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CASE COMMENT

GOODYEAR DUNLOP'S FAILED ATTEMPT TO REFINES THE
SCOPE OF GENERAL PERSONAL JURISDICTION

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

*Camilla Cohen**

In first-year civil procedure, students spend a great deal of time parsing an “answer” to a deceptively simple question: When may a state exercise its adjudicatory authority over an out-of-state defendant? Since *Pennoyer v. Neff*, the United States Supreme Court has addressed the issue of personal jurisdiction in at least thirty-five cases spanning three centuries.¹ Following the Court’s decision in *International Shoe Co. v. Washington*,² a state’s exercise of personal jurisdiction over a foreign defendant must satisfy two requirements. First, the state must have a statutory basis for asserting adjudicatory authority over a foreign defendant.³ Second, if the claims satisfy the statutory requirements for jurisdiction, the state must further determine whether the foreign defendant has established “minimum contacts” with the forum “such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”⁴ Rooted in the Fourteenth Amendment’s Due Process Clause, this second inquiry places a limit on the state’s adjudicatory authority in order to ensure the “fair and orderly administration of the laws.”⁵

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1. See generally *Pennoyer v. Neff*, 95 U.S. 714 (1878); *Harris v. Balk*, 198 U.S. 215 (1905); *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432, 111 N.E. 1075 (1916); *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952); *Hanson v. Denckla*, 357 U.S. 235 (1958); *Shaffer v. Heitner*, 433 U.S. 186 (1977); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *Burnham v. Superior Court*, 495 U.S. 604 (1990).

2. 326 U.S. 310 (1945).

3. 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1068.1 (3d ed. 2002) (stating that “state long-arm statutes simply cannot reach beyond the limits of the Due Process Clause of the Fourteenth Amendment”).

4. *Int’l Shoe*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

5. *Id.* at 319.

Following the minimum contacts requirement set forth in *International Shoe*,⁶ personal jurisdiction jurisprudence has developed significantly over time. The development of this doctrine, however, has focused heavily on cases dealing with specific jurisdiction.⁷ Until 2011, *Perkins v. Benguet*⁸ and *Helicopteros Nacionales de Columbia v. Hall*⁹ were the only Supreme Court cases that analyzed the scope of general personal jurisdiction.¹⁰ Consequently, lower courts were left to develop the contours of general personal jurisdiction, resulting in a hodgepodge of inconsistent holdings that often conflated several important distinctions between specific and general jurisdiction.¹¹ Now, twenty-eight years after *Helicopteros*, the Supreme Court has finally revisited general personal jurisdiction in *Goodyear Dunlop Tires Operations, S.A. v. Brown*.¹²

This Comment analyzes the Court's recent decision in *Goodyear*, concluding that the case produced the correct result, but failed to provide any meaningful future guidance for lower courts. One significant shortcoming of the case is the absence of any theoretical justification for the assertion of general personal jurisdiction. Without a basis for determining why general jurisdiction is appropriate in some circumstances and not others, the Court missed an opportunity to encourage a semblance of consistency in lower court decisions concerning general personal jurisdiction.¹³ Additionally, the decision failed to provide a clear analytical framework for deciding future cases. While the decision may be interpreted as refining the test for asserting general jurisdiction, *Goodyear* could just

6. *Id.* at 310.

7. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2854 (2011); see also Charles W. "Rocky" Rhodes, *Nineteenth Century Personal Jurisdiction Doctrine in a Twenty-First Century World*, 64 FLA. L. REV. 387, 423–24 (2012) [hereinafter Rhodes, *Nineteenth Century Personal Jurisdiction*] (stating that *Perkins* and *Helicopteros* "comprised the entirety of the Supreme Court's post-*Shoe* discussion of general jurisdiction"). The difference between specific and general jurisdiction is that the former may be asserted over a foreign defendant if the defendant's contacts with the forum are related to the plaintiff's cause of action. Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966). On the other hand, general jurisdiction may be asserted over a nonresident defendant for any cause of action unrelated to the defendant's contacts with the forum. *Id.* Until recently, the relevant inquiry for an assertion of general jurisdiction was whether the defendant's contacts with the forum were "continuous . . . substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Int'l Shoe*, 326 U.S. at 318.

