No. 10-76

IN THE

Supreme Court of the United States

GOODYEAR DUNLOP TIRES OPERATIONS, 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 Writ of Certiorari to the
North Carolina Court of Appeals

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CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement included in Petitioners' opening brief, pursuant to Supreme Court Rule 29.6, remains accurate.

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In our opening brief, Petitioners showed that both historical and modern jurisdictional principles preclude North Carolina's exercise of general jurisdiction based on the mere sale of Petitioners' products in North Carolina—regardless of how those products reached the state.

As we explained (at 13-28), this Court's decisions before *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), have continuing vitality for general jurisdiction. Under those cases, any exercise of jurisdiction over an unconsenting corporation required significant physical presence in the state. And this Court specifically held in *Consolidated Textile Corp. v. Gregory*, 289 U.S. 85, 88 (1933), that in-state sales of an absent corporation's products did not establish the necessary "presence"—even when the sales were by a wholly controlled subsidiary. Just as *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923), was dispositive in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984), *Gregory* and similar cases are dispositive here. Indeed, the facts here are even more compelling, because in *Gregory* the defendant directly caused the sales in the forum; here, the court below found that Petitioners took no "affirmative action" to cause the sales and were "not directly responsible" for them, Pet. App. 22a.

Petitioners also showed (at 29-55) that under modern due-process analysis, mere sales of a corporation's products in the forum cannot justify general jurisdiction. A state has no legitimate basis for exercising global authority over a defendant absent an intimate connection between the defendant and the state going far beyond mere sales. Moreover,

Petitioners cannot reasonably have anticipated such an unprecedented application of general jurisdiction; haling a defendant into court on such facts is presumptively inconvenient and unfair; and upholding jurisdiction here would amount to approving general jurisdiction in every state over every significant seller of products.

Respondents' brief abandons the holding below that Petitioners' stream-of-commerce contacts suffice for general jurisdiction. Instead, Respondents now argue for piercing the corporate veil between Petitioners and The Goodyear Tire & Rubber Company ("Goodyear TRC"), to hold Petitioners responsible for Goodyear TRC's distribution of Petitioners' tires to North Carolina. Specifically, Goodyear TRC sold the tires to independent dealers in North Carolina from its warehouses in Ohio, Pennsylvania, and Kansas. *See* JA 255-56, 264.

This new veil-piercing argument, however, misses the point: even if Petitioners *were* deemed directly responsible for the distribution to North Carolina, such sales alone cannot establish general jurisdiction. And, in any event, Respondents' new argument has been waived; has no support in the record; is legally erroneous; and is contrary to the finding below that Petitioners were "separate corporate entities" that did not cause the distribution of their tires in North Carolina. Pet. App. 22a-23a.

ARGUMENT

I. CONTROLLING PRE-*INTERNATIONAL SHOE* DECISIONS PRECLUDE GENERAL JURISDICTION BASED ON MERE SALES OF A DEFENDANT'S PRODUCTS IN THE FORUM.

As Petitioners showed (at 13-28), deeply rooted standards continue to limit general jurisdiction, as in *Helicopteros*, in which this Court found a pre-*International Shoe* case dispositive in precluding general jurisdiction. 466 U.S. at 417. The decision below conflicts with those historical standards, which consistently required that the defendant have considerable physical presence in the state. And it is squarely contrary to *Gregory*, which held that a defendant was not "present" in Wisconsin based on mere sales of its products there—even though the sales were through "a subsidiary wholly controlled by" the defendant acting as its "agent." 289 U.S. at 88 (internal quotation marks omitted). Further, these historical standards are supported by this Court's post-*International Shoe* decisions, which have upheld general jurisdiction only where suit was brought in "the corporation's principal, if temporary, place of business." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984).

Respondents do not contest that they cannot satisfy these historical standards, even under their newly minted veil-piercing theory. They argue only (at 18-21) that these historical holdings were

"[r]ejected" by *International Shoe*.[1] This is demonstrably incorrect.

A. Respondents rely (at 19-20) on the statement in *International Shoe* that to say a corporation is "so far 'present' [in a forum] as to satisfy due process . . . beg[s] the question to be decided." 326 U.S. at 316. But in saying this, "the Court was not overruling [its] earlier precedents," Philip B. Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 589 (1958), but rather was explaining them in a new way—one that permitted the development of specific jurisdiction. Moreover, while *International Shoe* and its progeny have relaxed the limits on *specific* jurisdiction, they have never altered the established scope of general jurisdiction. *See Burnham v. Superior Court*, 495 U.S. 604, 610 (1990) (plurality opinion).

