No. 10-76

In the Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA, ET AL.,

Petitioners,

v.

EDGAR D. BROWN, ET AL.,

Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF THE *AMICUS CURIAE*[1]

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit corporation with 100 corporate members representing a broad cross-section of American industry. Its corporate members include manufacturers and sellers of a wide array of products, including automobiles, aircraft, electronics, chemicals, pesticides, pharmaceuticals, and medical devices. A list of PLAC's current corporate membership is included in an appendix to this brief.

PLAC's primary purpose is to file *amicus curiae* briefs in cases raising issues that affect the development of product liability litigation and have potential impact on PLAC's members. This is such a case. PLAC's members are frequently named as defendants in lawsuits involving products distributed in interstate and international commerce, as well as in other types of litigation in which courts attempt to assert the potent form of adjudicative jurisdiction known as "general" jurisdiction. Accordingly, PLAC's members have a vital interest in ensuring that state courts adhere to the traditional, strict limitations on general jurisdiction that have been developed in this

[1] The parties' blanket letters of consent to the filing of *amicus* briefs have been filed with the Clerk. Under S. Ct. Rule 37.6, *amicus curiae* states that no counsel for a party has authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than the *amicus curiae*, its members, or its counsel, has made a monetary contribution to this brief's preparation or submission.

Court's decisions and applied by the lower federal and state courts for decades, but that were disregarded by the North Carolina courts in this case.

STATEMENT

A. The Fundamental Distinction Between General And Specific Jurisdiction

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid judgment against a nonresident defendant. *Kulko* v. *Superior Court of California*, 436 U.S. 84, 91 (1978); *Pennoyer* v. *Neff*, 95 U.S. 714, 732-33 (1878). A state court may exercise *in personam* jurisdiction over a nonresident only if the defendant has "certain minimum contacts" with the forum "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (internal quotations omitted). This requirement of minimum contacts ensures that a defendant has "fair warning" that a decision to engage in particular activities may subject it to the jurisdiction of a foreign sovereign. *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985).

The nature and number of contacts that give rise to such fair warning hinge on a crucial distinction reflected in this Court's cases: whether the state court is exercising specific or general jurisdiction. See *id.* at 472-73. When the cause of action does not arise out of or relate to the defendant's activities in the forum, those forum activities must be sufficiently "continuous and systematic" as well as "substantial" to make the assertion of *in personam* jurisdiction reasonable. *Perkins* v. *Benguet Consolidated Mining*

Co., 342 U.S. 437, 445-46 (1952). This Court has distinguished such "general" jurisdiction from "specific" jurisdiction, which requires a much lesser showing of forum contacts by the defendant but may be asserted only if the plaintiff's claims "arise out of or relate to" those contacts. *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 & nn.8-9 (1984).

Although this Court did not expressly adopt the terms "general" and "specific" jurisdiction until its decision in *Helicopteros*, the distinction can be traced back to the origins of the minimum contacts test in *International Shoe*. There, the Court explained that a state's assertion of personal jurisdiction over a foreign corporation most readily comports with due process where the defendant's forum activities "give rise to the liabilities sued on." *International Shoe*, 326 U.S. at 317. The Court also recognized, however, other cases where the "*continuous corporate operations within a state* were thought [to be] *so substantial and of such a nature* as to justify suit against [the foreign corporation] on causes of action arising from dealings entirely distinct from those activities." *Id.* at 318 (emphasis added).

Since *International Shoe*, this Court has reinforced the strict demarcation between specific and general jurisdiction—and the more stringent due process requirements that attend the latter. See *Burnham* v. *Superior Court of California*, 495 U.S. 604, 610, 618 (1990) (plurality opinion); *Burger King*, 471 U.S. at 472-73 & n.15; *Helicopteros*, 466 U.S. at 415; *Calder* v. *Jones*, 465 U.S. 783, 786-88 (1984); *Perkins*, 342 U.S. at 446-48. As a leading commentator has noted, the "general-specific jurisdiction distinction" is "extremely significant"

because of the far-reaching consequences for a defendant that attend the exercise of general jurisdiction. 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 1067.5, at 507 (3d ed. 2002). If a state court has general jurisdiction over a product manufacturer or other defendant, the court may compel the defendant to appear and defend against litigation that has *nothing to do* with the forum—including lawsuits initiated by plaintiffs with no connection to the forum that involve disputes over business activities of the defendant occurring halfway around the world.

B. The Exacting Standards Of General Jurisdiction

In *International Shoe*, this Court indicated that the standards governing general jurisdiction are demanding, requiring "*continuous* corporate operations *within* a state" that are "*substantial*" in nature. 326 U.S. at 318 (emphasis added). Subsequently, in *Perkins*, this Court reiterated these stringent requirements. See 342 U.S. at 447, 448 (forum activities must be "continuous and systematic" as well as "sufficiently substantial"). Those exacting standards were satisfied in *Perkins* only because the corporation's activities were so extensive that they rendered Ohio "the corporation's principal, if temporary, place of business." *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984). See also pages 16-17, *infra* (discussing *Perkins*). In *Helicopteros*, by contrast, the defendant corporation lacked the requisite substantial, continuous, and systematic activities in Texas, despite having engaged in numerous forum-related activities. See also pages 17-18, *infra* (discussing *Helicopteros*).

Taking their cue from this Court's decisions, the lower courts have long "evinced a reluctance to assert general jurisdiction over nonresident . . . foreign corporations even when the contacts with the forum State are quite extensive." 16 J. MOORE, MOORE'S FEDERAL PRACTICE § 108.41[3] (3d ed. 2003).

