *Keeton*. *Helicopteros Nacionales de Colombia v. Hall* was a wrongful death suit brought in Texas against a Colombian corporation with its principal place of business in Colombia, arising from a crash of defendant's helicopter in Peru.⁵⁹ The Court initially framed the issue as whether the defendant corporation's contacts with Texas "were sufficient to allow a Texas state court to assert jurisdiction over the corporation in a cause of action not arising out of or related to the corporation's activities within the State."⁶⁰

Later in the opinion, the Court refined the issue further with only a slight modification of the "test" for general jurisdiction suggested by *International Shoe*. "We thus must explore the nature of Helicol's contacts with the State of Texas to determine whether they constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*."⁶¹

The defendant's contacts with Texas included a trip for a negotiation session regarding the purchase of helicopters and, during

operated by the company, many of its wartime activities were directed from Ohio and were being given the personal attention of its president in that State at the time he was served with summons." *Id.*

⁵⁵ 465 U.S. 770 (1984).

⁵⁶ *Id.* at 772-75.

⁵⁷ *Id.* at 779.

⁵⁸ *Id.* at 779 n.11.

⁵⁹ *Helicopteros Nacionales de Colom. v. Hall*, 466 U.S. 408, 409-10.

⁶⁰ *Id.* at 409. The Court stated that "[a]ll parties to the present case concede that respondents' claims against Helicol did not 'arise out of,' and are not related to, Helicol's activities within Texas." *Id.* at 415. In his dissent, Justice Brennan criticized the majority for limiting its analysis to general jurisdiction, and concluded that the defendant had contacts with Texas that were "sufficiently important, and sufficiently related to the underlying cause of action" to permit the assertion of personal jurisdiction. *Id.* at 419-20 (Brennan, J., dissenting).

⁶¹ *Id.* at 415-16 (majority opinion).

the years 1970 to 1977, the actual purchase of helicopters and related items from the Bell Helicopter Company in Texas for more than \$4 million (approximately 80% of defendant's fleet).⁶² It sent prospective pilots, management and maintenance personnel to Texas for training, consultation, and to ferry the aircraft to South America.⁶³ It also received more than five million dollars in payments that were drawn upon a Texas bank.⁶⁴

The Court concluded that these contacts were not sufficient for the permissible exercise of general jurisdiction. It said that the one trip for negotiations "cannot be described . . . as a contact of a 'continuous and systematic' nature, as *Perkins* described it."⁶⁵ It dismissed the significance of accepting checks drawn on a Texas bank, because "[c]ommon sense and everyday experience suggest that, absent unusual circumstances, the bank on which a check is drawn is generally of little consequence to the payee."⁶⁶

Turning to the more substantial contacts of purchases and related training and consultation, the Court quickly rejected their sufficiency by invoking a precedent from 1923, *Rosenberg Bros. & Co. v. Curtis Brown Co.*⁶⁷ According to the Court, *Rosenberg* "makes clear that purchases and related trips, standing alone, are not a sufficient basis for a State's assertion of jurisdiction."⁶⁸ Noting that *International Shoe* "acknowledged and did not repudiate its holding in *Rosenberg*," the Court concluded that the precedent precluded the permissibility of jurisdiction.⁶⁹

So before *Goodyear Dunlop*, the status of general personal jurisdiction over corporations in the Supreme Court appeared to be as follows. The Court had rejected "presence" as a test in *International Shoe*.⁷⁰ The "test" was now whether the defendant had "the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*."⁷¹ Contacts warranting a conclusion that the forum state was the defendant's principal place of business were sufficient.⁷² And, purchases of millions of dollars worth of products and training over a seven-year

⁶² *Id.* at 411.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 416.

⁶⁶ *Id.* at 416–17 (footnote omitted).

⁶⁷ 260 U.S. 516 (1923).

⁶⁸ *Helicopteros*, 466 U.S. at 417.

⁶⁹ *Id.* at 418. The Court read *Rosenberg* as arguably foreclosing both general and specific jurisdiction based on purchases, but said that because *Helicopteros* involved general jurisdiction, "we need not decide the continuing validity of *Rosenberg* with respect to an assertion of specific jurisdiction." *Id.* at 418 n.12.

⁷⁰ See *supra* notes 43–44 and accompanying text.

⁷¹ See *supra* note 61 and accompanying text.

⁷² See *supra* note 58 and accompanying text.

period in the forum state were not sufficient.⁷³ Needless to say, there was a significant gray area in between these two polar examples.