Indeed, *International Shoe* itself relied on many of the earlier cases, 326 U.S. at 317-19, and it describes the general-jurisdiction standard consistently with the historical requirement of significant physical presence: *International Shoe* required "continuous corporate operations *within a state*" that are "so *substantial* and of *such a nature* as to justify" general jurisdiction. *Id.* at 318 (emphasis added). The

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[1] Respondents' veil-piercing argument contends only that Petitioners should be deemed directly responsible for Goodyear TRC's distribution of their tires to North Carolina, *see* Resps.' Br. 40-43 (basing "continuous and systematic" contacts solely on tire distribution), not that Petitioners should be deemed physically present in North Carolina through Goodyear TRC.

illustrative cases it cited, furthermore, were all decided under the "presence" rubric, and involved defendants with significant in-state presence. *See Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 586 n.1 (1st Cir. 1970) (describing cases).

B. Respondents also cannot account for this Court's subsequent general-jurisdiction jurisprudence. Most notably, *Helicopteros* treated a historical "presence" case (*Rosenberg*) as precluding general jurisdiction on analogous facts. 466 U.S. at 417; Petrs.' Br. 14-15. Respondents' rejoinder that the Court cited *Rosenberg* for a "limited proposition" (at 25 & n.9) is no response at all. The "limited proposition" (which Respondents conspicuously omit to describe) was precisely the proposition that supports Petitioners: that *Rosenberg* was dispositive in precluding general jurisdiction. *Helicopteros*, 466 U.S. at 418. The footnote cited by Respondents "limits" this holding only by reserving the question whether it would be equally applicable to *specific* jurisdiction—a limitation of no relevance here. *Id.* at 418 & n.12.

Respondents have similar difficulty with *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). They attempt (at 21-22) to depict the corporate presence in that case as minimal, but fail even to address that in *Perkins* the forum was "the corporation's principal, if temporary, place of business." *Keeton*, 465 U.S. at 779 n.11. And *Perkins*, like *International Shoe*, relied on earlier "presence" cases. 342 U.S. at 445-47 & n.6.

Respondents also cite (at 27-28) ruminative language from a footnote in *Burnham*, but that footnote expressly warned that "[w]e express no

views on these matters," 495 U.S. at 610 n.1. And the substance of the *Burnham* plurality opinion refutes Respondents' claim that *International Shoe* displaced historical limits on general jurisdiction, as it emphasizes that historical standards have been superseded "*only* with respect to suits arising out of the absent defendant's contacts with the State." *Id.* at 610 (emphasis added).

C. Respondents lastly cite (at 22-27) multiple *specific*-jurisdiction cases as purportedly proving "the evolution from the concept of 'presence.'" But it is undisputed that "presence" is no longer relevant to specific jurisdiction. As illustrated by *Helicopteros*, however, historical "presence" decisions *do* continue to limit the scope of *general* jurisdiction. Indeed, the *Helicopteros* footnote Respondents cite makes precisely this distinction, reaffirming *Rosenberg* with respect to general jurisdiction but not specific. 466 U.S. at 418 n.12.

The distinction the Court has drawn is a logical one: Specific jurisdiction turns on contacts related to the dispute, an inquiry wholly different from the defendant-focused "presence" analysis. In contrast, general jurisdiction is dispute-blind, and—like the historical "presence" inquiry—turns on the defendant's broader relationship to the forum. It is therefore unsurprising that *Helicopteros* found *Rosenberg*'s presence holding dispositive as to general jurisdiction.

Respondents' reference to "'the tremendous growth of interstate business activity'" (at 19-20 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958))), is equally misplaced. That increased interstate activity was directly addressed by the

development of specific jurisdiction. *See, e.g.*, *Hanson*, 357 U.S. at 250-51; *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957). Respondents fail to explain the relevance of such changes to *general* jurisdiction. If anything, the growth of specific jurisdiction merits a *narrowing* of general. *See* Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1143-44, 1179 (1966).[2]

Finally, Respondents quote the statement in *Burger King Corp. v. Rudzewicz* that the Court has "rejected the notion that an absence of physical contacts can defeat personal jurisdiction" (at 26 (quoting 471 U.S. 462, 476 (1985)) (emphasis omitted)). But Respondents offer no reason why this specific-jurisdiction principle should extend to general jurisdiction, and cite no case of this Court permitting general jurisdiction in the absence of physical presence.

II. MODERN DUE-PROCESS ANALYSIS EQUALLY PROHIBITS THE STATE FROM EXERCISING GENERAL JURISDICTION BASED MERELY ON SALES OF A DEFENDANT'S PRODUCTS THERE.