C. The Genesis Of The Stream Of Commerce Theory Of Specific Jurisdiction

Just as this Court has consistently distinguished specific from general jurisdiction, it has repeatedly suggested that the stream of commerce theory provides a basis for *specific* jurisdiction only. The stream of commerce theory was first discussed in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), which held that the Oklahoma courts could not exercise jurisdiction over a nonresident auto retailer and a regional distributor serving retailers in New York, New Jersey, and Connecticut, based on the fact that an automobile sold by the retailer in New York to New York residents was later driven to Oklahoma (where it was involved in an accident). Although neither the foreign manufacturer (Audi) nor its U.S. importer (Volkswagen) was contesting personal jurisdiction, the Court nevertheless observed:

> [I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen 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 owners or to others. The forum State does not

> exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

444 U.S. at 297-98 (emphasis added).

In its very first articulation of the stream of commerce theory, then, this Court limited that theory to claims arising from the defendant's forum contacts. In *Burger King* the Court reaffirmed that limitation, explaining that due process permits "personal jurisdiction over a corporation that delivers its product into the stream of commerce with the expectation that they will be purchased by consumers in the forum State *and those products subsequently injure forum consumers*." *Burger King*, 471 U.S. at 473 (emphasis added) (internal quotations omitted).

In *Asahi Metal Industry Co.* v. *Superior Court of California*, 480 U.S. 102 (1987), the Court split 4-4 on whether the mere placement of a product into the stream of commerce, without more, can serve as the basis for *in personam* jurisdiction. Consistent with this Court's statements in *World-Wide Volkswagen* and *Burger King*, *Asahi* was a specific jurisdiction case involving injuries sustained in the forum. Nothing in either Justice O'Connor's or Justice Brennan's opinion signaled a retreat from this Court's prior suggestions that the stream of commerce theory, where applicable, was a theory of specific jurisdiction.

D. The Proceedings Below

This case arises out of a tragic bus accident that occurred near Paris, France on April 18, 2004. Two

North Carolina teenagers died as a result of injuries sustained in the accident, which allegedly was caused by a faulty tire. The decedents' estates (respondents here) filed suit in North Carolina state court against various defendants, including three foreign tire manufacturers: Goodyear Luxembourg Tires, SA, Goodyear Lastikleri T.A.S. (a Turkish company), and Goodyear Dunlop Tires France, SA. Respondents claimed that these three foreign companies (petitioners here) designed, manufactured, and sold the allegedly defective tire that caused the accident. See also Pet. Br. 2-4 (describing record evidence of petitioners' business operations and activities).

Petitioners moved to dismiss for lack of personal jurisdiction, arguing that they lacked the requisite minimum contacts with North Carolina because they had no presence in the state and the tire in question was manufactured in Turkey, sold and used in France, and involved in an accident in France. The trial court denied the motion, concluding that it possessed general jurisdiction over petitioners because other tires they manufactured (unrelated to the accident) were distributed in North Carolina by other Goodyear affiliates between 2004 and 2007. Pet. App. 32a-36a. The trial court emphasized, among other things, that petitioners "knew or should have known that 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; see also Pet. Br. 4-5. At various points in its decision, the trial court pointed to the activities of petitioners' corporate affiliates, including their parent company, the Goodyear Tire and Rubber Company ("Goodyear"), which "is based in the United

States," without explaining why the activities of these separate corporate entities were relevant to the exercise of general jurisdiction over petitioners.[2]

The North Carolina Court of Appeals affirmed. Pet. App. 1a-29a. At the outset, the court acknowledged that respondents' cause of action was unrelated to petitioners' contacts with North Carolina, and accordingly this case "involves general rather than specific jurisdiction." *Id.* at 12a-13a. The court went on, however, to conclude that the "higher threshold" for general jurisdiction can be satisfied if a defendant "delivers its products into the stream of commerce with the expectation that they will be purchased in the forum state." *Id.* at 13a-14a. (internal quotations omitted). The Court of Appeals then applied the stream of commerce theory and, on that basis, concluded that the trial court properly exercised general jurisdiction in this case.

In reaching that result, the Court of Appeals, unlike the trial court, focused on the activities of petitioners themselves as opposed to the conduct of their separate corporate affiliates. "The 'continuous and systematic contacts' required for the assertion of general personal jurisdiction," the Court of Appeals explained, "must result from the actions *by Defendant* rather than from mere happenstance or coincidence

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[2] See, *e.g.*, Pet. App. 34a (noting that petitioners were "subsidiaries of Goodyear in the United States and *as such* have additional, abundant ties to the United States) (emphasis added); *id.* at 33a (noting that petitioners "used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina"); *id.* at 35a (citing the "ownership" of petitioners "by U.S. corporations doing substantial business in North Carolina" as a factor that "weighs in favor of a finding of general jurisdiction").

or the actions of others." Pet. App. 13a (emphasis added). Applying that principle, the Court of Appeals rejected the trial court's finding that petitioners had somehow "'caused' a certain number of tires to be shipped to North Carolina." *Id.* at 22a. The Court of Appeals explained:

> [T]he record appears to be devoid of evidence that [petitioners] took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina. On the contrary, the available evidence tends to show that *other entities* were responsible for the shipment of tires manufactured by [petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina. As a result, our analysis of the trial court's findings is informed by our understanding that [petitioners], *as separate corporate entities*, were *not* directly responsible for the presence in North Carolina of tires that they had manufactured.

Id. at 22a-23a (emphasis added). But cf. *id.* at 25a-26a (relying on the supposedly "continuous and systematic" distribution process "employed within the Goodyear organization").[3]

Despite acknowledging petitioners' ultimate lack of responsibility for "the presence in North Carolina of tires that they had manufactured" (Pet. App. 22a-23a), the Court of Appeals upheld general jurisdiction because: (1) several thousand tires "eventually found their way" into the state and petitioners made "no

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[3] The Court of Appeals also rejected as improperly classified the trial court's finding of "fact" that petitioners had continuous and systematic contacts with the forum. Pet. App. 22a.

attempt to keep these tires from reaching the North Carolina market," *id.* at 27a, 25a; and (2) those tires contained certain U.S. Department of Transportation markings and other information written in English, suggesting that the foreign manufacturers knew that the tires "could, if business conditions supported such a move, be sold in the United States," *id.* at 25a. The court also noted that North Carolina had an interest in the proceedings and that requiring respondents to litigate in French courts would impose a significant burden on them. *Id.* at 26a.

