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Julialeida Sainz*

INTRODUCTION

Recently, the United States Supreme Court has made it more difficult for plaintiffs to seek redress against corporate defendants in state courts. The Court made two seminal rulings that affect both general personal jurisdiction¹ and specific personal jurisdiction.² These two cases ride on the coattails of two other landmark decisions.³ In the case of *Daimler AG v. Bauman*, the Court unanimously held that courts may not exercise personal jurisdiction over corporate defendants when their contacts with the forum state are not sufficient to render the defendants “at home” in the forum state.⁴ Furthermore, the Court held that subjecting a corporate defendant to such a suit would violate the “fair play and substantial justice” standard⁵ of the Due Process Clause of the Fourteenth Amendment.⁶

This article will first outline the history of the Court’s personal jurisdiction doctrine beginning with the seminal case of *Pennoyer v. Neff*⁷ through the recent decisions in *BNSF Ry. v. Tyrrell*⁸ and *Bristol-Myers Squibb Co. v. Superior Court*,⁹ which continuously narrow plaintiffs’

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¹ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (unanimous opinion) (citing *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 317 (1945)) (defining general jurisdiction when a court may exercise personal jurisdiction over a “foreign (sister-state or foreign-country) corporation[] . . . when [the corporation’s] affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.”).

² *Id.* (defining specific jurisdiction as “depend[ent] on an ‘affiliatio[n] between the forum and the underlying controversy,’ principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.”).

³ *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (narrowing the scope of general personal jurisdiction); *Walden v. Fiore*, 134 S. Ct. 1115 (2014) (unanimous opinion) (narrowing the scope of specific personal jurisdiction).

⁴ *Daimler*, 134 S. Ct. at 761 (quoting *Goodyear*, 546 U.S. 915) (unanimous opinion) (“[T]he inquiry under *Goodyear* is not whether a foreign corporation’s in-forum contacts can be said to be in some sense ‘continuous and systematic,’ it is whether that corporation’s affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.”).

⁵ *See Int’l Shoe Co.* 326 U.S. at 324 (defining fair play and substantial justice as “permit[ting] the [s]tate to act if upon ‘an “estimate of the inconveniences” which would result to the corporation from a trial away from its “home” or principal place of businesses.”); *see also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) listing the factors that should be considered as:

- (1) the burden on the defendant;
- (2) the forum State’s interest in adjudicating the dispute;
- (3) the plaintiff’s interest in obtaining convenient and effective relief;
- (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and
- (5) the shared interest of the several States in furthering fundamental substantive policies.

⁶ U.S. CONST. amend XIV; *Daimler*, 134 S. Ct. at 763 (quoting *Int’l Shoe Co.*, 326 U.S. 310) (“[S]ubjecting *Daimler* to general jurisdiction of courts in California would not accord with the ‘fair play and substantial justice’ due process demands.”).

⁷ *Pennoyer v. Neff*, 95 U.S. 714 (1878).

⁸ *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549 (2017) (8–1 decision).

⁹ *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017) (8–1 decision).

options for bringing suit against corporate defendants.¹⁰ Next, Part II of this article discusses how these holdings, erroneously making the burden on the defendant the primary concern of the courts, almost to the exclusion of other factors, are augmenting corporate defendants' power in the judicial system.¹¹ Lastly, Part III discusses the adverse effects these rulings will have on plaintiffs injured in the forum state seeking to represent a nationwide class of plaintiffs, not all of whom were injured there.¹² In addition, Part III elaborates on why sufficient contacts should be based solely on the corporate defendant's contacts within the state without considering them in relation to the corporate defendant's presence in the entire country.¹³

I. BACKGROUND

To completely understand the effects of the most recent interpretation of personal jurisdiction, this part will first traverse through the history and meaning of personal jurisdiction, beginning with its first incantation in *Pennoyer*. Then, it will explore and elaborate the chipping away of the strict limitation of state sovereignty on personal jurisdiction with the passage of time. Ultimately, it will analyze the final iterations of personal jurisdiction, through the recent United States Supreme Court rulings restraining a plaintiff's right to hail a nonresident corporate defendant to court.