As Petitioners demonstrated (at 29-45), even if the historical "presence" cases were not dispositive, exercising general jurisdiction based on mere sales in

[2] Indeed, as we explained (at 15 n.3), general jurisdiction under *International Shoe* typically requires considerably *more* than corporate "presence" under historical standards; such "presence" is properly understood as necessary but not sufficient for general jurisdiction.

a state violates due process—regardless of whether the defendant sells the products directly or they reach the state through the stream of commerce.

A. We showed (at 30-36) that a state may legitimately exercise adjudicative power over a defendant's worldwide conduct—i.e., general jurisdiction—only when the defendant is so closely connected to the state as to be analogous to a citizen or resident. *See Milliken v. Meyer*, 311 U.S. 457, 462-64 (1940) (upholding jurisdiction on ground that "the authority of a state over one of its citizens is not terminated by the mere fact of his absence"); *Perkins*, 342 U.S. at 447-48 (jurisdiction in corporation's principal place of business). Whatever the precise line, at a minimum, exercising general jurisdiction over foreign causes of action based on mere sales in the forum goes "beyond the limits imposed on [states] by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

Respondents deem it sufficient (at 41) that the three Petitioners combined allegedly "enjoyed tens of thousands of tire sales in North Carolina." But they do not explain how—even if Petitioners can be deemed to have "enjoyed" sales made by a separate corporate entity—the distribution of a fraction of Petitioners' tires can give the state a legitimate basis for judicial authority over Petitioners' worldwide activities. A state may "exact *reciprocal* duties" from those who enjoy its benefits, *Milliken*, 311 U.S. at 463 (emphasis added), but imposing global jurisdiction on this basis goes far beyond the reciprocal.

Respondents also fail to address that sales of an out-of-state corporation's products in a state are

interstate or foreign commerce. As Petitioners showed (at 35-36), a state has no legitimate interest in leveraging a defendant's interstate commerce within the state into a basis for general jurisdiction. *See Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 895 (1988).

Moreover, Respondents' suggestion that general jurisdiction turns on the *quantity* of sales conflicts with *International Shoe*, which rejected the idea that jurisdiction turns on "whether the activity . . . is a little more or a little less." 326 U.S. at 319. Rather, jurisdiction "depend[s] upon the *quality* and *nature* of the activity." *Id.* (emphasis added). As the United States correctly notes, this requires contacts that are "systematic" in the sense of "'form[ing] a system'" that is "'united by some form of regular action or interdependence'"—as illustrated in *Perkins*, in which the contacts "formed the very embodiment of the defendant's corporate control structure." U.S. Br. 23 (quoting *Webster's New International Dictionary* 2562 (2d ed. 1958)).

Helicopteros supports this point, in that it framed the relevant inquiry as whether the defendant's contacts "constitute[d] the kind of continuous and systematic general business contacts . . . found to exist in *Perkins*." 466 U.S. at 416. And the contacts in *Perkins* were the "systematic" ones of a corporation with its "principal . . . place of business" in the forum. *Keeton*, 465 U.S. at 779 n.11. *Helicopteros* also rejected the notion that "mere purchases, *even if occurring at regular intervals*," could establish general jurisdiction, 466 U.S. at 418 (emphasis added), notwithstanding that the purchases there exceeded $4 million and covered 80%

of the defendant's helicopter fleet, *id.* at 411. *Helicopteros* thus confirms that general jurisdiction requires a particular *type*, and not just a particular *quantity*, of contacts. Respondents offer no reason why mere sales in the forum are any more adequate than the "mere purchases" rejected in *Helicopteros*.

Finally, even if it were possible to hypothesize a case in which a corporation's sales in a state were so central to the corporation as to justify general jurisdiction, this would not be it. Respondents have offered no evidence that the quantity of Petitioners' tires sold in North Carolina—or even the United States—was more than a tiny fraction of their business.

B. Petitioners further explained (at 36-38) that general jurisdiction based on in-state sales violates the requirement that the defendant be able to "reasonably anticipate being haled into court" in the forum. *World-Wide Volkswagen*, 444 U.S. at 297. This is particularly apparent in light of this Court's historical cases, and the vast gulf between this case and *Perkins*—the only previous one to uphold general jurisdiction over an out-of-state corporation. *See Burnham*, 495 U.S. at 637 (Brennan, J., concurring in the judgment) (historical practice highly relevant to "reasonable expectations").