If lower courts focused on the latter portion of the Court's test, "the kind of . . . contacts the Court found to exist in *Perkins*," we might expect them to limit general jurisdiction to places that could arguably be classified as the defendant's principal place of business. That, however, has not occurred. Instead, courts have appeared to view the first portion of the test, "continuous and systematic general business contacts" as the most important part. Standing alone, the language remains vague, and lower court decisions premised on it have reached a wide variety of results.

III. GENERAL PERSONAL JURISDICTION IN THE LOWER COURTS

A. *Confusion and Inconsistency*

Since *Helicopteros*, some lower court decisions on general jurisdiction reason by analogy, asking whether the facts of the case are similar to those in *Perkins* or *Helicopteros*.⁷⁴ Others are more categorical.

⁷³ See *supra* notes 62–69 and accompanying text. Notwithstanding the holding in *Helicopteros*, at least one later decision finding general jurisdiction is difficult to distinguish from the case. *Theo. H. Davies & Co. v. Republic of the Marshall Islands*, 174 F.3d 969 (9th Cir. 1999) was a suit in federal court in Hawaii against the Marshall Islands and two of its agencies seeking damages for breach of a contract relating to the overhaul of a generator in the Marshall Islands. *Id.* at 971–72. The court ruled that the federal statute authorizing personal jurisdiction, 28 U.S.C. § 1330(a)–(b) was constrained by the Due Process Clause and that in analyzing whether jurisdiction was permissible, it should consider the extent of the defendants' contacts with the United States. *Id.* at 974.

The court concluded that defendants' "contacts in the United States constitute a consistent and substantial pattern of business relations which warrant the exercise of general personal jurisdiction over them." *Id.* at 975. But the paragraph setting forth the facts preceding that conclusion begins, "[f]or many years, [defendants] have bought both goods and services from providers doing business or located in the United States." *Id.* at 974–75. It then listed purchases from the Hawaii plaintiff of three generators from 1983 to 1990 at a cost of slightly less than \$2 million, noted that one defendant had solicited bids for the third generator in Hawaii, and noted that the overhaul agreement, which was the subject of this suit, had been negotiated in Guam with meetings also in Hawaii. *Id.* at 975.

The similarity of these facts to those in *Helicopteros* is stunning. As far as the listed purchases go, they are over the same period of years and for smaller amounts than those before the Supreme Court, and like *Helicopteros*, we also have some negotiations in the forum. Yet the Ninth Circuit appears to have been blind to these similarities, as the opinion makes no effort to explain how the cases are distinguishable.

⁷⁴ See, e.g., *Wilson v. Belin*, 20 F.3d 644, 650 (5th Cir. 1994) (finding no general jurisdiction where defendants' "unrelated contacts with Texas were not as 'continuous and systematic' and, in any event, were not as 'substantial' as the nonresident defendant's contacts in *Perkins*"); *L.H. Carbide Corp. v. Piece Maker Co.*, 852 F. Supp. 1425, 1436 (N.D. Ind. 1994) (finding no general jurisdiction where "[t]he facts of *Helicopteros* . . . are somewhat analogous to the facts in the instant case").

At the most restrictive end of the spectrum, one decision, review of which was denied by the Supreme Court, suggests that general jurisdiction over foreign corporations should be limited to the state of incorporation and the state of the corporation's principal place of business. *Follette v. Clairol, Inc.* was a case brought in Texas against Clairol and Wal-Mart arising from an accident in Louisiana.⁷⁵ The claim had no relationship with Texas, and the reason it was filed there was to obtain the benefit of the Texas statute of limitations.⁷⁶

Notwithstanding the business contacts the defendants had with Texas, which could easily be described as substantial, systematic, and continuous,⁷⁷ the court rejected the argument that such contacts should be sufficient for general jurisdiction, stating:

There are persuasive arguments that the states with power to exercise general personal jurisdiction over a corporation should be limited to the state of incorporation and the state where the corporation's principal place of business is located. This court agrees that this is the "fair" and "reasonable" place to draw the line on permissible exercise of general personal jurisdiction under the circumstances presented in *this case*.⁷⁸

The United States Court of Appeals for the Fifth Circuit affirmed the decision without a written opinion,⁷⁹ and a petition for certiorari to the Supreme Court was denied.⁸⁰

Once one goes beyond the relatively clear limitations on general jurisdiction suggested by *Follette*, uncertainty ensues. A number of courts still suggest that general jurisdiction is permissible if the corporation is "present" within the forum state,⁸¹ the terminology used in the pre-

⁷⁵ *Follette v. Clairol, Inc.*, 829 F. Supp. 840, 842 (W.D. La. 1993), *aff'd without opinion*, 998 F.2d 1014 (5th Cir. 1993), *cert. denied*, 510 U.S. 1163 (1994).