8. 342 U.S. 437 (1952).

9. 466 U.S. 408 (1984).

10. See Rhodes, *Nineteenth Century Personal Jurisdiction*, *supra* note 7, at 422–24.

11. *Id.* at 424; Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. CHI. LEGAL F. 141, 152 (2001); Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 724 (1988) [hereinafter Brilmayer et al., *A General Look*].

12. 131 S. Ct. at 2851.

13. See *infra* text accompanying notes 58–61 for a discussion of the inconsistent lower court decisions regarding general personal jurisdiction.

as easily be narrowly confined to its facts in light of the manner in which the Court framed the issues.¹⁴

In April 2004, Julian Brown and Matthew Helms died in a bus accident while heading to the Charles de Gaulle Airport in Paris, France.¹⁵ The victims were two thirteen-year-old boys from North Carolina.¹⁶ Following the boys' deaths, their parents, as administrators of their estates, sued in the North Carolina Superior Court for wrongful death.¹⁷ The complaint attributed the accident to defective tires manufactured by Goodyear USA—an Ohio corporation—and its foreign subsidiaries.¹⁸ As such, Goodyear USA, Goodyear Luxembourg, Goodyear Turkey, and Goodyear France were all named as defendants.¹⁹

Unlike their parent corporation, Goodyear USA, the foreign subsidiaries all moved to dismiss the claims against them on the basis that North Carolina's courts lacked adjudicatory authority over them.²⁰ The North Carolina Court of Appeals affirmed the trial court's denial of the defendants' motion.²¹

The North Carolina Court of Appeals agreed that North Carolina lacked specific jurisdiction over the defendants.²² This was because the accident occurred in France and the faulty tire giving rise to the accident was manufactured in Turkey.²³ In sum, the defendants lacked the relevant contacts with North Carolina to make them amenable to suit on the basis of specific jurisdiction.²⁴ The appellate court found, however, that the foreign subsidiaries' contacts with North Carolina rendered the defendants amenable to suit on the basis of general jurisdiction.²⁵ The court based its holding on a "stream of commerce" theory, reasoning that the quantum of the defendants' tires that reached North Carolina's markets was sufficient to establish general jurisdiction.²⁶ After the North Carolina Supreme Court denied the defendants' appeal, the United States Supreme Court granted certiorari in the summer of 2011.²⁷

Corporate entities like Goodyear USA's subsidiaries, while incorporated in one state, are technically "present" in numerous states.

14. Michael H. Hoffheimer, *General Personal Jurisdiction After Goodyear Dunlop Tires Operations, S.A. v. Brown*, 60 U. KAN. L. REV. 549, 551–52 (2012).

15. *Goodyear*, 131 S. Ct. at 2851.

16. *Id.*

17. *Id.*

18. *Id.* at 2851–52.

19. *Id.*

20. *Id.* at 2852.

21. *Id.*

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

23. *Id.*

24. *Id.*

25. *Id.* at 395.

26. *Id.*

27. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011).

Recognizing the legal fiction of the corporate entity,²⁸ *International Shoe* expanded territorial notions of sovereignty and personal jurisdiction by adopting the following minimum contacts standard:

[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’²⁹

The holding expanded personal jurisdiction by considering a foreign corporation’s contacts with the forum state—as opposed to *physical* presence—as the relevant inquiry for asserting personal jurisdiction.³⁰ The Court determined that a foreign defendant could be considered “present” in the state where the defendant’s activities had been “continuous and systematic” and those activities had “give[n] rise to the liabilities sued on.”³¹ Additionally, the Court recognized an alternate basis for jurisdiction where a foreign defendant’s contacts were “continuous,” “substantial[,] and of such a nature as to justify suit against it” on an *unrelated* claim.³²