Respondents assert (at 31) that lower courts "[r]egularly" exercise general jurisdiction in purportedly similar circumstances. But they cite no case upholding general jurisdiction over an out-of-state corporation based solely on sales in the forum—even if the sales were through a "highly integrated enterprise." To the contrary, courts generally find mere sales, without physical presence, insufficient for

general jurisdiction. *See generally* 16 Moore's Federal Practice § 108.41[3] (3d ed. 2010) (general jurisdiction "typically requires the defendant to have an office in the forum state"); *see also, e.g.*, *Madara v. Hall*, 916 F.2d 1510, 1516 n.7 (11th Cir. 1990) (rejecting in-state "concerts and record sales" as basis for general jurisdiction, as otherwise defendant would be "amenable to suit in all the states of the union on any cause of action").

Moreover, Respondents' veil-piercing argument creates an additional "reasonable anticipation" issue. As detailed below, *see infra* Part III.D, adopting their "single business enterprise" theory would require overruling this Court's longstanding cases.

C. In response to Petitioners' showing (at 40-41) that it is presumptively inconvenient, and thus unreasonable, to require a corporation to defend unrelated cases in the forum simply because its products are sold there, Respondents assert (at 46) that corporations engaged in an integrated enterprise "suffer little burden in litigating" wherever their affiliates sell their products. This overlooks that separate corporations will typically—as here—have separate employees. *See* JA 155, 165, 173, 184. And an affiliate's local sales do not temper the inconvenience of forcing such employees to travel to the forum for depositions and/or trial. Nor does it mitigate the inconvenience of litigating unrelated cases wherever the defendant's products are sold, when all of the key witnesses and evidence are elsewhere—potentially, as in this case, thousands of miles away.

D. Lastly, Respondents offer no persuasive response to Petitioners' showing (at 41-45) that

permitting general jurisdiction on these facts will likely result in rampant forum shopping.

Contrary to Respondents' argument (at 59) that this Court "explicitly sanctioned" forum shopping in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), that case *disapproved* forum shopping by holding that the plaintiff had no vested right to her choice of an inconvenient but more favorable forum. *Id.* at 252-53 n.19. Indeed, the Court supported its decision by warning of the risk of plaintiffs increasingly filing essentially foreign claims in American courts. *Id.* at 252 & n.18.

Respondents also cite (at 60) purported "checks" on forum shopping. But the "discretionary nature" of *forum non conveniens*, and "the multifariousness of [its] factors," make it impossible to "count on the fact that jurisdiction will be declined." *Am. Dredging Co. v. Miller*, 510 U.S. 443, 455 (1994). Moreover, some states narrowly restrict its use. *See, e.g.*, *AT&T Corp. v. Sigala*, 549 S.E.2d 373, 377 (Ga. 2001). Similarly, the venue rules Respondents cite (at 60) vary from state to state, and hardly provide meaningful protection against forum shopping.

Lastly, Respondents suggest (at 60-61 (citing *Keeton*, 465 U.S. at 780)) that this Court could limit forum shopping by creating a new category of quasi-general jurisdiction available—in some unidentified circumstances—in the plaintiff's home state. But the plaintiff's residence has never been relevant to general jurisdiction, *see Perkins*, 342 U.S. at 438, which focuses solely on the relationship between the defendant and the state. Even as to specific jurisdiction, moreover, the plaintiff's residence may be relevant only in that it "may be the focus of the

activities of the defendant out of which the suit arises," *Keeton*, 465 U.S. at 780—a consideration irrelevant to general jurisdiction.

III. RESPONDENTS' NEWLY MINTED VEIL-PIERCING THEORY IS BOTH WAIVED AND MERITLESS.

In any event, even if mere sales of a corporation's products in the forum could suffice for general jurisdiction, Respondents' new veil-piercing argument for attributing Goodyear TRC's sales to Petitioners fails on multiple grounds.

A. Respondents Failed To Raise Their Veil-Piercing Argument Below Or In Opposition To Certiorari.

Respondents' veil-piercing theory fails at the outset because it was never previously raised. None of Respondents' briefs below made a single reference to "veil piercing," "enterprise liability," "alter ego," or any similar argument, *see* JA 333-50, 363-94, 456-92, 520-43; moreover, the parties developed no record on the issue, and the courts below had no opportunity to address it. Accordingly, this argument has been waived. *See Sprietsma v. Mercury Marine*, 537 U.S. 1, 56 n.4 (2002); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 360 n.5 (1994). Respondents also cannot raise the argument because it was omitted from their Brief in Opposition to certiorari. *See Granite Rock Co. v. Int'l Bhd. of Teamsters*, 130 S. Ct. 2847, 2861 (2010).