⁷⁶ *Id.*

⁷⁷ In resolving the issue of general jurisdiction, the court noted the defendants' contacts with Texas as follows: "Both Clairol and Wal-Mart have substantial and continuous contacts with Texas. They are both authorized to do business in Texas. As required by law, they have appointed agents for service of process in Texas. Wal-Mart's additional contacts with Texas include: 1. Operation of approximately 264 large scale retail outlets in Texas; 2. Deriving substantial income from the sale of goods in Texas; 3. Ownership of real and personal property located in Texas; 4. Ownership of a Texas corporation; 5. Employment of a substantial number of Texas residents. Clairol's contacts with Texas include: 1. Location of a business office in Texas; 2. The location of division regional offices in Texas; 3. Ownership of personal property located in Texas; 4. Payment of Texas property taxes; 5. Deriving substantial revenue from the sale and marketing of its products in Texas; 6. Payment of Texas franchise taxes." *Id.* at 845-46 (citation omitted).

⁷⁸ *Id.* at 846 (citing Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610 (1988); von Mehren & Trautman, *supra* note 6).

⁷⁹ *Follette v. Clairol, Inc.*, 998 F.2d 1014 (5th Cir. 1993).

⁸⁰ *Follette v. Clairol, Inc.*, 510 U.S. 1163 (1994).

⁸¹ *See, e.g.*, *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (requiring activity "that approximates physical presence within the state's borders"); *Access Telecom, Inc. v. MCI Telecomms. Corp.*, 197 F.3d 694, 717

International Shoe era. This “test” is used notwithstanding the statement in *International Shoe* that “[t]o say that the corporation is so far ‘present’ there as to satisfy due process requirements . . . is to beg the question to be decided.”⁸² The term is also used notwithstanding the fact that the Supreme Court, at least implicitly, seems to have abandoned its use as a test after *International Shoe*, as the term does not appear at all in *Perkins* and it is used only once, in a quotation of a 1923 case, in *Helicopteros*.⁸³

Other courts appear to require some sort of continuous physical business presence,⁸⁴ although just how substantial that presence needs to be is subject to debate. Some cases suggest it can be quite minimal. The Eighth Circuit has found that operating retail stores in the forum and having a registered agent there for service of process was sufficient.⁸⁵ And in *Rittenhouse v. Mabry*,⁸⁶ the Fifth Circuit found general jurisdiction based on the operation of an office in the state only one day per week.⁸⁷

So, sometimes a continuous physical business presence, even if quite small as in *Rittenhouse*, will suffice. On the other hand, there are cases suggesting that such a presence, standing alone, is not sufficient.⁸⁸ And

(5th Cir. 1999) (“business presence”); *ESAB Group, Inc. v. Centricut, Inc.* 126 F.3d 617, 623 (4th Cir. 1997) (asking “whether a defendant’s contacts with the forum state are so substantial that they amount to a surrogate for presence”); *Beary v. Beech Aircraft Corp.*, 818 F.2d 370, 376 (5th Cir. 1987) (asking whether the defendants contacts constitute a “general presence”).

⁸² *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

⁸³ *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 417 (1984) (quoting *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516, 518 (1923)); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

⁸⁴ *See, e.g., Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 270 (9th Cir. 1995) (“[Defendant’s] lack of a regular place of business in Washington is significant, and is not overcome by a few visits.”); *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984) (“Significantly, the defendants did not establish a regular place of business in Arizona.”).

⁸⁵ *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1075 (8th Cir. 2004).

⁸⁶ 832 F.2d 1380 (5th Cir. 1987).

⁸⁷ *Rittenhouse* was a suit brought in Mississippi against a foreign professional corporation whose only member was a physician who was also sued in his individual capacity. *Id.* at 1389. Service was made at a Mississippi clinic where the physician regularly practiced one day a week. *Id.* at 1388 n.6. The court found this scenario to be analogous to *Perkins*, stating: “Gastroenterology conducted its affairs in Mississippi every fifth business day. This conduct was calculated rather than fortuitous and regular and continuous rather than sporadic or isolated. Moreover, the business conducted in Mississippi was not only essentially local in character but was performed there through the nerve center, heart, and soul of the corporation, namely, Dr. Wardlaw (who was then licensed to practice in Mississippi), and necessarily amounted, at those times, to almost all the business then being done by the corporation. *See Perkins.*” *Id.* at 1390.