In an effort to label *International Shoe*’s revised bases for asserting personal jurisdiction, Professors Arthur von Mehren and Donald Trautman coined the terms “general jurisdiction” and “specific jurisdiction” in 1966.³³ Although not phrased as such, *International Shoe* recognized this distinction when Chief Justice Harlan Fiske Stone differentiated between activities that had “give[n] rise to the liabilities sued on,”³⁴ and activities that were “continuous,” “substantial,” and of “such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.”³⁵ Today, the former category is regarded as specific jurisdiction, while the latter category is regarded as general jurisdiction.³⁶

28. Rhodes, *Nineteenth Century Personal Jurisdiction*, *supra* note 7, at 393.

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

30. The Court noted “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.” As such, physical presence was no longer the only factor in establishing personal jurisdiction over a foreign defendant. Instead, presence would be determined by analyzing a foreign defendant’s contacts with the state. *Id.* at 316–17.

31. *Id.*

32. *Id.* at 318 (stating that courts have justified adjudicating a claim when “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”).

33. Von Mehren & Trautman, *supra* note 7, at 1136.

34. *Int’l Shoe*, 326 U.S. at 317.

35. *Id.* at 318.

36. While the decision of *International Shoe* created two distinct bases for asserting personal jurisdiction, Mary Twitchell has argued that the decision actually minimized the role of general

After the Supreme Court adopted the minimum contacts standard, the development of specific jurisdiction far outpaced that of general jurisdiction.³⁷ Until recently, the Court had only addressed the issue of general jurisdiction in *Perkins* and *Helicopteros*.³⁸ Notably, *Perkins* is the only post-*International Shoe* case that established the requisite contacts necessary for applying general jurisdiction.³⁹ In that case, the defendant, Benguet Consolidated Mining Company, was initially located in the Philippines, but the Japanese occupation of the islands forced the company's president to evacuate and move to his home state of Ohio.⁴⁰ While in Ohio, the president maintained an office where he conducted all of the company's affairs for the duration of the war.⁴¹ Specifically, the defendant

carried on there correspondence relating to the business of the company and to its employees. He drew and distributed . . . salary checks on behalf of the company He used and maintained . . . two active bank accounts carrying substantial balances of company funds.⁴²

The Court held that these contacts, taken together, were continuous and substantial enough to justify suit against the company on causes of action arising from dealings entirely distinct from its contacts with the forum state.⁴³

Thirty-two years later, the Supreme Court revisited general jurisdiction in *Helicopteros*.⁴⁴ In that case, a Columbian corporation, Helicol, provided transportation for oil and construction companies in South America.⁴⁵ One

jurisdiction. Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 625 (1988). Instead of providing an equal and distinct basis for jurisdiction, the category of general jurisdiction was actually intended "as a secondary basis for jurisdiction, important primarily when the cause of action did not arise from [the] defendant's forum activities." *Id.*

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

38. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415–16 (1984) ("We thus must explore the nature of Helicol's contacts with the [forum] to determine whether they constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*."); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 438 (1952). See also Charles W. "Rocky" Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 836 (2004) [hereinafter Rhodes, *Clarifying General Jurisdiction*].

39. *Goodyear*, 131 S. Ct. at 2854, 2857 (discussing the outcomes of *Perkins*, where general jurisdiction was appropriate, and *Helicopteros*, and stating that the contacts were insufficient to exercise personal jurisdiction, before ruling that the facts in the instant case were not sufficient to establish general jurisdiction).

40. *Perkins*, 342 U.S. at 447.

41. *Id.* at 447–48.

42. *Id.* at 448.

43. *Id.*

44. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 409 (1984).