Indeed, in the trial court, far from arguing for ignoring corporate form, Respondents exclusively pressed the "stream of commerce" theory that they

now depict as a mere slip of the North Carolina Court of Appeals' pen. *See* JA 335-49.

On appeal, Respondents disavowed their stream-of-commerce theory, but again made no veil-piercing argument. Rather, they argued that Petitioners *themselves* had purposefully directed activities toward North Carolina, depicting Goodyear TRC not as an alter ego or "merged" entity, but as a mere distributor—to wit, Petitioners "'used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina.'" JA 483-84 (quoting Pet. App. 33a). To prove Petitioners' purported intention to exploit the North Carolina market, Respondents argued that the tire at issue was "manufactured and labeled in such a way as to allow it to be sold in the United States, including North Carolina." JA 479. And, although Respondents referred to Goodyear TRC and its subsidiaries as "a highly integrated worldwide business," JA 483, they did so to support their claim that Petitioners "knew they were manufacturing products for sale to the United States," *id.*, not as part of any argument for ignoring corporate form. *See also* JA 484 (quoting Pet. App. 33a) (Petitioners "'knew or should have known'" their tires were being sold in North Carolina).

Likewise, when Petitioners sought to appeal to the North Carolina Supreme Court, Respondents again argued that Petitioners "deliberately manufacture thousands of tires they know will be shipped to the U.S., including North Carolina, for sale." JA 537; *see* JA 542. Respondents never argued below for any veil-piercing or enterprise

theory, and the same is true of Respondents' Brief in Opposition. They cannot do so now.

B. Respondents' New Argument Is Squarely Contrary To The Decision Below.

Respondents depict (at 12-15, 35-36) the decision below as resting on their veil-piercing theory rather than stream-of-commerce principles. Not only is this depiction untenable, but the findings below are flatly contrary to Respondents' veil-piercing theory.

As demonstrated in our Reply Brief in support of certiorari (at 5-6), there is no colorable basis for claiming that the decision was not based on stream-of-commerce principles. In addition to its extended discussion of the stream-of-commerce doctrine, Pet. App. 14a-20a, the court below *twice* emphasized that the decisive issue was "whether [Petitioners] have purposefully injected their product into the stream of commerce without any indication that they desired to limit [its] distribution . . . to exclude North Carolina." *Id.* at 20a (internal quotation marks and alterations omitted); *id.* at 29a. Furthermore, the court concluded the decision by stating that it was following "the principles outlined by" four North Carolina cases—*all of which were stream-of-commerce cases*. *Id.* at 29a (citing cases). Respondents' claim to the contrary is astonishing.

But that is not all: the findings below squarely conflict with Respondents' new argument that Petitioners, as part of an "integrated enterprise," should be deemed directly responsible for Goodyear TRC's distribution of their products to North Carolina. The opinion below expressly found that Petitioners, "*as separate corporate entities*, were *not*

directly responsible for the presence in North Carolina of tires that they had manufactured." Pet. App. 22a-23a (emphasis added). Respondents' new argument is contrary to this finding.

C. The Record Does Not Support Any Conceivable Veil-Piercing Theory.

Unsurprisingly, in light of their failure to raise this argument below, Respondents made no record on corporate governance, corporate structure, corporate financial relationships, day-to-day control, or any of the other issues relevant to veil piercing. The record thus focuses almost entirely on the chain of distribution for the small portion of Petitioners' tires sold in the United States. This falls far short of what is necessary even under Respondents' radically permissive veil-piercing theory.

Indeed, Respondents—who bear the burden of establishing jurisdiction, *see* 4 Wright, *Federal Practice & Procedure* § 1067.6 (3d ed. 2002)—have no evidence even for the "factors" they depict as "significant" in their brief (at 32): "whether the subsidiary is an independent decision-making body; whether its administrative organization is complete; whether the parent and subsidiary project an[] integrated posture to the public; and whether they exchange information, personnel and group resources."

Respondents' attempts to fill this yawning evidentiary gap with sheer assertion and characterization (or mischaracterization) fail to ameliorate the problem. For example, they assert (at 6) that Petitioners have "surrender[ed] their status as independent and free-standing businesses,"

because, among other things, they "did not directly solicit sales of their own products in North Carolina *or anywhere else*." The record, however, indicates only that Petitioners did not solicit sales or advertise *in the United States*. It is silent on Petitioners' foreign operations—which are the bulk of their business.[3] More importantly, Respondents cite no authority for the notion that a manufacturer's status as an independent legal entity turns on whether it "directly solicit[s] sales."