⁸⁸ *See, e.g., MacInnes v. Fontainebleau Hotel Corp.*, 257 F.2d 832 (2d Cir. 1958) (Florida hotel was not subject to general jurisdiction in New York, notwithstanding having an office there staffed with three employees); *see also In re Complaint of Rationis Enters., Inc. of Pan. v. AEP/Borden Indus.*, 261 F.3d 264, 270 (2d Cir. 2001) (“While a local office may constitute a ‘continuous and systematic’ contact sufficient

there are cases holding that a physical business presence is not always required.⁸⁹

The majority view appears to be that general personal jurisdiction cannot be based on substantial sales in the forum.⁹⁰ In a 1984 opinion, the Ninth Circuit said “no court has ever held that the maintenance of even a substantial sales force within the state is a sufficient contact to assert jurisdiction in an unrelated cause of action.”⁹¹ The state of the law before *Goodyear Dunlop*, however, was not quite that clear. A number of cases have held that continuous sales in the forum state are sufficient for general personal jurisdiction.⁹²

Perhaps the most frustrating types of cases finding general jurisdiction are those concluding that it is permissible if the defendant simply has large number of contacts with the forum, without explaining how those contacts have significance. The Second Circuit, for example, has said “[t]here is no talismanic significance to any one contact or set of contacts that a defendant may have with a forum state; courts should assess the defendant’s contacts *as a whole*.”⁹³

Marshall v. Inn on Madeline Island was a suit brought in state court in Minnesota arising out of an accident on vacation property in Wisconsin.⁹⁴ One defendant, a Wisconsin corporation that managed and rented the property to the public, moved to dismiss for lack of personal

to allow a court to hold that a defendant subjected itself to the general jurisdiction of the forum state the presence of such an office is not dispositive.” (citations omitted)).

⁸⁹ A leading treatise states that “[t]he continuous-and-systematic threshold usually requires, at least, that defendant have an office in the forum,” but then goes on to note that “some courts have asserted general jurisdiction based on lesser connections.” 1 ROBERT C. CASAD & WILLIAM B. RICHMAN, JURISDICTION IN CIVIL ACTIONS § 2-5(3)(a) (3d ed. 1998).

⁹⁰ See, e.g., *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195 (4th Cir. 1993) (finding no general jurisdiction notwithstanding contacts including 17 to 21 employees in Maryland who promoted Searle’s products in the state and annual sales in Maryland of \$9 to \$13 million).

⁹¹ *Congoleum Corp. v. DLW AG*, 729 F.2d 1240, 1242 (9th Cir. 1984).

⁹² See, e.g., *Mich. Nat’l Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 465–66 (6th Cir. 1989) (one independent sales representative and sales in the state in the amount of \$347,969 and \$279,557 over a two year period were sufficient for general jurisdiction); *Newco Mfg. Co. v. S. Ry. Co.*, 481 So. 2d 867, 869 (Ala. 1985) (annual sales to residents of the forum ranged from \$65,000 to \$85,000 and were sufficient for general jurisdiction); *Hayes v. Evergo Tel. Co.*, 397 S.E.2d 325, 329 (N.C. Ct. App. 1990) (sales in the United States of \$35 million by Hong Kong limited company warranted general jurisdiction in North Carolina where defendant made no attempt to limit the geographic distribution of its product); *Precision Erecting, Inc. v. M & I Marshall & Ilsley Bank*, 592 N.W.2d 5, 9 (Wis. Ct. App. 1998) (sales to retail stores in Wisconsin for at least 20 years warrants general jurisdiction). *But see* *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 807–10 (Tex. 2002) (annual sales to Texas residents of \$350,000 for at least 18 years did not warrant general jurisdiction).

⁹³ *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 570 (2d Cir. 1996), *cert. denied*, 519 U.S. 1006 (1996).

⁹⁴ *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 673 (Minn. Ct. App. 2000).

jurisdiction.⁹⁵ It was not licensed to do business in Minnesota, owned no property in Minnesota and did not have any business office or an agent to accept service of process in Minnesota.⁹⁶ The Minnesota Court of Appeals concluded that this defendant's contacts with Minnesota would not support the exercise of specific jurisdiction.⁹⁷ It concluded, however, that general jurisdiction was constitutionally permissible, summarizing the kind of "systematic general business contacts that indicate the defendant has generally subjected itself to jurisdiction in [Minnesota]" as follows:

Here, The Inn's contacts with Minnesota include solicitation of business through advertisements in Minnesota publications and telephone calls and mail to residents of Minnesota who rent from The Inn. The Inn also contracts with residents of Minnesota who own property on Madeline Island, purchases goods and services in Minnesota, and sends employees to attend meetings and training in Minnesota. Therefore, we conclude that the district court may properly exercise personal jurisdiction over The Inn.⁹⁸

It is difficult to describe cases like *Marshall* as standing for anything other than the notion that there comes a point when the contacts are so numerous that they suffice. There are "lots and lots" of contacts. As was the case with some cases early in the American Conflict of Laws revolution, this sort of approach is extremely manipulable.⁹⁹ If the plaintiff's counsel can manufacture and articulate a large number of contacts, it appears they have a shot at success on general jurisdiction.

