

2012

Refining the Due-Process Contours of General Jurisdiction over Foreign Corporations

Danielle Tarin

Christopher Macchiaroli

Follow this and additional works at: <http://scholarlycommons.law.hofstra.edu/jibl>



Part of the [Law Commons](#)

Recommended Citation

Tarin, Danielle and Macchiaroli, Christopher (2012) "Refining the Due-Process Contours of General Jurisdiction over Foreign Corporations," *Journal of International Business and Law*: Vol. 11: Iss. 1, Article 3.
Available at: <http://scholarlycommons.law.hofstra.edu/jibl/vol11/iss1/3>

This Legal Article is brought to you for free and open access by Scholarly Commons at Hofstra Law. It has been accepted for inclusion in Journal of International Business and Law by an authorized administrator of Scholarly Commons at Hofstra Law. For more information, please contact lawcls@hofstra.edu.

REFINING THE DUE-PROCESS CONTOURS OF GENERAL JURISDICTION OVER FOREIGN CORPORATIONS

Danielle Tarin
Christopher Macchiaroli*

After two decades of silence, on June 27, 2011, the U.S. Supreme Court issued two decisions refining the contours of personal jurisdiction.¹ While generating much anticipation and speculation, the Supreme Court's decisions offered little insight into the type of conduct that may render a foreign² corporation subject to a forum's general personal jurisdiction. In *J. McIntyre Machinery v. Nicastro*, a divided Supreme Court reversed the exercise of personal jurisdiction by a New Jersey court over a British corporation. Although six Justices concurred in the judgment, no majority opinion was reached. In *Goodyear Dunlop Tires Operations v. Brown*, the Supreme Court unanimously overturned the North Carolina Court of Appeals' finding of general jurisdiction over the foreign subsidiaries of a U.S. parent corporation. Despite its unanimity, the Supreme Court's reasoning in *Goodyear* was restrained and simply reaffirmed an established principle of general personal jurisdiction overlooked by the North Carolina courts.³

J. McIntyre and *Goodyear* are notable, not because of the issues they resolve, but rather because of the questions they raise. In both cases, the Supreme Court missed an opportunity to provide needed guidance to state and federal courts tasked with determining the level of business contacts that may subject a foreign corporation to a forum's general personal jurisdiction. This is particularly true in cases where foreign corporations have no physical presence in the forum, yet generate large revenues from customers in the forum. This article provides an overview of the current state of personal jurisdiction jurisprudence, notes the implications of the Supreme Court's recent decisions, and analyzes the questions relating to general personal jurisdiction that remain unanswered.

* The authors, along with former colleague Jaime M. Crowe, have successfully litigated personal jurisdiction disputes in state and federal court. See, e.g., *Curley v. Gateway Concrete Forming Sys., Inc.*, No. 1-09-2386, 2010 WL 4608754 (Ill. App. Ct. Nov. 5, 2010); *Martha Stewart Living Omnimedia, Inc. v. Xinyi Group (Glass) Co.*, Civil No. 05-520-GPM, 2008 WL 3992687 (S.D. Ill. Aug. 22, 2008).

¹ *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780 (Jun. 27, 2011); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (Jun. 27, 2011).

² The use of the word "foreign" requires additional discussion. Traditionally, in the context of personal jurisdiction, a "foreign corporation" could easily describe an Ohio corporation subject to jurisdiction in Michigan, like a British corporation. With the rise of interstate commerce, comparing the exercise of jurisdiction over an international company should be distinguished from the exercise of jurisdiction over a company based in a neighboring state. For purposes of this article, "foreign" applies to international companies, while "out-of-state" applies to U.S. domestic corporations.

³ *J. McIntyre* and *Goodyear* addressed appeals from the exercise of jurisdiction by state courts. In the context of personal-jurisdiction decisions by federal district courts, "[a] district court sitting in diversity has personal jurisdiction over a nonresident defendant only if a court of the state in which it sits would have jurisdiction." *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 779 (7th Cir. 2003) (citation omitted). Accordingly, in cases based on diversity, federal courts apply state laws governing personal jurisdiction so long as they comport "with the requirements of federal due process." *Id.* (citation omitted); see *Goodyear*, 131 S. Ct. at 2853.

PERSONAL JURISDICTION

“The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal’s authority to proceed against a defendant”⁴ and protects “a person against having the Government impose burdens upon him except in accordance with the valid laws of the land.”⁵ Thus the general rule is that “neither statute nor judicial decree may bind strangers to the State.”⁶ For the last seventy years, highlighted by the Supreme Court’s pronouncement in *International Shoe Company v. Washington*, courts have subjected a defendant to judgment only when the defendant has “certain minimum contacts” with a forum “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”⁷ Defining the contours of *International Shoe*’s holding has been an evolutionary process. Over time, the Supreme Court has developed different tests depending upon whether the forum sought to assert general or specific jurisdiction over a defendant.

General jurisdiction is the exercise of jurisdiction not based on the relationship of the cause of action to the forum, but rather as a result of the defendant having such “continuous and systematic” contacts with the forum that the defendant is essentially a resident of the forum.⁸ For example, general jurisdiction permits a shareholder to bring an action against a Philippine corporation in Ohio, even though the cause of action did not arise in Ohio and did not relate to the corporation’s activities in Ohio. This is because the corporation’s business activities in Ohio were so extensive that they rendered the corporation a *de facto* resident of that state.⁹ This example evinces that general jurisdiction “is based on a concept of ‘exchange.’”¹⁰ General jurisdiction “captures both the sovereign interest of the state and the interest of the person in a fairly accessible forum, . . . by invoking constructive consent.”¹¹ In other words, “by invoking the benefits and protections of the forum’s laws, the nonresident defendant is seen as ‘consenting’ to being sued there.”¹²

The Supreme Court’s leading case on general jurisdiction is *Helicópteros Nacionales de Colombia, S.A. v. Hall*.¹³ In *Helicópteros*, in seeking to determine whether a Columbian corporation had continuous and systematic contacts with Texas, the Supreme Court examined whether the corporation: (i) had ever been authorized to do business in Texas; (ii) had an agent for the service of process in Texas; (iii) conducted business operations in or sold products to Texas; (iv) solicited business in Texas; (v) signed any contracts in Texas; (vi) had any employees based in Texas; (vii) had ever recruited an employee from Texas; (viii) ever owned real or personal property in Texas; (ix) ever maintained an office or establishment in Texas;

⁴ *Shaffer v. Heitner*, 433 U.S. 186, 207 (1977).