45. *Id.*

of its helicopters crashed in Peru.⁴⁶ Among the passengers that died were four U.S. citizens.⁴⁷ The families brought an action against Helicol in Texas.⁴⁸ Because the families conceded that the facts did not support the application of specific jurisdiction, the Court relied on a general jurisdiction analysis in order to determine whether the foreign corporation was amenable to suit in Texas.⁴⁹

The Court's analysis of the facts focused on comparing Helicol's contacts with Texas to the contacts that Benguet Mining Company had with the state.⁵⁰ According to the Court, the contacts in *Perkins* were "continuous and systematic," whereas the contacts in *Helicopteros* were not.⁵¹ Helicol had received \$5 million in payments drawn from a Texas bank, travelled to Texas to negotiate a contract, purchased over \$4 million in equipment from a Texas company, and received employee training in Texas.⁵²

Each contact was discounted in turn. First, the Court refused to consider the \$5 million in payment as a relevant contact, because the payment arose from the unilateral activity of a Texas resident, and not from the company itself.⁵³ Second, the company's sole trip to Texas to negotiate a contract was neither continuous nor systematic.⁵⁴ Last, the mere purchase of equipment and training was not enough to warrant the imposition of general jurisdiction over the defendant.⁵⁵

Taken together, *Perkins* and *Helicopteros* stand for the proposition that general jurisdiction cannot rest solely on the quantitative aspect of a defendant's contacts with the forum.⁵⁶ Instead, the nature of the contacts should be considered as well, thus leading to a qualitative analysis.⁵⁷ Arguably, Helicol's contacts with Texas were quantitatively significant. However, unlike the defendant's contacts in *Perkins*, Helicol's contacts were qualitatively unsubstantial.

If we are to read the facts of each of these cases literally, they stand for the proposition that general jurisdiction may be asserted in circumstances where the defendant has essentially established his principal place of business within the forum. In such a case, the contacts are sufficiently substantial and of such a nature as to justify the defendant's amenability to

46. *Id.* at 410.

47. *Id.*

48. *See generally id.*

49. *Id.* at 415–16.

50. *Id.* at 416.

51. *Id.*

52. *Id.* at 410–11, 416.

53. *Id.* at 416–17.

54. *Id.* at 416.

55. *Id.* at 417.

56. Rhodes, *Clarifying General Jurisdiction*, *supra* note 38, at 816, 836.

57. *Id.* at 816.

suit for any cause of action. In contrast, mere purchases in the forum and trips to the forum related to those purchases are by their nature insufficient to grant general jurisdiction, no matter how substantial and continuous such contacts may be. The basic qualitative difference between *Perkins* and *Helicopteros* is that in *Perkins*, the out of state defendant was essentially conducting and directing its business from within the state, whereas in *Helicopteros*, the foreign defendant was conducting and directing its business outside the state.

The holdings of *Perkins* and *Helicopteros*, however, did not provide courts with a satisfactory theoretical framework for analyzing general jurisdiction as it arises in a myriad of distinct factual scenarios.⁵⁸ Neither *Perkins* nor *Helicopteros* established a justification for asserting general jurisdiction. Both opinions merely listed the defendant's contacts with each respective forum, deciding certain contacts warranted general jurisdiction, while others did not. There was never a discussion as to why the contacts in *Perkins* were stronger than those in *Helicopteros*. In fact, the analysis of *Helicopteros* consisted of an ad hoc comparison between the facts of that case and the facts in *Perkins*. As a result, lower courts have mirrored this factual comparison, zoning in on the "continuous and substantial" aspect of the *International Shoe* analysis, while failing to consider the decision's focus on the nature of those contacts.⁵⁹ Likewise, lower courts bolster their application of general jurisdiction over foreign defendants by analyzing the relationship of the defendant's contacts to the dispute.⁶⁰ General jurisdiction analysis, however, focuses solely on the defendant's relationship to the forum.⁶¹

In *Goodyear*, the Supreme Court was presented with the opportunity to revisit the holdings of *Perkins* and *Helicopteros*. Many believe that the unanimous decision in *Goodyear* indicates that the Court has tightened the reins on general jurisdiction. Justice Ruth Bader Ginsburg delivered the opinion of the Court, which framed the issue as whether North Carolina

58. *Id.* at 817; Patrick J. Borchers, *The Problem with General Jurisdiction*, 2001 U. CHI. LEGAL F. 119, 124–25 (2001).