In sum, lower court case law on general jurisdiction has been all over the map recently. While cases within a single jurisdiction may have some consistency, there has been vagueness and inconsistency throughout the nation as a whole. Clearly there was a need for clarification by the Supreme Court.

B. *General Jurisdiction, Forum Shopping, and Choice of Law*

The foregoing illustrates that a number of lower courts have not required truly substantial contacts to warrant general personal

⁹⁵ *Id.*

⁹⁶ *Id.* at 674.

⁹⁷ *Id.* at 676.

⁹⁸ *Id.* at 677.

⁹⁹ Professor Brainerd Currie criticized some mid-twentieth century New York conflict of laws decisions relying on a "grouping of contacts" as follows: "The 'grouping of contacts' theory provides no standard for determining what 'contacts' are significant, or for appraising the relative significance of the respective groups of 'contacts.' . . . One 'contact' seems to be about as good as another for almost any purpose. The 'contacts' are totted up and a highly subjective fiat is issued to the effect that one group of contacts or the other is the more significant. The reasons for the conclusion are too elusive for objective evaluation." Brainerd Currie, *Conflict, Crisis and Confusion in New York*, 1963 DUKE L.J. 1, 39-40, reprinted in BRAINERD CURRIE, *SELECTED ESSAYS ON THE CONFLICTS OF LAWS* 690, 727-28 (1963).

jurisdiction. It should come as no surprise that having a low bar for its permissibility increases opportunities for forum shopping and can test the limits of what should be permissible choice of law. In all three of the most recent cases decided by the Supreme Court on permissible choice of law, personal jurisdiction appears to have been based on general personal jurisdiction.

In *Allstate Insurance Co. v. Hague*, the Court, rejecting a constitutional challenge, upheld Minnesota's application of its own law to a suit arising from a fatal Wisconsin accident involving individuals who, at the time of the accident, all resided in Wisconsin.¹⁰⁰ The claim involved insurance coverage under an insurance policy delivered in Wisconsin.¹⁰¹ The result was that under Minnesota law, the plaintiff was able to "stack" the amount of the decedent's uninsured motorist coverage of \$15,000 times the three automobiles for which he had coverage, with a resulting recovery of \$45,000.¹⁰² The Minnesota courts construed Wisconsin law to prohibit such stacking.¹⁰³

The majority premised Minnesota's ability to apply its law on three different Minnesota contacts. First, the decedent had been employed at a Minnesota enterprise, to which he had commuted from his home in Wisconsin.¹⁰⁴ Second, Allstate, the insurance company involved in the case, "was at all times present and doing business in Minnesota."¹⁰⁵ Third, the decedent's wife, who was the plaintiff in the suit, had become a Minnesota resident after the accident but before the institution of the lawsuit.¹⁰⁶

There is no indication that Allstate objected to personal jurisdiction. It must have assumed a motion to dismiss on jurisdictional grounds would be denied, because although it had delivered the policy in Wisconsin (presumably from a Wisconsin office), it was "doing business" in Minnesota.¹⁰⁷

Phillips Petroleum Co. v. Shutts was a class action brought in Kansas to recover interest on royalty payments for natural gas.¹⁰⁸ Over 99% of the gas leases and 97% of the class members in Kansas "had no apparent connection to the State of Kansas except for this lawsuit."¹⁰⁹ The Supreme Court noted that the defendant "owns property and conducts substantial

¹⁰⁰ *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 305–06, 320 (1981).

¹⁰¹ *Id.* at 306.

¹⁰² *Id.* at 305.

¹⁰³ *Id.* at 306.

¹⁰⁴ *Id.* at 313–14.

¹⁰⁵ *Id.* at 317.

¹⁰⁶ *Id.* at 318–19.

¹⁰⁷ *Id.* at 306, 317.

¹⁰⁸ *Phillips Petrol. Co. v. Shutts*, 472 U.S. 797, 799 (1985).

¹⁰⁹ *Id.* at 815.

business in the State.”¹¹⁰ Yet it held that Kansas’ application of its law to claims that had no connection with Kansas violated the Constitution.¹¹¹

As was the case in *Allstate v. Hague*, there is no indication that Phillips challenged Kansas’ ability to assert personal jurisdiction over it. It had no contacts with Kansas related to the non-Kansas claims. But it apparently assumed that a challenge to personal jurisdiction would fail because it conducted “substantial business” in Kansas and would be subject to general personal jurisdiction there.