⁵ *Giaccio v. Pennsylvania*, 382 U.S. 399, 403 (1966); *see also* *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (explaining that the Due Process Clause “does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations”).

⁶ *J. McIntyre*, 131 S. Ct. at 2787.

⁷ 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)) (punctuation omitted).

⁸ *Goodyear*, 131 S. Ct. at 2851 (citing *Int’l Shoe*, 326 U.S. at 317).

⁹ *See Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

¹⁰ *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375 (5th Cir. 1987).

¹¹ *Id.*

¹² *Id.*

¹³ 466 U.S. 408 (1984).

GENERAL JURISDICTION OVER FOREIGN CORPORATIONS

(x) ever maintained records in Texas; or (xi) ever had shareholders in Texas.¹⁴ These factors were not meant to be exhaustive, but rather were part of an overall examination of the circumstances surrounding the corporation's relationship to the forum state.

In contrast to general jurisdiction, specific jurisdiction refers to the forum's exercise of jurisdiction based on the acts and events giving rise to the plaintiff's cause of action against the defendant.¹⁵ Specific jurisdiction is based on the premise that "where a defendant 'purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws,' . . . it submits to the judicial power of an otherwise foreign sovereign to the extent that power is exercised in connection with the defendant's activities touching on the State."¹⁶ For example, specific jurisdiction permits an out-of-state corporation to be subject to a breach-of-franchise-agreement action in Florida, even though the out-of-state corporation's sole connection with Florida was that the agreement at issue was negotiated with a Florida company and the out-of-state defendant was required to send payments under the agreement to Florida.¹⁷

In addressing specific jurisdiction in the context of commercial business, the Supreme Court in *World-Wide Volkswagen Corp. v. Woodson* explained that a defendant's placement of goods into the "stream of commerce" "with the expectation that they will be purchased by consumers within the forum State" may indicate purposeful availment.¹⁸ Such purposeful availment may, in turn, suffice to establish specific personal jurisdiction consistent with "traditional notions of fair play and substantial justice."¹⁹

The contours of the stream-of-commerce doctrine were subsequently addressed by the Supreme Court in *Asahi Metal Industry Company, Ltd. v. Superior Court of California, Solano County*.²⁰ While unanimously deciding that asserting jurisdiction would "offend traditional notions of fair play and substantial justice," the Supreme Court could not agree on a majority view regarding the level of minimum contacts necessary to subject a foreign corporation to personal jurisdiction. Four justices, lead by Justice Brennan, decided mere awareness that a corporation's product would enter the stream of commerce sufficed.²¹ Four justices, lead by Justice O'Connor, decided that mere awareness did not suffice and required plaintiffs to present additional facts evidencing the foreign corporation's intent to avail itself of the jurisdiction.²² Although not meant to be exhaustive, Justice O'Connor identified the following additional facts: "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."²³ As no view could muster majority support, the issue remained unresolved.²⁴ Nearly 25 years passed before the Supreme Court revisited the issue of personal jurisdiction in *J. McIntyre and Goodyear*.

¹⁴ *Id.* at 411.

¹⁵ *Id.* at 414, n.8.

¹⁶ *J. McIntyre*, 131 S. Ct. at 2787-88 (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

¹⁷ See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479-80 (1985).

¹⁸ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980).

¹⁹ *Id.*

²⁰ 480 U.S. 102 (1987).

²¹ *Id.* at 117.

²² *Id.* at 112.

²³ *Id.*

²⁴ Left without any guidance, the U.S. Courts of Appeal are split on the appropriate test to apply, some expressly adopting one test over another, while others have adopted a hybrid analysis. See, e.g., *Luv n' care*,

The Supreme Court's Recent Decisions

J. McIntyre Machinery, Ltd. v. Nicastro

In *J. McIntyre*, plaintiff Robert Nicastro, an employee of Curcio Scrap Metal ("Curcio"), was operating a recycling machine used to cut metal called "the McIntyre Model 640 Shear."²⁵ Nicastro's right hand accidentally got caught in the machine's blades, severing four of his fingers.²⁶ "The Model 640 Shear was manufactured by J. McIntyre Machinery, Ltd. ("J. McIntyre"), a company incorporated in the United Kingdom, and then sold, through its exclusive U.S. distributor, McIntyre Machinery America, Ltd. ("McIntyre America"), to Curcio."²⁷ In September 2003, Nicastro named J. McIntyre and McIntyre America as defendants in a product-liability action in the Superior Court for Bergen County.²⁸ The complaint alleged that the shear machine "was not reasonably fit, suitable, or safe for its intended purpose," "failed to contain adequate warnings or instructions," and was defectively designed.²⁹ Nicastro's principal allegation was that the McIntyre Model 640 Shear lacked a safety guard that would have prevented the accident.³⁰

J. McIntyre's principal place of business was in Nottingham, England, where it designed and manufactured metal recycling machinery and equipment.³¹ J. McIntyre had American and European patents in recycling technology, and its president, Michael Pownall, attended scrap metal conventions held in Las Vegas in 1994 and 1995, including one where a representative of Curcio visited the McIntyre America convention booth.³² Additionally, from at least 1990 until 2005, J. McIntyre officials, including Pownall, attended trade conventions, exhibitions, and conferences throughout the United States.³³ While McIntyre America was the exclusive U.S. distributor for J. McIntyre's products, McIntyre America addressed