Similarly, Respondents appear to attach significance to their assertion (at 41-42) that Petitioners were the "sole source" in the United States for "horse and boat trailers, cement mixers, [or] the like." This, too, is both inaccurate and irrelevant. Petitioners were *not* the sole source. *See* JA 243 (citing Slovenia and Germany).[4] And that Goodyear TRC imported tires for "vehicles that we

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[3] Respondents make this unsupported claim repeatedly (at 6, 7, 13, 42), citing Goodyear TRC testimony. But the snippet they quote (that Goodyear Turkey "doesn't control any distribution") responded to a question about "who would actually import [the tires] *into the U.S.*" JA 256 (emphasis added). Indeed, the witness—who was specifically designated to testify about distribution into the United States—made clear that he was otherwise unfamiliar with how Goodyear Turkey "handled their distribution or their customer base." JA 266.

[4] These misstatements of the record are two of many. One more worth noting is the repeated suggestion (at 8, 9, 17, 42) that the tires distributed to North Carolina were manufactured by Petitioners "at Goodyear's request." Nothing in the record indicates that Goodyear's requests were filled by manufacturing new tires rather than from existing inventory. *E.g.*, JA 227-28.

just do not sell here in the United States normally," JA 242, has no bearing on whether Petitioners are distinct corporate entities.

Respondents' various assertions seek to depict Petitioners as part of an "integrated" distribution system. But even Respondents' radical (and widely rejected) "enterprise" theory of veil piercing requires far more. Respondents rely (at 32-34) primarily on Texas law, and even the Texas courts that adopted that theory—before it was definitively rejected, *see infra* Part III.D—required consideration of numerous factors, as to most of which Respondents have not a scintilla of proof. Those factors include:

> (1) common employees, (2) common offices, (3) centralized accounting, (4) payment of wages by one corporation to another corporation's employees, (5) common business name, (6) services rendered by the employees of one corporation on behalf of another corporation, (7) undocumented transfers of funds between corporations, and (8) unclear allocation of profits and losses between corporations.

PHC-Minden, L.P. v. Kimberly-Clark Corp., 235 S.W.3d 163, 173-74 (Tex. 2007) (describing "single business enterprise" approach).

In short, even the most radically permissive corporate-attribution theory has no record support.

D. Respondents' Jurisdictional Veil-Piercing Theory Is Incompatible With This Court's Cases And Due Process.

Respondents' novel "enterprise" theory of jurisdictional veil piercing is not only factually but

also legally baseless. Even when a corporate parent and subsidiary are involved, "[e]ach defendant's contacts with the forum State must be assessed individually." *Keeton*, 465 U.S. at 781 n.13. Moreover, this Court has long held that even "merely formal" corporate separation must be respected in this context, so long as the separation is "real . . . . not pure fiction." *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 337 (1925). Although it is unclear to what extent *Cannon* itself expressed a due-process principle, *Cannon*'s corporate-separation principle was endorsed in *Gregory*, a Fourteenth Amendment due-process ruling. *See* 289 U.S. at 86, 88; *see also People's Tobacco Co. v. Am. Tobacco Co.*, 246 U.S. 79, 87 (1918); *Peterson v. Chi., Rock Island, & Pac. R.R. Co.*, 205 U.S. 364, 391-92 (1907).

1. Respondents assert (at 38) without explanation that *International Shoe* "effectively overruled" these cases. This is plainly incorrect, as *Keeton* cited *Gregory* and *Peterson* as good law, 465 U.S. at 781 n.13, forty-four years after *International Shoe*—which, in any event, said nothing about corporate separation.

Respondents also protest (at 39) that *Gregory* and *Cannon* did not involve "a highly-integrated enterprise." This, too, is incorrect. In *Gregory*, the defendant sold products in the forum solely through a "wholly controlled" subsidiary that was its "agent." 289 U.S. at 88 (internal quotation marks omitted). And in *Cannon*, the defendant "dominate[d]" the subsidiary and used it as "the instrumentality . . . to market [its] products within the State." 267 U.S. at 334-35.

Nor do the Court's modern cases "embrace[] the idea of attribution or merger for jurisdictional purposes." Resps.' Br. 29-30. As one of the cited cases emphasizes, the only attribution that has been permitted is in straightforward cases of agency, where the defendant has actively directed the contacts. *See Burger King*, 471 U.S. at 479 n.22 (activities "carried on in behalf of an out-of-state party . . . may sometimes be ascribed to the party, *at least where he is a primary participant in the enterprise and has acted purposefully in directing those activities*") (emphasis added) (internal quotation marks and citation omitted).