Based on these determinations, the Court of Appeals held that petitioners "purposefully and intentionally manufactured tires and placed them in the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina." Pet. App. 27a. Although petitioners argued that delivering goods into the stream of commerce cannot support a finding of general jurisdiction, the Court of Appeals rejected that argument as unsupported by North Carolina precedent (and declined to address the decisions in many other jurisdictions holding that general jurisdiction may *not* be exercised based on the stream of commerce theory). See *id.* at 28a; see also Pet. Br. 37. The Supreme Court of North Carolina denied review. Pet. App. 37a-38a.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question presented in this case is whether this Court should permit the eradication or blurring of one of the few bright-line rules in the field of personal jurisdiction: the crucial and time-tested distinction between general and specific jurisdiction.

By converting a particular theory of specific jurisdiction—the stream of commerce test—into a theory of general jurisdiction, the lower court blurred that critical distinction, which has stood fast for the past half century. This Court should take this opportunity to make clear what virtually all of the lower courts to face the issue have grasped: that the stream of commerce theory cannot serve as a basis for general jurisdiction. See Pet. Br. 37 (citing cases). Put simply, the mere act of placing a product into the stream of commerce can never constitute the substantial, continuous, and systematic activities within the forum that are required for the exercise of general jurisdiction. Nor is it sensible to read the Due Process Clause as permitting a state court to exercise the sweeping adjudicatory power of general jurisdiction over a nonresident defendant on the basis of such an insubstantial connection between the defendant and the forum state.

I. The longstanding distinction between general and specific jurisdiction stems from the fact that general jurisdiction remains firmly grounded in the defendant's substantial and continuous "presence" in the forum state tantamount to the state's serving as the defendant's home base. Thus, in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the only occasion on which this Court has upheld general jurisdiction over a corporation under the test set forth in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), the Court looked to the traditional indicia of corporate presence—local offices, facilities, employees, and operations—and concluded, based on those factors, that the defendant was sufficiently present in the forum state to warrant jurisdiction. In other words, the "continuous and

systematic" activities within the forum that are also "sufficiently substantial" in nature (*Perkins*, 342 U.S. at 447, 448) to support general jurisdiction are those that create a *bona fide* corporate home in the forum.

In contrast, specific jurisdiction can rest on more attenuated contacts that come nowhere near establishing such a corporate presence in the forum. Moreover, while the doctrine of specific jurisdiction has evolved in response to advances in technology and the changing nature of commerce, general jurisdiction has remained a Rock of Gibraltar, remarkably faithful to traditional American jurisdictional principles. That is due, in no small part, to the significant consequences that necessarily attach to general jurisdiction. If a state may exercise general jurisdiction over a foreign defendant, it can compel that individual or entity to appear and defend against all manner of claims that have nothing whatsoever to do with the state or with any forum activities.

This Court's consistent limitation of the stream of commerce theory to assertions of specific jurisdiction is hardly surprising. It reflects the fact that depositing a product into the stream of commerce somewhere outside the forum state, without more, can never constitute the corporate "presence" in that state necessary to sustain general jurisdiction. Such an act simply bears no resemblance—none—to "continuous corporate operations *within* a state" that are "substantial." *International Shoe*, 326 U.S. at 318 (emphasis added). Moreover, petitioners' actions in this case—selling products to third-party distributors with the knowledge that the products *could* ultimately find their way to the forum state—are not

nearly as substantial as those that this Court held were insufficient to support general jurisdiction in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984). The North Carolina Court of Appeals' assertion of general jurisdiction based on the stream of commerce theory therefore directly contradicts this Court's precedents and flouts traditional American jurisdictional principles. Nor can respondents defend the decision below by relying on the forum contacts not of petitioners themselves but of their separate and independent corporate affiliates.

II. The lower court's confusion about the relationship between general jurisdiction and the stream of commerce theory also ran afoul of the fundamental requirements of due process. This Court has explained that a state may not exercise jurisdiction over a defendant unless the defendant would, based on its contacts with the forum, reasonably expect to be haled into court there. That due process requirement is easier to satisfy with respect to specific jurisdiction: a potential defendant who purposefully directs products to forum residents may reasonably expect, under certain circumstances, to be subject to suit there in the event that *those products cause injury in the forum*. But a potential defendant does not expect to be haled into state court regarding activities *wholly unrelated* to its forum contacts unless those contacts are so substantial and continuous that the forum is the equivalent of the defendant's home state. By conflating the requirements of specific and general jurisdiction, then, the lower court's decision undermines the predictability and fairness that due process demands.

Failure in this case to reaffirm and apply the rigorous standards governing general jurisdiction will have far-reaching, negative consequences for U.S. companies. Other nations have already demonstrated a willingness to retaliate in response to overly expansive assertions of state court jurisdiction. If the lower court's decision is upheld, U.S. companies will undoubtedly face reciprocal treatment abroad, with the result that many will be haled into foreign courts and forced to answer for activities that have nothing to do with those distant countries and indeed may occur wholly in the United States. Strict adherence to this Court's general jurisdiction jurisprudence is therefore necessary to foster international comity, protect the interests of U.S. product manufacturers and other companies, and prevent state courts from impermissibly extending their territorial reach to encompass any and all corporate activities across the globe.

ARGUMENT

I. THIS COURT SHOULD REAFFIRM THE CRUCIAL DISTINCTION BETWEEN SPECIFIC AND GENERAL JURISDICTION AND MAKE CLEAR THAT THE STREAM OF COMMERCE THEORY CANNOT SUPPORT THE LATTER

A. The Concept Of General Jurisdiction Is Firmly Grounded In The Defendant's Substantial And Continuous "Presence" In The Forum State

Traditionally, *in personam* jurisdiction was grounded on the state court's "de facto power over the defendant's person." *International Shoe Co.* v.

Washington, 326 U.S. 310, 316 (1945). An individual's physical presence within a state's territory was thus a prerequisite to rendition of a binding judgment against that person. *Ibid.*; *Pennoyer* v. *Neff*, 95 U.S. 714, 733-34 (1878). Corporations, however, never fit comfortably within the *Pennoyer* paradigm because the corporation itself, as opposed to its property or agents, has no real physical presence within a state.