Ltd. v. Insta-Mix, Inc., 438 F.3d 465, 470 (5th Cir. 2006) ("We have, therefore, declined to follow the suggestion of the plurality in *Asahi* . . . that some additional action on the part of the defendant, beyond foreseeability, is necessary to 'convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.')" (citations omitted); *Commissariat A L'Energie Atomique v. Chi Mei Optoelectronics Corp.*, 395 F.3d 1315, 1321-22 & n.7 (Fed. Cir. 2005) (discussing a split of authority amongst the circuits as to *Asahi's* stream-of-commerce analysis and noting that the Federal Circuit had not yet decided between Justice Brennan's approach and the "more rigorous" approach adopted by Justice O'Connor); *Bridgeport Music, Inc. v. Still N The Water Publ'g*, 327 F.3d 472, 480 (6th Cir. 2003) (adopting Justice O'Connor's test); *Pennzoil Prods. Co. v. Colelli & Assocs., Inc.*, 149 F.3d 197, 207 n.13 (3d Cir. 1998) (concluding that "[s]ince the facts of this case satisfy the standards of both *Asahi Metal* pluralities, we do not have occasion to select one standard or the other as the law of this circuit"); *Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 683 (1st Cir. 1992) (adopting Justice O'Connor's test); *Nicastro v. McIntyre Mach. Am., Ltd.*, 987 A.2d 575, 587-88, n.10-12 (N.J. 2010) (discussing the conflicting applications of the plurality opinions in *Asahi*).

²⁵ *Nicastro*, 987 A.2d at 577.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 53, 987 A.2d at 577-8.

²⁹ *Id.* at 53, 987 A.2d at 578.

³⁰ *Id.*

³¹ *Id.* at 55, 987 A.2d at 579.

³² *Id.*

³³ *Id.*

GENERAL JURISDICTION OVER FOREIGN CORPORATIONS

any requests for information about those products at the scrap-metal conventions and trade shows in the United States.³⁴

The trial court granted J. McIntyre's motion to dismiss, deciding that it lacked sufficient minimum contacts with New Jersey to justify the forum's exercise of personal jurisdiction:

J. McIntyre had no contacts with the state of New Jersey—it did not directly sell or solicit business in this State or have a physical presence here. . . . [It] had no expectation that its product would be purchased and utilized in New Jersey. . . . [Although J. McIntyre] may have sufficient aggregate minimum contacts with the United States to establish jurisdiction in this country [, that] is not a reason to extend jurisdiction to the Superior Court of New Jersey. . . . J. McIntyre could be haled into a New Jersey court under the stream-of-commerce theory only if the company engaged in a nationwide distribution scheme that purposefully brought J. McIntyre's shear machines to New Jersey and the company purposely availed itself of the protections of [New Jersey's] laws.³⁵

The New Jersey Appellate Division reversed, concluding that New Jersey's exercise of jurisdiction “would not offend traditional notions of fair play and substantial justice” and was justified “under the stream-of-commerce plus rationale espoused by Justice O'Connor in *Asahi*”³⁶ According to the Appellate Division, J. McIntyre placed “the shear machine that injured [Nicastro] into the stream of commerce by transferring it to its distributor, McIntyre America, with an awareness that its machine might end up in New Jersey” and “engaged in additional conduct indicating an intent or purpose to serve the New Jersey market.”³⁷ This conduct included J. McIntyre (i) designating McIntyre America as its exclusive U.S. distributor; (ii) knowing McIntyre America was not necessarily the machines' end user; (iii) sending management officials to trade conventions; (iv) establishing a distribution scheme to sell its machines to customers in McIntyre America's “exclusive sales territory;” and (v) designating the shear to conform to U.S. specifications.³⁸

In affirming the Appellate Division's assertion of jurisdiction, the New Jersey Supreme Court explained that a foreign manufacturer that “knows or reasonably should know that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states must expect that it will be subject to [New Jersey's] jurisdiction if one of its defective products is sold to a New Jersey consumer, causing injury.”³⁹ The New Jersey Supreme Court approved jurisdiction pursuant to the stream-of-commerce doctrine because J. McIntyre (i) targeted the U.S. market for the sale of its recycling products by engaging McIntyre America, an Ohio-based company, as its exclusive U.S. distributor for an approximately seven-year period ending in 2001; (ii) knew or reasona-

³⁴ *Id.*

³⁵ *Id.* at 56, 987 A.2d at 579 (citation and quotation marks omitted).

³⁶ *Nicastro v. McIntyre Mach. Am. Ltd.*, 399 N.J. Super. 539, 545, 945 A.2d 92, 95 (N.J. Super. Ct. App. Div. 2008) (citing *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 111 (2008)).

³⁷ *Id.* at 558, 945 A.2d at 104.

³⁸ *Id.* at 558-9, 945 A.2d at 104-5.

³⁹ *Nicastro v. McIntyre Mach. Am. Ltd.*, 201 N.J. 48, 76-7, 987 A.2d 575, 592 (2010) (punctuation and citations omitted).

bly should have known that its distribution system extended to the entire United States, because its company officials, along with McIntyre America officials, attended scrap metal trade shows and conventions in U.S. cities where its products were advertised; and (iii) its appearance with McIntyre America at scrap metal trade shows and conventions was a calculated effort to penetrate the overall American market.⁴⁰

In asserting jurisdiction, the New Jersey Supreme Court refused to allow a “manufacturer to shield itself [from liability] merely by employing an independent distributor—a middleman—knowing the predictable route the product will take to market.”⁴¹ The New Jersey Supreme Court also refused to focus on the manufacturer’s control of the distribution scheme and reasoned that the proper focus should be placed on the “manufacturer’s knowledge of the distribution scheme through which it received economic benefits.”⁴² If a manufacturer does not want to be subject to jurisdiction in New Jersey when targeting the U.S. market, the New Jersey Supreme Court reasoned that the manufacturer “must take some reasonable step to prevent the distribution of its products” into the State.⁴³