Finally, in *Ferens v. John Deere Co.*, the plaintiff lost his hand in an accident in Pennsylvania.¹¹² He delayed filing a tort suit until the Pennsylvania statute of limitations for tort claims had expired.¹¹³ He then filed contract and warranty claims, for which the Pennsylvania limitations period had not yet run, in federal court in Pennsylvania.¹¹⁴ He then filed his tort claims against the defendant in federal court in Mississippi, where its statute of limitations, which Mississippi courts would apply to his claims, had not yet expired.¹¹⁵ According to the Court,

[T]he Ferenses took their forum shopping a step further: having chosen the federal court in Mississippi to take advantage of the State’s limitations period, they next moved, under § 1404(a), to transfer the action to the federal court in Pennsylvania on the ground that Pennsylvania was a more convenient forum. The Ferenses acted on the assumption that, after the transfer, the choice-of-law rules in the Mississippi forum, including a rule requiring application of the Mississippi statute of limitations, would continue to govern the suit.¹¹⁶

The district court in Mississippi granted the motion to transfer.¹¹⁷ In the Supreme Court, the issue was whether under federal precedent the Mississippi statute of limitations continued to govern the plaintiffs’ tort claims after they were transferred to Pennsylvania, and the Court concluded that it did.¹¹⁸

Again, as was the case in *Hague* and *Shutts*, there was no indication that the defendant made a motion to be dismissed from the Mississippi action on personal jurisdiction grounds. And it is apparent that it must have believed that notwithstanding the fact that it had no contact with Mississippi related to the plaintiff’s claim, such a motion would be denied. It must have believed that it would have been subject to general personal jurisdiction in the state based on its business activities there.

¹¹⁰ *Id.* at 819.

¹¹¹ *Id.* at 821–22.

¹¹² *Ferens v. John Deere Co.*, 494 U.S. 516, 519 (1990).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 519–20.

¹¹⁶ *Id.* at 520.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 532.

The fact that the Supreme Court decided to take these three cases suggests that they were pushing at the outer boundaries of permissible choice of law and acceptable forum shopping.¹¹⁹ And the cases would not have existed had the defendants successfully challenged personal jurisdiction. But they apparently believed that the requirements for general jurisdiction were not substantial enough for a successful motion. This is not surprising in light of the state of lower court case law on general jurisdiction prior to *Goodyear Dunlop*.

IV. GOODYEAR DUNLOP

Goodyear Dunlop Tires Operations v. Brown arose from a bus accident in France that resulted in the deaths of two teenage boys from North Carolina.¹²⁰ The boys' parents filed suit in a North Carolina state court naming Goodyear Tire and Rubber Company and three of its subsidiaries, operating in Turkey, France, and Luxembourg, as defendants.¹²¹ The plaintiffs alleged that the accident was caused by a defective tire manufactured by the Turkish subsidiary.¹²² The three subsidiaries contended that the North Carolina courts lacked personal jurisdiction over them.¹²³

The North Carolina Court of Appeals concluded that North Carolina courts could not assert specific jurisdiction over the European defendants.¹²⁴ It held, however, that it was constitutionally permissible for North Carolina to assert general jurisdiction because some of the tires they made abroad had reached North Carolina through the "stream of commerce."¹²⁵ Thus, this was an instance of asserting general jurisdiction based on sales of products in the forum state.

The United States Supreme Court reversed in a unanimous opinion authored by Justice Ginsburg.¹²⁶ The Court described the sales as a small percentage of the defendants' tires, typically custom ordered, that were distributed in North Carolina by other Goodyear USA affiliates.¹²⁷ The

¹¹⁹ I have written critically on the Supreme Court's choice of law jurisprudence elsewhere. See James R. Pielemeier, *Why We Should Worry About Full Faith and Credit to Laws*, 60 S. CAL. L. REV. 1299 (1987) [hereinafter Pielemeier, *Why We Should Worry*]; James R. Pielemeier, *Constitutional Limitations on Choice of Law: The Special Case of Multistate Defamation*, 133 U. PA. L. REV. 381 (1985) [hereinafter Pielemeier, *Multistate Defamation*].

¹²⁰ *Goodyear Dunlop Tires Operations v. Brown*, 131 S. Ct. 2846, 2850 (2011).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Brown v. Meter*, 681 S.E.2d 382, 388 (N.C. Ct. App. 2009).