International Shoe responded to that lack of fit. The case also addressed the need to justify jurisdiction over corporations whose agents' actions within a state gave rise to legal claims even though the corporation was not incorporated or based there. As the Court observed, "[s]ince the corporate personality is a fiction . . . it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on its behalf by those who are authorized to act for it." *International Shoe*, 326 U.S. at 316 (internal citation omitted). The minimum contacts test enunciated in *International Shoe* was thus an effort to delineate what forum-related corporate activities would warrant jurisdiction over a foreign corporation when a claim arose from those activities: "'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on." *Id.* at 317. See also *Lesnick* v. *Hollingsworth & Vose Co.*, 35 F.3d 939, 942 (4th Cir. 1994) ("Even though the Court in *International Shoe* recognized for the first time an expanded state power to exercise jurisdiction over a person not physically 'present'

there, its holding was rooted in finding a suitable analogy for the 'presence' of the out-of-state party.").

General jurisdiction is therefore inextricably tied to a territorial framework and has, since *International Shoe*, remained firmly rooted in the traditional notion of a substantial corporate presence within the forum state approximating a home base. Indeed, in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984), the only occasions on which this Court has analyzed general jurisdiction over corporate defendants, the Court hewed closely to the traditional indicia of a substantial corporate presence as reflected in local offices, employees, and operations.

Perkins involved a suit in the Ohio courts by a shareholder of a mining concern organized under the laws of the Philippines. The company's mining operations were in the Philippines but had been "completely halted during the occupation of the Islands by the Japanese." 342 U.S. at 447. During that suspension, the company's president had returned to Ohio, where he "maintained an office," "kept the[] office files of the company," carried on "correspondence relating to the business . . . and to its employees," "drew and distributed" salary checks for himself and two secretaries "who worked there with him," "used and maintained" two active bank accounts "carrying substantial balances of company funds," used another bank as transfer agent for the company's stock, held several directors' meetings, "supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines," and "dispatched funds to cover purchases of machinery for

such rehabilitation"—effectively establishing, with all of this activity, a new corporate primary place of business. *Id*. at 447-48. Because those activities in Ohio amounted to the "continuous and systematic supervision of the necessarily limited wartime activities of the company," this Court concluded that they constituted a sufficient basis for the exercise of general jurisdiction. *Id*. at 448. See also *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984) (noting that in *Perkins* Ohio had become "the corporation's principal, if temporary, place of business").

By contrast, in *Helicopteros*, the Court reversed a decision of the Texas Supreme Court that had upheld the exercise of general jurisdiction over a Colombian corporation with its principal place of business in Bogota. The defendant, which provided helicopter transportation for oil and construction companies in South America, was sued after a helicopter it owned crashed in Peru, killing four U.S. citizens. This Court rejected the argument that Texas could assert general jurisdiction, even though the defendant purchased most of its helicopters, spare parts, and equipment (together worth more than $4 million) from a company located in Texas, sent its CEO to Texas for a contract-negotiation session, sent other personnel to Texas for training, and accepted into its New York bank account checks drawn on a Texas bank. *Helicopteros*, 466 U.S. at 410-11, 416-19. Even such extensive contacts with Texas, the Court explained, did not "constitute the kind of continuous and systematic general business contacts" necessary to support general jurisdiction. *Id.* at 416. In reaching that conclusion, the Court observed that the defendant lacked the traditional characteristics of

corporate presence in the forum such as offices, employees, operations, or property. *Id.* at 411-12.

Notably, the Court in *Helicopteros* also reaffirmed *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, 260 U.S. 516 (1923), a pre-*International Shoe* decision involving a corporate defendant. *Helicopteros*, 466 U.S. at 417-18 & n.12. That case addressed the question "whether, at the time of the service of process, defendant was doing business within the state of New York in such manner and to such extent as to warrant the inference that it was *present* there." *Rosenberg*, 260 U.S. at 517 (emphasis added). This Court concluded that the corporation's forum activities—consisting of purchases and related trips—were not a sufficient basis for the state's assertion of jurisdiction in light of the fact that the corporation lacked an established place of business in the forum and never regularly carried on business there. *Id.* at 518.

Perkins, *Helicopteros*, and *Rosenberg* thus confirm the requirement of traditional indicia of corporate presence as a prerequisite for the exercise of general jurisdiction. In other words, general jurisdiction may be exercised only where a defendant has effectively made the forum its "home"—either through incorporation under the state's laws or through very substantial and continuous business operations within the forum. Only if the corporation has truly made the forum its home may a state exercise the potent authority of general jurisdiction to compel a defendant to defend in the state's courts against litigation having no connection whatsoever to the forum. Lower courts have faithfully applied this well-settled framework, expressly requiring a

defendant's contacts to be "sufficiently extensive and pervasive to approximate physical presence" in order to justify general jurisdiction. *Tamburo* v. *Dworkin*, 601 F.3d 693, 701 (7th Cir. 2010); see also, *e.g.*, *Bancroft & Masters, Inc.* v. *Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

B. Unlike Specific Jurisdiction, Which Has Been Adapted To New Circumstances, General Jurisdiction Has Remained Constant And Faithful To Its Roots

One of the hallmarks of specific jurisdiction is that its contours have changed over time in response to the growing nationalization and internationalization of commerce. See, *e.g.*, *World-Wide Volkswagen*, 444 U.S. at 292-93; *Developments in the Law—State-Court Jurisdiction*, 73 HARV. L. REV. 911, 919 (1960) ("*Developments*") (noting with respect to *Pennoyer* era that "[a]s corporate transactions increasingly assumed a nation-wide character, it became necessary for the states to find some ground upon which jurisdiction could be asserted over foreign corporations"). For that reason, by 1960 the law had developed so that "[t]here [was] little doubt that a corporation [was] amenable to state jurisdiction in a tort action even though it has carried on only isolated or sporadic activity within the forum state, *so long as the alleged tort grew out of that activity*." *Id.* at 926 (emphasis added).