On appeal, the U.S. Supreme Court reversed. In a four-justice plurality opinion, Justice Kennedy clarified Justice O’Connor’s stream of commerce doctrine by reaffirming that the primary jurisdictional inquiry is whether the defendant’s activities “manifest an intention to submit to the power of a sovereign.”⁴⁴ Justice Kennedy explained that transmitting products may warrant asserting general jurisdiction only when the defendant targets the forum, not when the defendant merely anticipates that the products could reach a customer in the forum.⁴⁵ Justice Kennedy further explained that the defendant’s actions—not its expectations—determine whether a court may subject the defendant to its judgments.⁴⁶

Applying this analysis to the facts of the case, Justice Kennedy concluded that Nicastro failed to establish that J. McIntyre “engaged in conduct purposefully directed at New Jersey” because it did not market goods in the State or ship them there.⁴⁷ In doing so, Justice Kennedy dismantled the factual predicates underlying the New Jersey Supreme Court’s decision. First, Justice Kennedy credited the corporate distinctions between J. McIntyre and McIntyre America, stating that “there [was] no allegation that the distributor was under J. McIntyre’s control.”⁴⁸ Second, Justice Kennedy found that while conventions to solicit its machines were attended in various states, they never attended any in New Jersey.⁴⁹ Third, he noted that at least one, but no more than four, machines including the machine at issue, ended up in New Jersey.⁵⁰ Justice Kennedy also relied on the lack of traditional contacts with the forum: “the British manufacturer had no office in New Jersey; it neither paid taxes nor owned property there; and it neither advertised in, nor sent any employees to, the State.”⁵¹ Finding no conduct establishing an “intent” to invoke or benefit from the protection of New Jersey’s

⁴⁰ *Id.* at 78, 987 A.2d at 592.

⁴¹ *Id.* at 77, 987 A.2d at 592.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *J. McIntyre*, 131 S. Ct. at 2788.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 2790.

⁴⁸ *Id.* at 2786.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 2790.

GENERAL JURISDICTION OVER FOREIGN CORPORATIONS

laws, the plurality concluded that New Jersey was “without power to adjudge the rights and liabilities of J. McIntyre.”⁵²

Although Justices Breyer and Alito also found jurisdiction inappropriate, they decided it was “unwise to announce a rule of broad applicability”⁵³ without the Court having fully considered the “relevant contemporary commercial circumstances” facing foreign and out-of-state corporations that would be “relevant to any change in present law[.]”⁵⁴ Moreover, Justice Breyer concluded that the absence of jurisdiction was consistent with existing precedent because there was only “a single isolated sale” of a product to New Jersey.⁵⁵ Based upon that fact, Justice Breyer reasoned that both Justices Brennan and O’Connor would have agreed that “a single sale of a product in a State does not constitute an adequate basis for asserting jurisdiction over an out-of-state defendant, even if that defendant places his goods in the stream of commerce, fully aware (and hoping) that such a sale will take place.”⁵⁶ Moreover, in part because the record left many questions unanswered, Justice Breyer believed the facts of the case presented an “unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules.”⁵⁷ Justice Breyer’s belief that a fact-specific inquiry is required when assessing personal jurisdiction is a sentiment shared and lamented by state and federal courts that regularly conduct these analyses.⁵⁸

Justice Ginsburg, joined by Justices Sotomayor and Kagan, dissented from the judgment of the Court and reasoned that those Justices finding jurisdiction improper failed to consider all the relevant contacts supporting the exercise of general jurisdiction and condoned a foreign defendant’s contracting away liability to its U.S. distributor, which it engaged “to ship [defendant’s] machines stateside.”⁵⁹ The majority, Justice Ginsburg argued, effectively permitted foreign manufacturers to avoid jurisdiction by shipping its products to the forum through a distributor: “[T]he splintered majority today ‘turn[s] the clock back to the days before modern long-arm statutes when a manufacturer, to avoid being haled into court where a user is injured, need only Pilate-like wash its hands of a product by having independent distributors market it.’”⁶⁰

⁵² *Id.* at 2791.

⁵³ *Id.*

⁵⁴ *Id.* at 2794.

⁵⁵ *Id.* at 2792.

⁵⁶ *Id.* (Breyer, J., concurring) (citing *Asahi*, 480 U.S. at 111-112 (O’Connor, J., concurring) (requiring “something more” than simply placing “a product into the stream of commerce,” even if defendant is “awar[e]” that the stream “may or will sweep the product into the forum State”) and *id.* at 117 (Brennan, J., concurring) (instructing that jurisdiction should lie where a sale in a State is part of “the regular and anticipated flow” of commerce into the State, but not where that sale is only an “edd[y],” *i.e.*, an isolated occurrence)).

⁵⁷ *Id.* at 2793 (Breyer, J., concurring).

⁵⁸ *See, e.g.*, *Cossaboon v. Maine Med. Ctr.*, 600 F.3d 25, 33 (1st Cir. 2010) (explaining that assessing a defendant’s minimal contacts to a forum requires a “highly idiosyncratic” fact-specific inquiry “involving an individualized assessment and factual analysis of the precise mix of contacts that characterize each case”) (citation omitted); *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 570 (2nd Cir. 1996) (“The assessment of minimum contacts is fact-specific and must necessarily be tailored to the circumstances of each case.”).

⁵⁹ *J. McIntyre*, 131 S. Ct. at 2794 (Ginsburg, J., dissenting).

⁶⁰ *Id.* at 2795 (Ginsburg, J., dissenting) (quoting Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531, 555 (1995)).

GOODYEAR DUNLOP TIRES OPERATIONS, S.A. V. BROWN

In *Goodyear*, Matthew Helms and Julian Brown, two thirteen-year-old soccer players who resided in North Carolina, died from injuries suffered in a bus wreck on April 18, 2004, outside Paris, France.⁶¹ The decedents were traveling to Charles de Gaulle Airport to return to North Carolina.⁶² Representatives of the decedents' estates filed a suit for wrongful-death damages. They ("Plaintiffs") alleged that one of the bus tires designed, manufactured, and distributed by the Goodyear Defendants failed when its plies separated.⁶³ The tire that failed was a Goodyear Regional RHS tire manufactured by Goodyear Turkey, which operated a manufacturing plant located in that country.