¹²⁵ *Id.* at 394–95.

¹²⁶ *Goodyear Dunlop*, 131 S. Ct. at 2850, 2858.

¹²⁷ *Id.* at 2852.

type of tire involved in the accident was never distributed in North Carolina.¹²⁸

The Supreme Court rejected the notion that North Carolina could assert general jurisdiction on this basis in no uncertain terms. It said the defendants' "attenuated connections to the State fall far short" of the types of contacts necessary for general jurisdiction.¹²⁹ It found no reason to differentiate the Texas contacts in *Helicopteros* from the North Carolina contacts here. "Under the sprawling view of general jurisdiction urged by respondents and embraced by the North Carolina Court of Appeals, any substantial manufacturer or seller of goods would be amenable to suit, on any claim for relief, wherever its products are distributed."¹³⁰ The Court added in a footnote, "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales."¹³¹

The opinion makes clear that general jurisdiction based on sales in the forum violates due process. But the opinion goes further. In elaborating on the law of general jurisdiction, the Court emphasized a term that it had not emphasized in earlier decisions.

The first time the opinion discussed general jurisdiction it quoted the language in *International Shoe* requiring that the defendant's affiliations with the State must be "continuous and systematic."¹³² But drawing on a term used in another portion of *International Shoe*, the Court addressed more specifically the nature of the required contacts. It said that the defendant's affiliations with the forum must be so continuous and systematic "as to render them essentially at home in the forum State."¹³³ The *International Shoe* language that the opinion appeared to be referencing was this:

[The] demands [of due process] may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An "estimate of the inconveniences" which would result to the corporation from a trial away from its "home" or principal place of business is relevant in this connection.¹³⁴

The *Goodyear Dunlop* opinion repeated this emphasis on the "home" of the corporation later in identifying "paradigm" forums for general jurisdiction: "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an

¹²⁸ *Id.*

¹²⁹ *Id.* at 2857.

¹³⁰ *Id.* at 2856.

¹³¹ *Id.* at 2857 n.6.

¹³² *Id.* at 2851. See *supra* text accompanying notes 47–48.

¹³³ *Goodyear Dunlop*, 131 S. Ct. at 2851 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)).

¹³⁴ *Int'l Shoe Co.*, 326 U.S. at 317.

equivalent place, one in which the corporation is fairly regarded as at home.”¹³⁵ This language was immediately followed by a citation to an article in the *Texas Law Review* by Professor Lea Brilmayer and others, and a parenthetical that noted that the article had identified “domicile, place of incorporation, and principal place of business as ‘paradig[m]’ bases for the exercise of general jurisdiction.”¹³⁶ And as if this was not enough emphasis on a corporation’s “home” or principal place of business, the *Dunlop Goodyear* opinion later identified *Perkins* as the textbook case for the appropriate application of general jurisdiction.¹³⁷

V. A PREDICTION OF SOME CONSEQUENCES OF *GOODYEAR DUNLOP*

From the perspective of one who has argued for a limited scope of general personal jurisdiction,¹³⁸ as well as some meaningful constitutional limitations on choice of law,¹³⁹ *Goodyear Dunlop* is a highly positive development. One can hope it will mark the beginning of significant clarification to potential defendants of where they may be subject to general jurisdiction.¹⁴⁰

One fairly clear consequence of the case is that general jurisdiction based on regular sales in the forum is clearly dead.¹⁴¹ One might argue that the footnote clearly negating this sort of jurisdiction¹⁴² is dicta, but if one does that in the face of this clear statement in a unanimous opinion, they should not be entitled to charge their client for it.

Eliminating this basis of general jurisdiction goes a long way toward eliminating the possibility that numerous potential defendants who sell products on a nationwide basis could be subject to general jurisdiction in every state.

Numerous cases reflect a clear, almost reflexive, aversion to the notion that such widespread general jurisdiction might be permissible. In the 1917 case of *Philadelphia & Reading Railway Co. v. McKibbin*, for example, Justice Brandeis, writing the opinion of the Court, declined to

¹³⁵ *Goodyear Dunlop*, 131 S. Ct. at 2853–54.

¹³⁶ *Id.* at 2854 (alteration in original) (citing Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 728 (1988)).

¹³⁷ *Id.* at 2856.

¹³⁸ See Pielemeier, “*Virtual Stores*,” *supra* note 13, at 656–70.

¹³⁹ See Pielemeier, *Why We Should Worry*, *supra* note 119; see also Pielemeier, *Multistate Defamation*, *supra* note 119.

