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Supreme Court of the United States

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

v.

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

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

PETITION FOR A WRIT OF CERTIORARI

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JULY 13, 2010

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QUESTION PRESENTED

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

PARTIES TO THE PROCEEDING

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

CORPORATE DISCLOSURE STATEMENT

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

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

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The opinion of the North Carolina Court of Appeals (Pet. App. 1a-29a) is reported at 681 S.E.2d 382. The North Carolina Superior Court's opinion (Pet. App. 30a-36a) is unreported. The North Carolina Supreme Court's denial of discretionary review (Pet. App. 37a-38a) is reported at 364 N.C. 128, and is available at 2010 WL 1643255.

JURISDICTION

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

CONSTITUTIONAL PROVISION INVOLVED

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

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

U.S. Const. amend. XIV, § 1, cl. 2.

INTRODUCTION

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

need of resolution by this Court—whether a foreign corporation becomes subject to general personal jurisdiction in a state's courts, on causes of action not arising out of or related to any contacts between it and the forum state, merely because other entities distribute in the forum state products placed in the "stream of commerce" by the defendant. In this case, claims arising out of a bus accident in France were asserted against French, Luxembourgian, and Turkish corporations in North Carolina state court. Citing North Carolina's "interest in providing a forum" for North Carolina plaintiffs, the court below erroneously held—contrary to the precedents of the multiple federal courts of appeals and state supreme courts that have addressed the issue—that mere placement in the stream of commerce of products ultimately distributed by others in North Carolina was sufficient to support general jurisdiction in North Carolina over any and all claims against these foreign defendants.

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

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

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

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

STATEMENT

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

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

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

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

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

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

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

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

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

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

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

The Court of Appeals nonetheless upheld the exercise of general personal jurisdiction over Petitioners, holding that the key "question . . . is whether [Petitioners] have purposefully injected their products into the stream of commerce without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina." *Id.* at 20a (internal quotation marks and alterations omitted). Here, Petitioners "knew or should have known that a Goodyear affiliate obtained tires manufactured by [Petitioners] and sold them in the United States in the regular course of business"; "several thousand tires manufactured by each of the [Petitioners] eventually found their way into North Carolina markets" in this fashion; and North Carolina had a "well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained." *Id.* at 27a. On this reasoning, the court expressly rejected Petitioners' argument "that 'stream of commerce' analysis simply does not apply in instances involving general, as compared to specific, jurisdiction." *Id.* at 28a. It chose not to address the federal authority cited by Petitioners, observing only that Petitioners "have not cited a North Carolina case" rejecting placement of products in the stream of commerce as a basis for general jurisdiction. *Id.*

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

North Carolina Supreme Court denied review without opinion.

REASONS FOR GRANTING THE WRIT

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

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

This Court's cases addressing due process limits on personal jurisdiction draw a distinction between "specific jurisdiction" and "general jurisdiction." "Specific jurisdiction" is the exercise of "jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum," whereas "general jurisdiction" permits jurisdiction over a defendant on any and all claims, even those "not arising out of or related to the defendant's contacts with the forum." *Helicopteros*, 466 U.S. at 414-15 nn.8-9. General jurisdiction over a corporation applies when "the continuous corporate operations within a state" are "so substantial and of such a nature as to justify suit against it on causes of action

arising from dealings entirely distinct from those activities." *Int'l Shoe Co.*, 326 U.S. 310 at 318.

This is a general jurisdiction case, because the "dispute is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina." Pet. App. 12a. The court below held that North Carolina could properly assert general jurisdiction over Petitioners—notwithstanding Petitioners' lack of presence in North Carolina and the absence of any "evidence that [Petitioners] took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina," *id.* at 22a—because Petitioners "purposefully injected their product into the stream of commerce without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina." *Id.* at 29a.

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

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

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

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

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

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

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

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

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

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

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

1. Because general jurisdiction permits a state to assert authority even over claims that have no relationship to the forum, its application is strictly limited. As this Court stated in *International Shoe* in describing this form of jurisdiction, the defendant's connection to the state must be "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U.S. at 318. Only certain types of relationships between the defendant and a state—typically involving, at a minimum, the defendant's actual presence or its equivalent—can give the state legitimate authority over *all* of a defendant's activities, regardless of where they occur. Thus, as Professor Brilmayer has explained, "general jurisdiction depends on the fairness of regulating the activities of *insiders*, regardless of where the activities occur," and accordingly "the paradigm bases for general adjudicative jurisdiction" are "domicile,

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

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

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

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

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

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

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

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

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

> Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if

> its allegedly defective merchandise *has there been the source of injury* to its owner or to others.

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

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

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

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

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

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

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

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

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

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

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

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

This Court in *Asahi* recognized the important foreign relations consequences of aggressive assertions of jurisdiction over foreign corporations, emphasizing that United States "foreign relations policies, will be best served by . . . an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." 480 U.S. at 115. Permitting the assertion of general jurisdiction over foreign defendants based upon their mere placement of products in the stream of commerce goes well beyond even prior "exorbitant assertions of judicial jurisdiction" by United States courts, and directly

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

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

CONCLUSION

The petition should be granted.

Respectfully submitted,

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