Plaintiffs sued a series of Goodyear affiliates, including Goodyear France, Goodyear Luxembourg, and Goodyear Turkey on several theories arising from an alleged negligent design, construction, testing, and inspection of the Goodyear Regional tire in question.⁶⁴ The foreign Goodyear defendants ("Foreign Defendants") moved to dismiss for lack of personal jurisdiction.

In denying their motion to dismiss, the trial court found, among other items, that:

- "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";
- "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";
- "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";
- "[t]he number of tires shipped into North Carolina from each of these manufacturers may actually be substantially higher, in that [Goodyear's U.S. entity], after being noticed for a 30(b)(6) deposition, failed to determine how many vehicles equipped with tires from these foreign defendant manufacturers [were] imported into the U.S. and shipped into North Carolina for sale each year"; and
- the foreign 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"⁶⁵

Upon these findings, the trial court denied the Foreign Defendants' motion to dismiss and concluded that the Foreign Defendants had continuous and systematic ties with North Carolina sufficient to permit the court to assert personal jurisdiction over the Foreign Defendants.⁶⁶

⁶¹ *Brown v. Meter*, 681 S.E.2d 382, 384 (N.C. Ct. App. 2009).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 385-86.

⁶⁶ *Id.* at 387.

GENERAL JURISDICTION OVER FOREIGN CORPORATIONS

On appeal, the North Carolina Court of Appeals affirmed and?relying principally on North Carolina state law?reasoned that some of the tires produced abroad by Goodyear's foreign subsidiaries reached North Carolina through "the stream of commerce":

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 . . . and thereby purposefully availed themselves of the protection of the laws of this State."⁶⁷

The appellate court concluded that the Foreign Defendants' placement of their tires in the stream of commerce justified the exercise of general jurisdiction.⁶⁸

After the North Carolina Supreme Court denied discretionary review, the U.S. Supreme Court granted *certiorari* and unanimously reversed. The Supreme Court clarified the distinction between specific and general jurisdiction, rejecting the appellate court's conclusion that the "stream of commerce" could ever support the exercise of general jurisdiction. The Supreme Court explained that the stream-of-commerce doctrine applies when analyzing whether a defendant is subject to a court's specific—not general—jurisdiction: "Flow of a manufacturer's products into the forum, we have explained, may bolster an affiliation germane to *specific* jurisdiction."⁶⁹ The Court added that ties supporting the exercise of specific jurisdiction "do not warrant a determination that, based on those ties, the forum has general jurisdiction over a defendant."⁷⁰

Applying a proper general jurisdictional analysis, the Supreme Court held that the Foreign Defendants' "attenuated" contacts with the forum fell "far short of 'the continuous and systematic general business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State."⁷¹ The Supreme Court noted that the Foreign Defendants' tires were manufactured primarily for European and Asian markets and differed in size and construction from tires ordinarily sold in the United States. Moreover, the Foreign Defendants were not registered to do business in North Carolina; had no place of business, employees, or bank accounts in the State; did not design, manufacture, or advertise their products in the State; and did not solicit business in the State or sell or ship tires to North Carolina customers.⁷² The Supreme Court also found that the Foreign Defendants' sporadic tire sales in North Carolina through intermediaries were insufficient to warrant a state's assertion of general jurisdiction.⁷³ Ultimately, the Supreme Court's decision in *Goodyear* reaffirmed that the general-jurisdiction test is whether the for-

⁶⁷ *Id.* at 395 (quoting *Bush v. BASF Wyandotte Corp.*, 306 S.E.2d 562, 568 (1983)) (alterations in original).

⁶⁸ *Id.*

⁶⁹ *Goodyear*, 131 S. Ct. at 2849 (citing *World-Wide Volkswagen*, 444 U.S. at 297) (emphasis in original); see *D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 106 (3rd Cir. 2009) (limiting the stream-of-commerce doctrine to an analysis of specific jurisdiction); *Purdue*, 338 F.3d at 788 (explaining that the stream-of-commerce theory "is relevant only to the exercise of specific jurisdiction" and that "it provides no basis for exercising general jurisdiction over a nonresident defendant").

⁷⁰ *Goodyear*, 131 S. Ct. at 2849.

⁷¹ *Id.* at 2857 (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)).

⁷² *Id.* at 2852.

⁷³ *Id.* at 2856 (concluding that "mere purchases [made in the forum State], even if occurring at regular intervals, are not enough to warrant a State's assertion of [general] jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions" (citing *Helicópteros*, 466 U.S. at 418)).

foreign corporation's affiliations with a state "render them essentially at home in the forum state."⁷⁴

LESSONS LEARNED AND QUESTIONS UNANSWERED

The Supreme Court's recent decisions provide several guideposts to state and federal courts tasked with analyzing personal jurisdiction issues. First, the focus of personal-jurisdiction jurisprudence remains "the relationship among the defendant, the forum, and the litigation," particularly the defendant's activities purposefully directed at that forum.⁷⁵ Second, when analyzing personal jurisdiction, define the purported basis of jurisdiction: general, specific, or both. Third, conduct a separate and distinct analysis for each basis of jurisdiction, noting that the stream-of-commerce doctrine applies *only* to specific jurisdiction. Fourth, anticipate courts more narrowly interpreting a forum's ability to assert general jurisdiction over a foreign corporation. Purchases and now sales, even if occurring at regular intervals, seem insufficient alone to constitute "the continuous and systematic general business contacts" warranting general jurisdiction over a foreign corporation. Furthermore, despite the access technology provides corporations to the global marketplace, the traditional hallmarks of general jurisdiction indicating domicile—offices in the forum, for example—remain the touchstone of corporate presence in the forum.

Notwithstanding these guideposts, the Supreme Court's decisions in *Nicastro* and *Goodyear* are noteworthy not for the questions they resolved but rather for the questions they left unanswered. What level of business contacts is sufficient to establish general personal jurisdiction? Why were the Foreign Defendants' sales in *Goodyear* too "attenuated" to warrant general jurisdiction? Because they were sporadic? Because they were made through intermediaries? Because the amount of sales or revenue generated from those sales was insignificant? Are sales or revenues generated from sales—regardless of the amount—insufficient alone to warrant general jurisdiction?