¹⁴⁰ *Cf.* *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (“The Due Process Clause, by ensuring the ‘orderly administration of the laws,’ gives a degree of predictability to the legal system that allows 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.” (citation omitted)).

¹⁴¹ A 1933 Supreme Court opinion arguably stood for the same proposition. See *Consol. Textile Corp. v. Gregory*, 289 U.S. 85, 88 (1933).

¹⁴² *Goodyear Dunlop*, 131 S. Ct. at 2857 n.6.

find jurisdiction over a railroad whose tickets were sold by others in New York, and said, “[o]bviously the sale by a local carrier of through tickets does not involve a doing of business within the State by each of the connecting carriers. If it did, nearly every railroad company in the country would be ‘doing business’ in every State.”¹⁴³

A rule of no general jurisdiction based on sales should also extend to on-line entities. In *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, a case decided after *Goodyear Dunlop*, the Ninth Circuit rejected an argument for general jurisdiction premised on a “highly interactive” website.¹⁴⁴ The Court said:

Many of the features on which Mavrix relies to show . . . interactivity . . . are standard attributes of many websites. Such features require a minimal amount of engineering expense and effort on the part of a site’s owner and do not signal a non-resident defendant’s intent to sit down and make itself at home in the forum by cultivating deep, persistent ties with forum residents. To permit the exercise of general jurisdiction based on the accessibility in the forum of a non-resident interactive website would expose most large media entities to nationwide general jurisdiction. That result would be inconsistent with the constitutional requirement that “the continuous corporate operations within a state” be “so substantial and of such a nature as to justify suit against [the nonresident defendant] on causes of action arising from dealings entirely distinct from those activities.”¹⁴⁵

In addition to invalidating general jurisdiction based on sales, the opinion signals that other bases for general jurisdiction will need to entail substantial contacts warranting the conclusion that the defendant is “at home” in the forum. Will those places be limited to a corporation’s state of incorporation and principal place of business, as the opinion arguably suggested?¹⁴⁶ That, of course, remains to be seen. The transcript of the Supreme Court oral argument reflects that Justice Kagan,¹⁴⁷ Justice Kennedy,¹⁴⁸ and Justice Sotomayor¹⁴⁹ all posited the possibility that general jurisdiction might be limited to such situations. Perhaps the Court is reading its own precedent as if the focus of the test from *Helicopteros* should be on whether the defendant had “the kind of . . . contacts the Court found to exist in Perkins.”¹⁵⁰

¹⁴³ *Phila. & Reading Ry. Co. v. McKibbin*, 243 U.S. 264, 265, 268 (1917).

¹⁴⁴ *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1226 (9th Cir. 2011).

¹⁴⁵ *Id.* at 1227 (alteration in original) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)) (internal quotation marks omitted).

¹⁴⁶ *Goodyear Dunlop*, 131 S. Ct. 2846, 2853–54 (2011).

¹⁴⁷ Transcript of Oral Argument at 4, *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011) (No. 10-76).

¹⁴⁸ *Id.* at 34.

¹⁴⁹ *Id.* at 35.

¹⁵⁰ *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 416 (1984); see also *supra* note 61 and accompanying text.

In any event, a limitation of general jurisdiction over corporations to places where they are “at home,” appears clearly to envision fewer places than one could envision under tests of “presence,” “doing business,” and “continuous and systematic general business contacts.” It seems likely, for example, that the continued precedential value of cases like *Rittenhouse v. Mabry*,¹⁵¹ permitting general jurisdiction based on having a medical office in the state open one day a week, is very much in doubt. It is difficult to view that state as the defendant’s home. More likely, its “home” should be considered the state where its office was open the other four days of the week.

Permitting numerous jurisdictions to assert general jurisdiction over defendants only exacerbates the ability to forum shop, raising choice of law issues, which can be expensive to litigate and difficult to resolve. There is absolutely no need or warrant for expansive notions of general jurisdiction. Without it, there will almost always be at least one U.S. state with specific jurisdiction, with the additional options of general jurisdiction at least in the corporate defendant’s state of incorporation and principal place of business. To expand its availability significantly beyond these places only invites mischief and increasingly expensive litigation. *Goodyear Dunlop*, of course, also raises additional issues that this Article will not explore. They include the issue of how courts should define a corporation’s principal place of business for purposes of general jurisdiction. There is also the issue of general jurisdiction over companies based in foreign countries. Perhaps for them, the test should be refined to finding a place where they are “at home” in the United States.

But overall, *Goodyear Dunlop* is a welcome clarification on the law of general personal jurisdiction.

¹⁵¹ 832 F.2d 1380 (5th Cir. 1987); see also *supra* notes 86–87 and accompanying text.