59. *The Myth of General Jurisdiction* explains that:

Most courts simply list the defendant's contacts and conclude that they are, or are not, sufficient. What is not said is often more important than what is said. Not only do courts avoid analyzing in depth the nature and scope of a defendant's contacts or discussing the policies underlying general jurisdiction, but they also never ask the question that is crucial to a truly dispute-blind jurisdiction analysis: whether the defendant's contacts are such that the exercise of jurisdiction would be fair for most causes of action brought by the plaintiff.

Twitchell, *supra* note 36, at 637.

60. Rhodes, *Clarifying General Jurisdiction*, *supra* note 38, at 818.

61. *Id.* at 818–20; Twitchell, *supra* note 36, at 611–12.

could exercise general jurisdiction over Goodyear USA's foreign subsidiaries based on a stream of commerce theory.⁶²

The Court held that North Carolina's courts lacked both personal and general jurisdiction over the foreign subsidiaries.⁶³ Justice Ginsburg found that the defendants' connections with the state were too tenuous to support general jurisdiction.⁶⁴ The defendant-petitioners' relevant contacts (or lack of contacts) with North Carolina were listed as follows:

[P]etitioners are not registered to do business in North Carolina. They have no place of business, employees, or bank accounts in North Carolina. They do not design, manufacture, or advertise their products in North Carolina. And they do not solicit business in North Carolina or themselves sell or ship tires to North Carolina customers. Even so, a small percentage of petitioners' tires (tens of thousands out of tens of millions manufactured between 2004 and 2007) were distributed within North Carolina by other Goodyear USA affiliates.⁶⁵

After listing petitioners' weak connections with the state, Justice Ginsburg proceeded to explicitly draw the line between specific and general jurisdiction.⁶⁶ As an illustration, the Court noted that the "the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is *fairly regarded as at home*."⁶⁷ The error of North Carolina's courts stemmed from their failure to recognize "the essential difference between case-specific and all-purpose (general) jurisdiction."⁶⁸ Importantly, the Court noted that the stream of commerce theory was only relevant in the context of specific jurisdiction.⁶⁹ While ties under a stream of commerce theory might "bolster" the exercise of specific jurisdiction, those ties "do not warrant "a determination that . . . the forum has *general* jurisdiction over the defendant."⁷⁰ The Court concluded its analysis by comparing the petitioners' contacts with the petitioners in *Perkins* and *Helicopteros*.⁷¹ Justice Ginsburg described the facts in *Perkins* as "[t]he

62. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2850 (2011) ("Are foreign subsidiaries of a United States parent corporation amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State?").

63. *Id.* at 2851.

64. *Id.*

65. *Id.* at 2852.

66. *Id.*

67. *Id.* at 2853–54 (emphasis added).

68. *Id.* at 2855.

69. *Id.*

70. *Id.*

71. *Id.* at 2856–57.

textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum.”⁷²

By contrast, the facts in *Goodyear*—even more so than those in *Helicopteros*—clearly demonstrate that the defendants had only a tenuous connection with the forum. As such, the Court’s holding came as no surprise. However, the Court chose to go one step further: it refined *International Shoe*’s analysis for general jurisdiction by emphasizing the notion of the “home” base.⁷³ The Court rejected North Carolina’s reasoning that doing “some quantum of business” within the forum would in and of itself warrant the court’s exercise of general jurisdiction.⁷⁴ Rather, it found that general jurisdiction should be limited to situations where the foreign defendant conducts intrastate operations that “are directed, controlled, and coordinated within the state.”⁷⁵

While the result was correct, the Court’s decision fell short in its attempt to rein in the liberal application of general personal jurisdiction. First, the Court detailed *what* types of contacts are sufficient to assert general jurisdiction, but it failed to state *why* those contacts are critical in light of the minimum contacts test set forth in *International Shoe*.⁷⁶ Stated another way, the Court missed an opportunity to provide any justification in either policy or theory for the proper assertion of general jurisdiction.⁷⁷ Is the requirement that the nature of a defendant’s contacts be such that it is regarded as “essentially at home” rooted in ideas of reciprocal benefits,⁷⁸ foreseeability,⁷⁹ convenience to the defendant,⁸⁰ state sovereignty,⁸¹ or

72. *Id.* at 2856 (quoting *Donahue v. Far E. Air Transp. Corp.*, 652 F.2d 1032, 1037 (D.C. Cir. 1981)).