The latter question has become more prevalent recently, with courts struggling to determine whether they may exercise general jurisdiction over foreign corporations that have no physical presence in the forum but generate large revenues from customers in the forum. The courts' struggle is compounded when those large revenues represent a small percentage of the corporation's total revenues. The due process contours of general jurisdiction over foreign corporations under these circumstances are far from clear. Current jurisprudence, which has strayed from the principles underlying jurisdictional analysis, presents "a bewildering array of seemingly inconsistent results."⁷⁶ Below we refocus the analysis to promote more consistent, and ultimately predictable, outcomes that will enable foreign corporations to structure their activities "with some minimum assurance as to where that conduct will and will not render them liable to suit."⁷⁷

⁷⁴ *Id.* at 2851 (citing *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 317 (1945)).

⁷⁵ *Shaffer v. Heitner*, 433 U.S. 186, 186 (1977).

⁷⁶ *Severinsen v. Widener Univ.*, 338 N.J. Super. 42, 49, 786 A.2d 200, 203 (N.J. Super. Ct. App. Div. 2001); see Charles W. "Rocky" Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 871 (2004)

⁷⁷ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (quoting *Int'l Shoe*, 326 U.S. at 319).

GENERAL JURISDICTION OVER FOREIGN CORPORATIONS

GENERAL JURISDICTION BASED ON REVENUE

Absent further guidance from the Supreme Court regarding how they should evaluate a defendant's contacts with the forum, state and federal courts have been left to develop their own standards. For over twenty-five years, in applying the "continuous and systematic" standard, state and federal courts have considered (i) whether some jurisdictional factors should weigh more heavily than others; (ii) what level of contacts tip the scale in the favor of exercising jurisdiction; (iii) whether the contacts of subsidiaries and related companies can be attributed to a foreign parent corporation; (iv) how to examine internet generated revenue for purposes of assessing general jurisdiction; and (v) whether revenue generated from the forum alone can buttress the lack of any other factors supporting the exercise of general jurisdiction.

Armed with an inherently imprecise standard and little guidance on applying it to varying fact patterns, courts have developed a range of formulas to justify asserting general jurisdiction over foreign corporations. Some formulas have deteriorated from the qualitative analysis described above to, in some cases, a purely quantitative analysis.⁷⁸ Courts relying on a quantitative analysis focus on the foreign corporation's sales or revenues, assessing whether they are so "substantial" that they are "tantamount to [the foreign corporation] being constructively present" in the forum state.⁷⁹ Although perhaps a tempting alternative to the complexity of a qualitative analysis, relying on a quantitative analysis is problematic, and it leads courts to produce arbitrary decisions and inconsistent results.

Sales to and revenues generated from sales to forum residents—without more—are insufficient to vest forum courts with general jurisdiction. As one court has explained, relying on sales and revenues alone destroys the distinction between a foreign corporation "doing business" in the forum and "doing business" with a forum resident.⁸⁰ "Only the former is a proper basis for jurisdiction."⁸¹ If sales to or revenue generated from forum residents were sufficient to confer general jurisdiction over foreign corporations, "it would follow that the very existence of a business relationship with a [forum resident] would automatically sustain [the forum's] jurisdiction."⁸² The Due Process Clause does not permit such a broad grant of personal jurisdiction.

Although sales and revenue may indicate the extent to which a foreign corporation does business in the forum, it is not the sole contact courts should consider in the general-jurisdiction inquiry.⁸³ Courts must examine sales and revenue in the context of all the foreign

⁷⁸ See, e.g., *Richter v. Instar Enters. Int'l, Inc.*, 594 F. Supp. 2d 1000 (N.D. Ill. 2009) (deciding that "[w]here a defendant's sales in a state represent both a small percentage of a defendant's total sales and a small volume of sales over all, its contact with the forum state cannot be said to be substantial" such that it warrants the exercise of general jurisdiction); *Farris v. Williams*, No. 06-609, 2006 WL 1716285, at *2 (D. Minn. Jun. 21, 2006); *Injen Tech. Co. Ltd. v. Advanced Engine Mgmt., Inc.*, 270 F. Supp. 2d 1189, 1194-95 (S.D. Cal. 2003); *C.E. Jamieson & Co., Ltd. v. Willow Labs, Inc.*, 585 F. Supp. 1410, 1411 (S.D.N.Y. 1984); *Bank of Taiwan v. Ulti-Med Int'l Inc.*, No. 95 Civ. 5657, 1996 WL 502411, at *2 (S.D.N.Y. Sept. 4, 1996).

⁷⁹ *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F. 3d 773, 787 (7th Cir. 2003).

⁸⁰ *Kadala v. Cunard Lines, Ltd.*, 226 Ill. App. 3d 302, 310-15 589 N.E. 2d 802, 807-11 (Ill. App. Ct. 1992) (evincing that this principle applies not only to the "transacting business" test of the state's long-arm statute, but also to the "doing business" test of general jurisdiction).

⁸¹ *Id.*

⁸² *Id.* at 310.

⁸³ See *Horizon Aggressive Growth, L.P. v. Rothstein-Kass, P.A.*, 421 F. 3d 1162, 1167 (11th Cir. 2005) ("Factors relevant, but not dispositive, to this analysis include the presence and operation of an office in Florida, the possession and maintenance of a license to do business in Florida, the number of Florida clients served, and

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

corporation's contacts with the forum as indicia of jurisdiction.⁸⁴ These contacts, which Justice White called "affiliating circumstances,"⁸⁵ include, but are not limited to, certain hallmark contacts that approximate a corporation's continuous and systematic physical presence in the forum: whether the corporation (i) maintains offices or employees in the forum; (ii) sends agents into the forum to conduct business; (iii) designates an agent for service of process in the forum; (iv) registers to do business in the forum; (v) owns real or personal property in the forum; (vi) is a party to any litigation in the forum; (vii) has an ownership interest in a forum corporation or business; and (viii) files tax returns in the forum.⁸⁶ Sales and revenue alone do not establish that the foreign corporation is engaging in activities similar to those of a commercial domiciliary.