One example of such adaptability is this Court's endorsement of an "effects test" that permits the assertion of specific jurisdiction over claims arising out of certain types of *intentional* tortious acts by nonresident defendants, where those acts are specifically aimed at the forum and cause harm there.

See *Calder* v. *Jones*, 465 U.S. 783, 788-89 (1984) (libel action). Another example, of course, is the stream of commerce theory, which authorizes a state court under certain circumstances to assert jurisdiction in product liability actions over nonresident or foreign manufacturers whose products are sold into the forum and cause injuries there (provided there is sufficient evidence of the defendant's purposeful availment). See *Asahi Metal Industry Co.* v. *Superior Court of California*, 480 U.S. 102, 111-13 (1987) (plurality opinion of O'Connor, J.). Lower courts have authorized further expansions of the doctrine of specific jurisdiction—with the Ninth Circuit, for example, even going so far as to adopt a broad "but for" test for determining whether a plaintiff's claim arises out of or relates to a defendant's forum contacts. See *Shute* v. *Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991).

The test for general jurisdiction, however, has remained relatively static. According to the American Law Institute:

> A state has power to exercise judicial jurisdiction over a foreign corporation which does business in the state with respect to causes of action that do not arise from the business done in the state if this business is so continuous and substantial as to make it reasonable for the state to exercise such jurisdiction.

RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 47(2) (1971). The *Restatement* also notes—citing *Perkins*—that "[s]uch jurisdiction is particularly likely to exist in situations where the corporation's principal place of business is in the State." *Id.* § 47

cmt. e. As Professors von Mehren and Trautman explained in an influential article, general jurisdiction in the corporation's state of incorporation or "principal place of business" is the historic rule:

> From the beginning in American practice, general adjudicatory jurisdiction over corporations and other legal persons could be exercised by the community with which the legal person had its closest and most continuing legal and factual connections. The community that chartered the corporation and in which it has its head office occupies a position somewhat analogous to that of the community of a natural person's domicile and habitual residence. If a corporation's managerial and administrative center is in a state other than its state of incorporation, presumably general jurisdiction should exist in either community.

von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1141-42 (1966) (cited for the definitions of general and specific jurisdiction in *Helicopteros*, 466 U.S. at 414 n.8).

As a result of the increased nationalization and internationalization of commerce, it was inevitable that "specific jurisdiction [would] come into sharper relief and form a considerably more significant part of the scene." *Id.* at 1164. But because specific jurisdiction has already adapted to address these societal conditions, and because of the dramatic consequences that attach to general jurisdiction (permitting any claim to be asserted against the defendant, even if wholly unconnected to the defendant's forum contacts), courts understandably have been far more reluctant to expand the doctrine of general jurisdiction.

This Court has expressly recognized that it is only specific jurisdiction that has been broadened by *International Shoe*. In *Burnham* v. *Superior Court of California*, 495 U.S. 604 (1990), the plurality opinion acknowledged that the Court has approved the assertion of personal jurisdiction over absent defendants "in a manner that deviates from the rules of jurisdiction applied in the 19th century"—*i.e.*, in cases where the defendant's contacts with the forum bear little resemblance to "presence" in the literal sense. *Id.* at 610. That departure, the plurality noted, was necessitated by technological advances and the changing nature of commerce, which led to a relaxation of the strict limits on state jurisdiction. *Id.* at 617. Importantly, however, the Court has approved such deviations from "traditional notions" of jurisdiction *only* "with respect to suits arising out of the absent defendant's contacts with the State"—*i.e.*, with respect to *specific* jurisdiction. *Id.* at 609-10. The clear lesson is that general jurisdiction continues to require substantial, continuous, and systematic forum contacts akin to the significant physical presence in the forum required under "traditional notions" of personal jurisdiction.[4]

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[4] The serious mismatch between the stream of commerce theory and the doctrine of general jurisdiction is confirmed by the difference in *time frames* that apply to each jurisdictional inquiry. Whereas general jurisdiction requires a showing of forum activities that have been "continuous" during a reasonable time period leading up to the time the complaint is filed, see 4 C. WRIGHT & A. MILLER, *supra*, § 1067.5, at 520-21; *Harlow* v. *Children's Hosp.*, 432 F.3d 52, 64-65 (1st Cir 2005), the stream of commerce theory often hinges on the actions of a manufacturer in designing or manufacturing the injury-causing

C. The Lower Court Improperly Applied The Stream Of Commerce Test As A Means Of Establishing General Jurisdiction

The North Carolina Court of Appeals correctly recognized that it could assert general jurisdiction over petitioners only if their forum activities were "sufficiently continuous and systematic, a higher threshold than that required to support the exercise of specific jurisdiction." Pet. App. 13a (internal quotations and citation omitted). The court went astray, however, in concluding that this Court had found that standard satisfied "where a corporation 'delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.'" *Id.* at 14a (quoting *World-Wide Volkswagen*, 444 U.S. at 298). In so holding, the court departed sharply from the traditional notions of personal jurisdiction and collapsed the careful distinction this Court has repeatedly drawn between specific and general jurisdiction.

That fundamental error infected the lower court's entire decision. Because it imported a *specific* jurisdiction standard (the stream of commerce test) into the *general* jurisdiction inquiry, the court failed to squarely address the extent to which petitioners' activities in North Carolina were, in fact, continuous, substantial, and systematic—the touchstone of general jurisdiction. Instead, the court's sole legal conclusion regarding the minimum contacts requirement was that petitioners delivered products into the stream of commerce without limiting the

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product in the distant past, well outside the time period for evaluating general jurisdiction.

extent to which those products could be sold in North Carolina.

Depositing a product into the stream of commerce, however, cannot by itself constitute the corporate "presence" necessary to sustain general jurisdiction. That principle is well illustrated by the facts of this case. As the lower court acknowledged, petitioners were not even "directly responsible for the presence in North Carolina of tires that they had manufactured." Pet. App. 22a-23a. But merely because they knew that their products *could* legally be sold in the United States and because they failed to affirmatively *prevent* their products from entering the forum state, petitioners were deemed to have engaged in the substantial, continuous and systematic activities within North Carolina necessary to support general jurisdiction there.