73. *Goodyear*, 131 S. Ct. at 2853–54 (“For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as *at home*.”) (emphasis added); *id.* at 2851 (“A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially *at home* in the forum State.”) (emphasis added); *id.* at 2857 (“Unlike the defendant in *Perkins*, whose sole wartime business activity was conducted in Ohio, petitioners are in no sense *at home* in North Carolina.”) (emphasis added).

74. Rhodes, *Nineteenth Century Personal Jurisdiction*, *supra* note 7, at 430.

75. *Id.*

76. Hoffheimer, *supra* note 14, at 594–95.

77. See generally Lea Brilmayer & Matthew Smith, *The (Theoretical) Future of Personal Jurisdiction: Issues Left Open by Goodyear Dunlop Tires v. Brown and J. McIntyre Machinery v. Nicastro*, 63 S.C. L. REV., 617, 618–20 (2012) (discussing the absence of any political or theoretical analysis in *Goodyear* and *Nicastro*, along with “collateral issues about the meaning and consequences of state sovereignty”—including causality, symmetry, and international due process).

78. Brilmayer et al., *A General Look*, *supra* note 11, at 732.

79. See, e.g., *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) (noting that “the defendant’s ability to anticipate suit renders the assertion of jurisdiction fair. In this way, the opinion made foreseeability the touchstone of jurisdiction.”) *But see* Brilmayer et al., *A General Look*, *supra* note 11, at 766 (noting that since *International Shoe*, the test for general jurisdiction is more than simple foreseeability, it is a holistic look at fairness).

predictability of a definite forum?⁸² Instead of providing a theoretical basis for general personal jurisdiction, the Court's decision was guided by a "comparative evaluation of corporate activity,"⁸³ discussing the facts in *Perkins* and *Helicopteros* as compared to those in *Goodyear*.⁸⁴ The natural consequence of this gap in the Court's analysis is that the significance of its refined emphasis on the "home" base will be subsumed by the tendency of lower courts to engage in an arbitrary comparative factual analysis.⁸⁵

In addition to the Court's failure to provide any theoretical guidance, the decision also failed to provide a clear analytical framework for the application of general jurisdiction. The decision can easily be interpreted as adopting both a broad and narrow interpretation of the reach of general jurisdiction. Some scholars have suggested that the case can be limited to the rule that foreign manufacturers who sell their products in a state through intermediaries do not have sufficient contacts to warrant the application of general jurisdiction⁸⁶—or that a stream of commerce theory will not support the application of general jurisdiction.⁸⁷ Read in this light, lower courts can—and some already have⁸⁸—limit *Goodyear* to its facts. For example, in *J.B. ex rel. Benjamin v. Abbott Laboratories Inc.*,⁸⁹ the Northern District of Illinois rejected the defendant's contention that *Goodyear* changed the standard for asserting general jurisdiction, stating: "the Supreme Court did not replace or redefine the well-established standard for establishing general jurisdiction."⁹⁰ The court went on to find general jurisdiction where the defendant "maintained regular, continuous

80. Brilmayer et al., *A General Look*, *supra* note 11, at 730.

81. *Id.* at 731.

82. Von Mehren & Trautman, *supra* note 7, at 1137.

83. Hoffheimer, *supra* note 14, at 551.

84. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2857 (2011).

85. See Twitchell, *supra* note 36, at 636–37, for a discussion on the confusion of lower court opinions regarding general personal jurisdiction:

The melange of pre- and post-*International Shoe* formulas used to justify exercises of general jurisdiction reveals that courts have not developed a coherent view of the kind of analysis needed in this area. . . . The absence of policy analysis in cases that purport to find general jurisdiction suggests that courts are unsure about what policies support this exercise of jurisdiction. . . . [M]ost courts simply list the defendant's contacts and conclude that they are, or are not, sufficient.