Of those courts that rely on a quantitative analysis to assess a foreign corporation's contacts, many use different formulas. Some courts assess the foreign corporation's gross revenue,⁸⁷ others assess the percentage of revenue generated from forum residents,⁸⁸ others assess the number of sales,⁸⁹ and still others assess a combination of these.⁹⁰ Such formulas lead to "a bewildering array of seemingly inconsistent results"⁹¹ and arbitrary decisions as courts are forced to decide how many sales or how much revenue is enough.

Yet the problems inherent in the quantitative analyses seem obvious. If a foreign corporation's sales in the forum state were 18% of total U.S. sales, this percentage might seem sufficient to justify asserting general jurisdiction over the foreign corporation. This percent-

the percentage of overall revenue gleaned from Florida clients." (internal citations omitted)); *Costa v. Keppel Singmarine Dockyard PTE, Ltd.*, No. CV 01-11015MMM, 2003 WL 24242419, at *11 (C.D. Cal. Apr. 24, 2003) ("[T]he totality of a defendant's contacts with the state must be assessed in determining whether the exercise of general jurisdiction is appropriate.").

⁸⁴ See generally *World-Wide Volkswagen*, 444 U.S. at 295-99; *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1388 (8th Cir. 1995) ("In determining whether there is personal jurisdiction, the courts consider the defendant's contacts with the forum in the aggregate, not individually, they look at the totality of the circumstances.").

⁸⁵ *Id.* at 295.

⁸⁶ See *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447-48 (1952) (concluding that although the claim did not arise in Ohio, it would not violate due process for Ohio to adjudicate the controversy because the corporation's president maintained his office in Ohio, kept company files in that office, and supervised from that office "the necessarily limited wartime activities of the company"); *Horizon*, 421 F.3d at 1167; *McGill v. Gigantex Techs. Co., Ltd.*, No. 05C5892, 2005 WL 3436403, *2 (N.D. Ill. Dec. 12, 2005).

⁸⁷ See, e.g., *LSI Indus. Inc. v. Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000) ("Based on Hubbell's millions of dollars of sales of lighting produces in Ohio over the past several years and its broad distributorship network in Ohio, we find that Hubbell maintains 'continuous and systematic' contacts with Ohio.").

⁸⁸ See, e.g., *Farris*, 2006 WL 1716285, at *2; *Injen Tech*, 270 F. Supp. 2d at 1194-95.

⁸⁹ See, e.g., *Bolger v. Nautica Int'l, Inc.*, 369 Ill. App. 3d 947, 952 (Ill. App. Ct. 2007) (declining to assert jurisdiction, noting that "[t]he record shows sales of one to four boats each year in Illinois").

⁹⁰ See, *Richter v. Instar Enters. Int'l, Inc.*, 594 F. Supp.2d 1000, 1007 (N.D. Ill. 2009).

⁹¹ *Severinsen*, 768 A. 2d at 203; compare *Michigan Nat'l Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 465-66 (6th Cir. 1989) (deciding that asserting general jurisdiction was appropriate over Alabama corporations because \$625,000 in combined revenues?although only 3% of the companies' total sales?constituted continuous and systematic contacts with the forum), with *Stemcor USA, Inc. v. Sharon Tube Co.*, No. 00 Civ. 9186, 2001 WL 492427, at *1-2 (S.D.N.Y. May 8, 2001) (declining to assert general jurisdiction where orders invoiced and shipped to customers in New York accounted for .58% or \$741,900.27 of total sales in 1999 and .73% or \$926,011.43 of total sales in 2000), and *LeBlanc v. Patton-Tully Trans. LLC*, 138 F. Supp. 2d 817, 819 (S.D. Tex. 2001) (declining to assert general jurisdiction where defendant's work performed for a Texas business accounted for 10-15% of defendant's revenue).

GENERAL JURISDICTION OVER FOREIGN CORPORATIONS

age might not seem sufficient, however, if the foreign corporation's total U.S. sales were \$100,000 and thus forum state sales were \$18,000.⁹² Conversely, if forum-state sales were 1% of total U.S. sales, this percentage might not seem sufficient to support general jurisdiction, but it might seem sufficient if the foreign corporation's total U.S. sales were \$100 million and thus forum sales were \$1 million.

The inconsistent results quantitative analyses produce stymie the very protections the Due Process Clause was intended to protect. "Due Process requires that the defendant be given adequate notice of the suit" before becoming subject to the court's general jurisdiction.⁹³ By "ensuring the 'orderly administration of the laws,'" the Due Process Clause "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."⁹⁴ With adequate notice, a foreign corporation "can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State."⁹⁵ But foreign corporations cannot effectively structure their conduct when courts' divergent quantitative analyses produce inconsistent and thus unpredictable results.

Regardless of whether courts focus on revenue or percentage of revenue, even quantitatively substantial earnings may not indicate whether a foreign corporation "has established a permanent and continuing relationship with the forum."⁹⁶ This is because relying on quantity neglects the qualitative analysis that remains the test for general jurisdiction.⁹⁷ "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure."⁹⁸ Thus, in *Keeton v. Hustler Magazine*, the Supreme Court noted in dicta that although the defendant sold 10,000 to 15,000 magazine copies in the forum each month, the sales were not qualitatively "so substantial" that they supported general jurisdiction.⁹⁹ "It is evident that the criteria by which [courts] mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative."¹⁰⁰

By focusing on the number of sales, dollar amount of sales, or percentage of total revenue generated by those sales, courts reduce the "doing business" test to mere sales or revenue counting. But courts should analyze a foreign corporation's contacts to the forum not

⁹² See *Colletti v. Crudele*, 169 Ill. App. 3d 1068, 1078 (Ill. App. Ct. 1988) (noting that "even \$5,000 or \$10,000 is a substantial amount from a number of perspectives, despite being a small percentage of a thriving company's revenues"); cf. *Dominion Gas Ventures, Inc. v. N.L.S., Inc.*, 889 F. Supp. 265, 268 (N.D. Tex. 1995) (deciding that \$70,000 of gross revenue from, and 7% of, defendant's Texas business did not warrant exercising general jurisdiction).