None of Respondents' other cases is to the contrary. *International Shoe* concerned a corporation that *itself* "employed . . . salesmen" in the forum. 326 U.S. at 313. *Perkins* concerned a corporation conducting its *own* in-state activities. 342 U.S. at 447-48. And in *United States v. Scophony Corp.*, 333 U.S. 795 (1948)—which was not a personal-jurisdiction case—the parent's own agents created the necessary contacts. *Id.* at 814-16.

Lastly, Respondents cite (at 44-45) two unrelated legal doctrines. But the "unitary business" doctrine of state taxation merely allows a particular method of calculating taxes on entities operating *within* the state, when they are part of a larger enterprise. It does *not* permit the state to tax the out-of-state entities themselves. *See, e.g.*, 1 J. Hellerstein & W. Hellerstein, State Taxation ¶ 6.13, p. 6-86 (3d ed. 2006). And labor law's "integrated enterprise" test addresses liability, not personal jurisdiction, and is based on labor-specific policy concerns; it has no relevance to personal jurisdiction.

2. Respondents are left to rely (at 31-38) on lower-court decisions for their nebulous "enterprise" theory. But there is universally a "conspicuous lack of support" for any "'integrated enterprise' theory" of personal jurisdiction. *United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1096 (1st Cir. 1992); *see Langlois v. Deja Vu, Inc.*, 984 F. Supp. 1327, 1338-39 (W.D. Wash. 1997) (a "novel theory" with potentially "absurd[] . . . result[s]"); *Hart Holding Co. v. Drexel Burnham Lambert Inc.*, No. 11514, 1992 WL 127567, at *10 (Del. Ch. May 28, 1992) ("so-called enterprise theory" "has not met with wide or easy acceptance").

This is likely because the theory freely merges the contacts of separate entities regardless of each defendant's role, and thereby eliminates the requirements that a defendant's contacts be "purposeful," *Burger King*, 471 U.S. at 475, and that each defendant be "assessed individually," *Keeton*, 465 U.S. at 781 n.13. And it eviscerates a defendant's ability to "structure [its] primary conduct" to obtain predictability over where it may be subject to suit. *World-Wide Volkswagen*, 444 U.S. at 297; *see* Lynn M. LoPucki, *The Death of Liability*, 106 Yale L.J. 1, 67-69 (1996) (describing enterprise theory as "radical" and not "workable" due to "intolerable uncertainty").[5]

[5] Professors Brilmayer and Paisley—whom Respondents depict as supportive (at 31, 59)—in fact criticize this approach as "radical." Lea Brilmayer & Kathleen Paisley, *Personal Jurisdiction and Substantive Legal Relations: Corporations, Conspiracies, and Agency*, 74 Cal. L. Rev. 1, 29-30 (1986).

Respondents rely primarily (at 32-34) on the doctrine's fleeting embrace by intermediate courts in Texas—notwithstanding that those decisions have been definitively rejected by the Texas Supreme Court. *See SSP Partners v. Gladstrong Invs. Corp.*, 275 S.W.3d 444, 454-55 (Tex. 2008) (no court "has found sound jurisprudential footing for the [enterprise] theory"). Respondents obliquely recognize this rejection (at 33 n.17), but claim that it affected only substantive liability, not personal jurisdiction. This is true, however, only in that by the time of *SSP Partners* the Texas Supreme Court had *already* rejected the doctrine for personal-jurisdiction purposes, citing *Cannon* and requiring analysis using traditional veil-piercing factors. *PHC-Minden*, 235 S.W.3d at 173-76; *see Olympia Capital Assocs., L.P. v. Jackson*, 247 S.W.3d 399, 412 (Tex. App. 2008) (rejecting theory for personal jurisdiction "[i]n light of *PHC-Minden*").

Respondents' attempt (at 34) to enlist support from other jurisdictions is equally unavailing, as they are reduced to describing as "similar" cases that apply far more demanding traditional doctrines, such as alter ego. *See, e.g.*, *Donatelli v. Nat'l Hockey League*, 893 F.2d 459, 465 (1st Cir. 1990) (alter ego); *D'Jamoos v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 108-09 (3d Cir. 2009) (principal-agent); *Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 378-79 (7th Cir. 2008) ("dummy or sham" corporations). Notably, North Carolina itself applies such a traditional standard, requiring a showing of "complete domination" that renders the entity at issue a "mere instrumentality or alter ego." *State ex rel. Cooper v. Ridgeway Brands Mfg., LLC*, 666

S.E.2d 107, 114 (N.C. 2008) (internal quotation marks omitted). The paucity of Respondents' evidence is even more glaring as applied to these traditional doctrines.