Those actions (and inactions) are a far cry from the contacts found sufficient for general jurisdiction in *Perkins*, where the company's president literally set up shop in the forum state. Indeed, petitioners' activities are considerably less substantial than those rejected as a basis for general jurisdiction in *Helicopteros*, where the defendant corporation sent personnel into the forum state, purchased equipment in the forum state, and engaged in business negotiations in the forum state. If those significant contacts were insufficient in *Helicopteros*, it is difficult to see how petitioners' activities in this case could be enough to allow general jurisdiction to be exercised.

This Court has squarely rejected the notion that a seller's "amenability to suit would travel with [its] chattel." *World-Wide Volkswagen*, 444 U.S. at 296.

But that is precisely the reasoning of the lower court, which based general jurisdiction on the fact that some products manufactured by petitioners were distributed into the state by third parties. Cf. *Burger King*, 471 U.S. at 475 (jurisdiction cannot be based on the "unilateral activity of another party or a third person" but may only result from "actions by the defendant *himself* that create a substantial connection to the forum State") (internal quotations omitted). The lower court reached that conclusion even though petitioners' ownership interest in the products themselves ceased when petitioners sold those products to third parties. It would be anomalous, to say the least, to hold that a corporation is "present" in a state, and thus amenable to general jurisdiction there, simply because a chattel that it no longer owns ultimately found its way there. Cf. *Shaffer* v. *Heitner*, 433 U.S. 186, 208-09 (1977) (presence of property in forum cannot serve as basis for *quasi in rem* jurisdiction where property is unrelated to the cause of action). In short, the mere fact that *products* manufactured by a defendant are present in a state cannot convert an absent defendant into a present one.

That conclusion holds, moreover, irrespective of the number of products that are ultimately delivered to the forum. The "substantial" contacts sufficient to justify general jurisdiction differ in kind as well as in number from those that can justify specific jurisdiction—they must be "sufficiently substantial *and of such a nature*" (*Perkins*, 342 U.S. at 447 (emphasis added)) as to support the exercise of global authority over litigation naming the defendant. And depositing an item into the stream of commerce is qualitatively different from the activities that satisfy

that exacting standard—establishing local offices, employees, business operations, and the like. Thus, regardless of the volume of products at issue, the stream of commerce theory cannot possibly serve as a valid basis for general jurisdiction.[5]

D. Any Effort By Respondents To Rely On The Forum Contacts Of Third Parties, Including Corporate Affiliates Of Petitioners, Should Be Rejected

Given the paucity of contacts between petitioners and North Carolina, it is perhaps not surprising that, as noted above, the trial court relied substantially on the perceived forum contacts not of the petitioners themselves but of their corporate affiliates, including their indirect parent company, Goodyear Tire and Rubber Company. See page 8 & n.2, *supra*. Although it purported to disavow reliance on the contacts of these third parties, the Court of Appeals was not entirely successful in that effort. See pages 9-10, *supra*. If respondents attempt in this Court to justify the exercise of jurisdiction based on imputing or

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[5] The total number of tires manufactured by each of the three petitioners that found their way into North Carolina from 2004 to 2007, as well as the percentage of petitioners' total tire business represented by those numbers, was exceedingly small. The record showed that in the three-year period there were "at least" 6,402 tires made by Goodyear Luxembourg Tires, SA (out of a total manufacturing capacity of 7 million tires), 33,923 tires made by Goodyear Dunlop Tires France, SA (out of a capacity of 56.1 million tires), and 5,906 tires made by Goodyear Lastikleri T.A.S. (out of a capacity of 30.5 million tires). See Pet. App. 5a; Pet. 4-5 n.2. For Goodyear Lastikleri T.A.S., the Turkish company that manufactured the accident tire, this tiny trickle of tires into North Carolina each year represented only .000193 of its tire-manufacturing capacity.

attributing the forum contacts of corporate affiliates of petitioners (see Br. in Opp. 8, 10, 18), that argument should be rejected.

To begin with, the argument is squarely foreclosed by this Court's personal jurisdiction cases, which make clear that the requisite minimum contacts "must be met as to *each defendant* over whom a state court exercises jurisdiction." *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980) (emphasis added); see also *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) ("[e]ach defendant's contacts with the forum State must be assessed *individually*") (emphasis added); *Calder*, 465 U.S. at 790 (same). Applying these principles, the Court in *Rush* rejected the argument that jurisdiction over an individual defendant in an automobile accident case could be based solely on the forum contacts of his insurance company, explaining that such a result was "plainly unconstitutional." 444 U.S. at 332. Similarly, in *Keeton*, the Court held that "jurisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary." 465 U.S. at 781 n.13 (emphasis added). And in *Shaffer*, 433 U.S. at 213, the Court held that the presence of a corporation in Delaware did not justify jurisdiction over the corporation's officers and directors.

Nor is this all. In *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U.S. 333, 337 (1925), the Court held that the maintenance of corporate formalities—so long as "not pure fiction"—precluded a finding of jurisdiction over a foreign parent corporation based on its subsidiary's forum contacts. The plaintiff in *Cannon* initially sued a Maine corporation in North Carolina state court for breach of contract. Plaintiff

served a wholly owned subsidiary of the Maine corporation, which had an office in North Carolina and, notably, was "the instrumentality employed to market [the parent's] products within the state." *Id.* at 335. Although the parent was a large national enterprise that "dominate[d]" the subsidiary "*immediately and completely*," this Court refused to disregard the "corporate separation" so "carefully maintained" through the keeping of separate books and the observance of all corporate formalities. *Id.* at 335-36. "The corporate separation," this Court reasoned, "though perhaps merely formal, was real. *It was not pure fiction*." *Id.* at 337 (emphasis added). *Cannon* dooms any effort by respondents to rely on the forum contacts of petitioners' corporate affiliates.[6]