⁹³ *World-Wide Volkswagen*, 444 U.S. at 291.

⁹⁴ *Id.* at 297 (quoting *Int'l Shoe*, 326 U.S. at 319).

⁹⁵ *Id.*

⁹⁶ *Riemer v. KSL Recreation Corp.*, 348 Ill. App. 3d 26, 36 (Ill. App. Ct. 2004); see *Helicópteros*, 466 U.S. at 408-409 (deciding that "mere purchases, even if occurring at regular intervals, are not enough to warrant State's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to the purchases.").

⁹⁷ See *Rhodes*, *supra* note 76, at 871; *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (explaining that the test for general jurisdiction is not "simply mechanical or quantitative").

⁹⁸ *Int'l Shoe*, 326 U.S. at 319.

⁹⁹ *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 772, 779-80 (1984).

¹⁰⁰ *Int'l Shoe*, 326 U.S. at 319.

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

for the sake of counting sales or revenues, but to determine whether those sales and the revenue generated by those sales show continuous, permanent, and substantial activity in the forum justifying general jurisdiction.¹⁰¹ In other words, courts examine sales and revenue in the context of all the factual circumstances, not to determine whether sales and revenue are quantitatively “substantial,” but rather to determine whether the revenue-generating activities are *qualitatively* so “substantial” that they evidence continuous, permanent, and substantial activity in the forum justifying general jurisdiction.

In *Bearry v. Beech Aircraft Corporation*, for example, the Fifth Circuit concluded that Beech’s contacts with Texas did not warrant general jurisdiction.¹⁰² These contacts included manufacturing airframe assemblies for a Texas business under contracts exceeding \$72 million and purchasing over \$195 million of goods and services from over 500 Texas vendors under sales agreements with Texas dealers.¹⁰³ The court explained that Beech did not afford itself “the benefits and protections” of Texas laws, but rather “exercised its right to structure its affairs in a manner calculated to shield it from the general jurisdiction of the courts of other states such as Texas, carefully requiring the negotiation, completion, and performance of all contracts in Kansas.”¹⁰⁴ Simply put, quantity is not enough to require a foreign corporation to answer in a forum “in any litigation arising out of any transaction or occurrence taking place anywhere in the world.”¹⁰⁵

The inquiry is not necessarily how much revenue a foreign corporation generated, but rather how the foreign corporation generated that revenue.¹⁰⁶ Accordingly, some courts have considered where the sales were negotiated, executed, or performed and where the foreign corporation negotiated and consummated its contracts for, received payments for, and performed its revenue-generating work.¹⁰⁷ They have also considered whether these activities occurred on a continuous, regular, and systematic basis.¹⁰⁸ Evaluating these factors—in the context of all the foreign corporation’s contacts—is the type of qualitative analysis the Due Process Clause requires.

Although the Supreme Court did not clarify this qualitative analysis in *Nicastro* or *Goodyear*, at least two Justices hinted that they may revisit general personal jurisdiction if presented with a case providing “a better understanding of the relevant contemporary commercial circumstances.”¹⁰⁹ In the future, the Supreme Court might address how revenues,

¹⁰¹ See *Landoil Res. Corp. v. Alexander & Alexander, Servs., Inc.*, 918 F.2d 1039, 1043 (2d Cir. 1990).

¹⁰² *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 374-77 (5th Cir. 1987).

¹⁰³ *Id.* at 373.

¹⁰⁴ *Id.* at 375-76.

¹⁰⁵ See *Purdue Research Found. V. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir. 2003).

¹⁰⁶ See *Rhodes*, *supra* note 76, at 872.

¹⁰⁷ See, e.g., *Bearry*, 818 F.2d at 375-77; *Riemer v. KSL Recreation Corp.*, 807 N.E.2d 1004, 1017 (Ill. App. Ct. 2004) (declining to assert general jurisdiction where, *inter alia*, the nonresident corporation’s employee, an Illinois resident, “merely solicited potential clients to enter into contracts with representatives” of the corporation’s resorts located outside Illinois and “did not execute any contracts” inside Illinois); *Kadala v. Cunard Lines, Ltd.*, 589 N.E.2d 802, 810 (Ill. App. Ct. 1992) (declining to assert general jurisdiction over the nonresident corporation because, *inter alia*, it “did not receive any revenues in this state; all payments were received in its New York office.”).

¹⁰⁸ See *Halsey v. Scheidt*, 630 N.E.2d 905, 909 (Ill. App. Ct. 1994) (indicating that, rather than “the amount of financial benefit it derives from the consumers of Illinois, . . . the key consideration is the corporation’s temporal relationship with the State” (citation omitted)).

¹⁰⁹ *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2792-94 (Jun. 27, 2011) (Breyer, J., concurring) (“Because the incident at issue in this case does not implicate modern concerns, and because the factual record

GENERAL JURISDICTION OVER FOREIGN CORPORATIONS

modern marketing, the Internet, local distributors, and corporate formalities impact general-jurisdiction jurisprudence. Until then, state and federal courts likely will continue struggling with these issues and generating inconsistent results. Foreign corporations, in turn, likely will continue struggling to structure their activities with some minimum assurance as to where they might be subject to suit. Ultimately, however, courts should permit the quality, rather than the quantity, of foreign corporations' contacts to serve as their analytical guide. Such an analytical guide remains the key to achieving a decision that comports with due process.

leaves many open questions, this is an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules. . . . I would not work such a change to the law in the way either the plurality or the New Jersey Supreme Court suggests without a better understanding of the relevant contemporary commercial circumstances. Insofar as such considerations are relevant to any change in present law, they might be presented in a case (unlike the present one) in which the Solicitor General participates. . . . This case presents no such occasion").

THE JOURNAL OF INTERNATIONAL BUSINESS & LAW