Id.; see also Rhodes, *Clarifying General Jurisdiction*, *supra* note 38, at 817 ("The Supreme Court's decisions have also not articulated any type of theoretical approach underlying general jurisdiction, instead merely employing an ad hoc comparative analysis to prior precedent.").

86. Hoffheimer, *supra* note 14, at 551.

87. *Goodyear Dunlop*, 131 S. Ct. at 2855.

88. For a discussion of two recent decisions narrowly interpreting *Goodyear*, see Hoffheimer, *supra* note 14, at 600 n.286.

89. 12-CV-385, 2013 WL 452807 (N.D. Ill. Feb. 6, 2013).

90. *Id.* at *3.

business contacts in the Southern District. By soliciting business, selling and marketing products, and employing a sales team in the Southern District, [the defendant] could reasonably anticipate being haled into the District.”⁹¹ Absent from the decision was any reference to Justice Ginsburg’s notion of “at home.”

On the other hand, *Goodyear* can be read broadly, as adopting a theory that general jurisdiction should only be asserted against a foreign corporate defendant if the forum is either its place of incorporation or its principal place of business.⁹² Lower courts might support this broad reading by referencing Justice Ginsburg’s characterization of *Perkins* as the “paradigm” case,⁹³ and her reference to only three examples where general jurisdiction is appropriately exercised—an individual’s domicile and a corporation’s principal place of business or its place of incorporation.⁹⁴ Importantly, these divergent interpretations reveal that the “at home” language adopted by the Court fails to provide a meaningful framework for analyzing cases concerning the application of general personal jurisdiction.

The Court’s adoption of the “essentially at home” standard does nothing to clarify what has up until now been the misapplication of general jurisdiction.⁹⁵ The Court’s failure to provide a theoretical justification for general personal jurisdiction leaves the door open to future confusion as to the significance and, more importantly, what it means to be “essentially at home.” Additionally, the opinion’s lack of a coherent analytical framework encourages divergent holdings on cases presenting identical facts. *Goodyear* presented the court with the opportunity to resolve many issues that have plagued lower courts in their consideration of general

91. *Id.*

92. Hoffheimer, *supra* note 14, at 585; *Goodyear*, 131 S. Ct. at 2853.

93. *Goodyear*, 131 S. Ct. at 2853–54 (stating that the paradigm forum for an individual is that individual’s domicile and that for a corporation the paradigm forum would be one where the corporation is “fairly regarded as home”). Justice Sandra Day O’Connor referenced Professor Brilmayer’s article, which identified the place of incorporation and the principal place of business as appropriate forums for the exercise of general jurisdiction. *Id.* (citing Brilmayer et al., *A General Look*, *supra* note 11, at 728).

94. *Goodyear*, 131 S. Ct. at 2853–54.

95. In Florida alone, there are several examples of lower court decisions that have misapplied the assertion of general jurisdiction. See *Woods v. Nova Companies Belize Ltd*, 739 So. 2d 617, 619 (Fla. 4th DCA 1999) (applying general jurisdiction over a foreign defendant based on the cumulation of the defendant’s contacts in Florida *relating* to the cause of action); *May v. Needham*, 820 So. 2d 430, 431 (Fla. 4th DCA 2002) (asserting general jurisdiction over a foreign defendant based on defendant’s sales to a Florida corporation, travel to Florida, and use of a Florida address); *Bridgestone/Firestone, Inc. v. Herron*, 828 So. 2d 414, 415-16 (Fla. 1st DCA 2002) (holding general jurisdiction applied to a foreign defendant who was not incorporated in Florida and did not have its principal place of business in Florida based on the quantity of sales, advertisements, and business directed at Florida.); *Northwestern Aircraft Capital v. Stewart*, 842 So. 2d 190, 192 (Fla. 5th DCA 2003) (upholding the lower court’s assertion of general jurisdiction based solely on the defendant’s purchases of jets in Florida; transportation of Florida residents into and out of the state; and maintenance of its jets within the state).

jurisdiction. The broad, ambiguous language of the case will surely present more issues in years to come.