That result finds additional support in this Court's repeated recognition that "bedrock" principles of corporate law—including the stringent standards governing piercing of the corporate veil—are "deeply 'ingrained in our economic and legal systems.'" *United States* v. *Bestfoods*, 524 U.S. 51, 61-62 (1998) (quoting Douglas & Shanks, *Insulation from Liability Through Subsidiary Corporations*, 39 YALE L.J. 193, 193 (1929)). See also *Alpine View Co.* v. *Atlas Copco AB*, 205 F.3d 208, 218-19 (5th Cir. 2000) (applying veil-piercing principles in rejecting argument that

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[6] The lower courts have applied *Cannon* to claims that a parent company could be haled into a distant forum in which is does not do business based on the forum activities of a subsidiary or other affiliated company. See, *e.g.*, *Consolidated Dev. Corp.* v. *Sherritt, Inc.*, 216 F.3d 1286, 1293-94 (11th Cir. 2000) (applying *Cannon* rule); *I.A.M. Nat'l Pension Fund* v. *Wakefield Indus., Inc.*, 699 F.2d 1254, 1258-59 (D.C. Cir. 1983) ("the relationship of parent and subsidiary alone would not suffice" for "service on the parent [to] reach a foreign subsidiary") (citing *Cannon*).

corporation's forum contacts should be attributed to separate, affiliated corporation). "A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities." *Dole Foods Co.* v. *Patrickson*, 538 U.S. 468, 474 (2003). Certainly that principle was well established by the time this Court decided *International Shoe* in 1945. See, *e.g.*, *Berkey* v. *Third Ave. Ry. Co.*, 155 N.E. 58, 58 (N.Y. 1926) (Cardozo, J.) ("Stock ownership alone would be insufficient to charge the dominant company with liability for the torts of the subsidiary.").

In this case, of course, respondents never even *attempted* to demonstrate that petitioners' corporate affiliates, including their parent company, were anything other than entirely separate and independent corporations. The North Carolina Court of Appeals, moreover, specifically concluded that petitioners were "separate corporate entities" in relation to their corporate affiliates and that the evidence "show[ed] that other entities were responsible for the shipment of tires" into North Carolina. Pet. App. 22a. Under *Cannon* as well as traditional veil-piercing and "alter ego" doctrines, then, there is simply no basis for attributing to petitioners the forum contacts of any of their corporate affiliates.

II. THE EXACTING STANDARDS OF GENERAL JURISDICTION CREATE PREDICTABILITY AND AVOID ADVERSE CONSEQUENCES FOR SMALL BUSINESSES AND FOR AMERICAN COMPANIES THAT SERVE FOREIGN MARKETS

A. Relaxation Of The General Jurisdiction Standards To Embrace A Stream Of Commerce Theory Would Undermine The Predictability Required By Due Process

Due process prohibits a court from exercising personal jurisdiction over a defendant unless the "defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297. That proscription "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." *Ibid.*

This "fair warning" requirement can be satisfied by a minimal quantum of contacts in the specific jurisdiction context. That is because when a defendant purposefully delivers products to a state, it may reasonably expect to be subject to suit there based on injuries *those* products caused in the forum, assuming other requirements are satisfied. It can therefore take steps to "alleviate the risk of burdensome litigation" in the forum—for example, by purchasing insurance or passing costs on to forum consumers—and it is not unfair that it should have to do so. *Ibid.*

Reasonable forseeability in the general jurisdiction context, however, requires more. A defendant does not reasonably expect to be subject to state jurisdiction for activities unrelated to its contacts with the forum if it lacks a substantial presence there. In addition, placing a product into the stream of commerce with the knowledge that the product *could* ultimately end up in a state cannot reasonably put a manufacturer on notice that it may be sued in that state based on unrelated actions occurring halfway around the world.

By conflating specific and general jurisdiction, the lower court's rule precludes defendants from structuring their conduct with any minimal assurance as to where their conduct will and will not render them liable to suit. Under the decision below, there is nothing a potential defendant can do to minimize the risk of litigation in the forum; designing safer products, issuing clear warnings, or purchasing product liability insurance in North Carolina would have absolutely no bearing on the likelihood or costs of litigation concerning a labor dispute in China or a contract negotiation in Spain. Needless to say, the uncertainty and unpredictability caused by the North Carolina courts' approach will only be multiplied if the decision below is upheld, since the majority of states have long-arm statutes that extend as far as due process permits. See McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended the Limits of Due Process*, 84 B.U. L. REV. 491, 525-30 (2004) (30 of 50 states).[7]

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[7] Moreover, upholding general jurisdiction is unlikely to serve any conceivable interest of the forum state in such situations

B. Affirming The Judgment Below Would Harm Small Companies And All U.S. Companies That Serve Foreign Markets

Clear rules are a virtue in most areas of the law. They are especially important with respect to personal jurisdiction—a threshold question in many lawsuits that has "become one of the most litigated issues in state and federal courts." Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531, 531 & n.5 (1995) (more than 2,300 cases involving "minimum contacts" test in 1990-95). Against this backdrop, the distinction between general and specific jurisdiction stands out as one of the few fixed points of reference. Any blurring of that distinction would severely undermine the goals of predictability and fairness that the minimum contacts test was designed to promote—and which due process demands. The resulting uncertainty would negatively impact not just large multinational corporations, but also small companies—both foreign and domestic—which, in today's global economy, are increasingly likely to see their products wind up in places far removed from their corporate homes.

Any loosening of general jurisdiction's strict requirements is also likely to affect U.S. foreign relations and international trade—with negative consequences for U.S. companies. See *Asahi*, 480 U.S. at 115 (instructing courts to consider the "Federal interest in Government's foreign relations policies"). The international community has long lamented what it has regarded as lax U.S. rules

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where the litigation is unrelated to the defendant's forum activities.

regarding personal jurisdiction. See Twitchell, *Why We Keep Doing Business with Doing-Business Jurisdiction*, 2001 U. CHI. LEGAL F. 171, 173 (2001). If those rules are diluted further by an eradication of the bedrock distinction between specific and general jurisdiction, it is likely that other countries will retaliate by making it much easier for U.S. companies to be haled into foreign courts to answer for claims completely unrelated to activities in those countries. See Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 GA. J. INT'L & COMP. L. 1, 29 (1987) ("Because exorbitant assertions of judicial jurisdiction by United States courts may offend foreign sovereigns, these claims can provoke diplomatic protests, trigger commercial or judicial retaliation, and threaten friendly relations in unrelated fields.").