3. Respondents' argument is also problematic in that they seek to attribute the conduct of the allegedly controlling entity (Goodyear TRC) to the allegedly controlled Petitioners. Whereas it is sometimes permissible to attribute to a controlling actor the actions of one he controls, *see Burger King*, 471 U.S. at 479 n.22, there is no logical basis for doing the reverse. *See, e.g.*, *Home-Stake Prod. Co. v. Talon Petroleum, C.A.*, 907 F.2d 1012, 1021 (10th Cir. 1990) (refusing to "impute to the dominated corporation the forum contacts of its alter ego"); *Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 301-02 (9th Cir. 1986) ("[A] parent corporation's ties to a forum do not create personal jurisdiction over the subsidiary.").

4. Lastly, Respondents' "enterprise" theory is particularly troubling for general jurisdiction. Subjecting a corporation to suit in a forum merely because of the *unrelated* contacts of its *affiliate* "stretches the boundaries of jurisdictional theory beyond any discernable limit." Lonny Sheinkopf Hoffman, *The Case Against Vicarious Jurisdiction*, 152 U. Pa. L. Rev. 1023, 1092-93 (2004). Indeed, the few cases cited by Respondents that support an enterprise theory are specific-jurisdiction cases. *See Bulova Watch Co. v. K. Hattori & Co.*, 508 F. Supp. 1322, 1344-45 (E.D.N.Y. 1981); *Warren v. Honda Motor Co.*, 669 F. Supp. 365, 370-71 (D. Utah 1987); *Hoffman v. United Telecomms., Inc.*, 575 F. Supp. 1463, 1476 (D. Kan. 1983).

IV. RESPONDENTS' POLICY ARGUMENTS, TO THE EXTENT RELEVANT, ARE MISTAKEN.

Respondents downplay (at 54) the likely negative effects on trade and foreign relations of a decision in their favor, arguing that a preliminary international "expert" report suggested that veil-piercing rules be left to individual states. But this evades the point, which has nothing to do with veil piercing: our Nation's trading partners *have* objected to overbroad assertions of general jurisdiction (U.S. Br. 33-34), and the expansive rule at issue here—allowing mere sales to suffice—"exceeds what many nations would recognize as reasonable" (*id.* at 30).

Respondents additionally argue (at 55-56) that deterring imports may not "be a bad thing," given the "U.S. trade deficit." But a decision in their favor would deter exports, too, because the risk of retaliatory exercises of jurisdiction by other countries threatens to "dissuade[]" American corporations "from exporting [their] products." U.S. Br. 31. And deterring imports *also* harms United States residents, who benefit from competition and variety. *Id.*

Respondents further misleadingly contend that the decision below will have little effect because general jurisdiction is rarely exercised, and "is, as [a] practical matter, '[s]eldom properly available against a defendant from abroad.'" Resps.' Br. 55-56 (quoting Kevin Clermont, *Jurisdictional Salvation and the Hague Treaty*, 85 Cornell L. Rev. 89, 115 (1999)). That is true only because (as shown *supra*) the courts have adhered to a demanding standard that—as Professor Clermont explains, in language Respondents omitted—"requires the defendant to be

so active in the forum as to seem like a native." 85 Cornell L. Rev. at 115. The decision below, by contrast, opens the floodgates to general jurisdiction.

Relatedly, Respondents assert (at 56) that the decision will be limited by "the pervasive presence of Goodyear in North Carolina," but this is a red herring. Respondents' contention (at 40-43) that Petitioners have "continuous and systematic" contacts with North Carolina is based *solely* on Petitioners' alleged responsibility for the distribution of their tires there. Respondents make no claim that any of Goodyear TRC's other contacts contribute to satisfying that test.

Lastly, Respondents predict (at 52) that reversal will create incentives to "outsource," so as to give "foreign courts the exclusive right to decide whether those subsidiaries are liable in tort for . . . defective products they produce." But Respondents ignore the availability of *specific* jurisdiction, which defeats any such incentive. And this case involves no "outsourcing." With "rare exceptions," Petitioners manufacture tires only for *overseas* markets. JA 229. Manufacturing products where they are sold and used is not "outsourcing" in any coherent sense.

CONCLUSION

The judgment of the North Carolina Court of Appeals should be reversed.

Respectfully submitted,

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