Indeed, many nations have enacted reciprocity measures specifically authorizing their courts to exercise jurisdiction over a foreign defendant if that defendant's home country would assert jurisdiction in the same situation. *Id.* at 15. The specter of such "retaliatory statutes"—and the possibility that more are in store if the general jurisdiction standard is weakened—is one more reason to heed this Court's admonition that "[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Asahi*, 480 U.S. at 115 (internal quotations omitted).[8] Caution

[8] Notably, the very same concern with foreign retaliation is reflected in this Court's cases involving the extraterritorial application of U.S. laws. See, *e.g.*, *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21 (1963) (noting that expansive application of U.S. law in foreign contexts could "invite retaliatory action from other nations").

is also warranted to avoid the negative economic ramifications that naturally flow from the North Carolina courts' approach to general jurisdiction. Faced with such an uncertain jurisdictional regime in the United States and reciprocal aggressive treatment abroad by foreign courts, some small product manufacturers would no doubt elect simply to withdraw from manufacturing altogether or attempt to stop serving markets where they simply cannot tolerate being subjected to general jurisdiction, with negative ramifications for commerce and the U.S. economy.

In our federal system it is axiomatic that a "state's jurisdictional power remains territorial." *Lesnick*, 35 F.3d at 943. By severing the connection between general jurisdiction and corporate "presence," the North Carolina Court of Appeals effectuated an astonishing extraterritorial expansion of the state's jurisdictional power. If permitted to stand, the lower court's decision will usher in a new world without borders, where every state's courts could effectively assert universal jurisdiction over absent defendants whose products are swept into the forum by the sometimes haphazard and unpredictable currents of the stream of commerce. The resulting prejudice would be especially great for companies, such as PLAC's members, that manufacture products and place them into the stream of commerce. This Court has never authorized such an extraordinary

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Those concerns are implicit in the longstanding presumption against extraterritorial application of U.S. laws—a presumption recently reaffirmed and indeed strengthened by this Court. See *Morrison* v. *National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010).

expansion of general jurisdiction. It should not do so here.[9]

CONCLUSION

For the foregoing reasons, the judgment of the North Carolina Court of Appeals should be reversed.

Respectfully submitted.

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November 18, 2010

[9] The Court of Appeals was also wrong (Pet. App. 26a) to rely on the burdens on respondents that supposedly would arise from having to sue in France. The burdens imposed on a *plaintiff* are germane to the separate question whether the exercise of personal jurisdiction comports with "fair play and substantial justice," not to the antecedent determination whether the *defendant* has minimum contacts with the forum state. See *Burger King*, 471 U.S. at 477.

APPENDIX

PRODUCT LIABILITY
ADVISORY COUNCIL, INC.
LIST OF CORPORATE MEMBERS

3M
Altec Industries
Altria Client Services Inc.
Anheuser-Busch Companies
Arai Helmet, Ltd.
Astec Industries
Bayer Corporation
Beretta U.S.A Corp.
BIC Corporation
Biro Manufacturing Company, Inc.
BMW of North America, LLC
Boeing Company
Bombardier Recreational Products
BP America Inc.
Bridgestone Americas Holding, Inc.
Brown-Forman Corporation
Caterpillar Inc.
Chrysler LLC
Continental Tire the Americas LLC
Cooper Tire and Rubber Company
Crown Equipment Corporation
Daimler Trucks North America LLC
The Dow Chemical Company
E.I. duPont de Nemours and Company
Eli Lilly and Company
Emerson Electric Co.
Engineered Controls International, Inc.
Environmental Solutions Group
Estee Lauder Companies
Exxon Mobil Corporation

Ford Motor Company
General Electric Company
General Motors Corporation
GlaxoSmithKline
The Goodyear Tire & Rubber Company
Great Dane Limited Partnership
Harley-Davidson Motor Company
Hawker Beechcraft Corporation
Honda North America, Inc.
Hyundai Motor America
Illinois Tool Works, Inc.
International Truck and Engine Corporation
Isuzu Motors America, Inc.
Jaguar Land Rover North America, LLC
Jarden Corporation
Johnson & Johnson
Johnson Controls, Inc.
Joy Global Inc., Joy Mining Machinery
Kawasaki Motors Corp., U.S.A.
Kia Motors America, Inc.
Kolcraft Enterprises, Inc.
Kraft Foods North America, Inc.
Leviton Manufacturing Co., Inc.
Lincoln Electric Company
Magna International Inc.
Marucci Sports, L.L.C.
Mazak Corporation
Mazda (North America), Inc.
Medtronic, Inc.
Merck & Co., Inc.
Michelin North America, Inc.
Microsoft Corporation
Mitsubishi Motors North America, Inc.
Mueller Water Products
Niro Inc.

Nissan North America, Inc.
Novartis Pharmaceuticals Corporation
PACCAR Inc.
Panasonic
Pella Corporation
Pfizer Inc.
Porsche Cars North America, Inc.
Purdue Pharma L.P.
Remington Arms Company, Inc.
RJ Reynolds Tobacco Company
Schindler Elevator Corporation
SCM Group USA Inc.
Segway Inc.
Shell Oil Company
The Sherwin-Williams Company
Smith & Nephew, Inc.
St. Jude Medical, Inc.
Stanley Black & Decker, Inc.
Subaru of America, Inc.
Synthes (U.S.A.)
Techtronic Industries North America, Inc.
Terex Corporation
TK Holdings Inc.
The Toro Company
Toshiba America Incorporated
Toyota Motor Sales, USA, Inc.
Vermeer Manufacturing Company
The Viking Corporation
Volkswagen of America, Inc.
Volvo Cars of North America, Inc.
Vulcan Materials Company
Whirlpool Corporation
Yamaha Motor Corporation, U.S.A.
Yokohama Tire Corporation
Zimmer, Inc.