A. THE BEGINNING OF THE PERSONAL JURISDICTION DOCTRINE

The United States Supreme Court's personal jurisdiction doctrine began in 1877, with its holding in the well renowned case of *Pennoyer*.¹⁴ In this case, Neff's attorney sued him for unpaid attorneys' fees and served him by publication strictly in the state of Oregon, as authorized by an Oregon statute permitting "constructive service" via publication.¹⁵ Neff was a resident of California and never appeared in court, which resulted in a default judgment.¹⁶ To satisfy the debt, Neff's property was then sold at a sheriff's sale.¹⁷ Neff later returned to Oregon to challenge the validity of the court's ruling and jurisdiction over him.¹⁸

Moreover, the Court applied two principles dictating the extent of a state's ability to exercise personal jurisdiction over a person.¹⁹ Applying those principles, the Court affirmed the lower court's holding, declaring that states may not exercise personal jurisdiction over a person

¹⁰ See discussion *infra* Part I.

¹¹ See discussion *infra* Part II.

¹² See discussion *infra* Part III.

¹³ *Id.*

¹⁴ *Pennoyer*, 95 U.S. at 714 (holding that a state could not exercise personal jurisdiction over a person unless the person consents or is physically present in the state).

¹⁵ *Id.* at 719–20.

¹⁶ *Id.* at 717.

¹⁷ *Id.* at 719.

¹⁸ *Id.* at 721–22 (alleging that the Oregon court's judgment was invalid "for want of personal service of process on him, or his appearance in the action in which it was rendered . . .").

¹⁹ *Id.* at 722 ("[E]very [s]tate possesses exclusive jurisdiction and sovereignty over persons and property within its territory," and "no [s]tate can exercise direct jurisdiction and authority over persons or property [outside of] its territory.").

“unless [t]he [defendant] appear[s] in the court, or [is] found within the [s]tate, or be a resident thereof, or have property therein.”²⁰

B. EXPANDING THE REACH OF PERSONAL JURISDICTION

Pennoyer’s holding was the governing law for over half a century until the Court rendered its decision in *International Shoe Co. v. Wash.*²¹ In *International Shoe Co.*, the state of Washington sought to collect unpaid contributions to the state unemployment compensation fund from International Shoe Company (“International Shoe”).²² International Shoe was incorporated in Delaware and had its principal place of business in St. Louis, Missouri.²³ Its only contacts with the state of Washington were eleven to thirteen salesmen who lived in Washington.²⁴ International Shoe argued that the state of Washington could not exercise personal jurisdiction over it because “its activities within the state were not sufficient to manifest its ‘presence’ there.”²⁵ However, the Court disagreed by holding that a state court may exercise personal jurisdiction over a defendant if the defendant had “certain minimum contacts with the [state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”²⁶

Furthermore, a corporation’s presence, as opposed to that of a natural person, may be shown by “activities carried on its behalf by those who are authorized to act for it.”²⁷ These activities must be “continuous and systematic [and] give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given.”²⁸ However, “[mere] presence . . . or . . . single or isolated . . . activities in a state . . . are not enough to subject [a corporation] to suit on causes of action unconnected with the activities there.”²⁹

Thus, the Court held that the Washington court correctly exercised personal jurisdiction over International Shoe.³⁰ The Court stated that International Shoe’s continuous activities, performed and executed through its salespeople in the state of Washington, were such that it would be amenable to suit.³¹ Although the Court did not use the terms, it distinguished between specific jurisdiction and general jurisdiction.³² Since the decision in *International Shoe Co.*,

²⁰ *Pennoyer*, 95 U.S. at 720.

²¹ *Int’l Shoe Co.*, 326 U.S. at 316–17.

²² *Id.* at 311–12 (explaining that each employer must contribute a specified percentage of annual wages to the state unemployment compensation fund in order to defray the costs of the state’s comprehensive unemployment compensation scheme).

²³ *Id.* at 313.

²⁴ *Id.*

²⁵ *Id.* at 315 (arguing that the Washington court’s exercise of personal jurisdiction over it despite International Shoe’s absence in the state was a denial of due process).

²⁶ *Id.* at 316 (quoting *Miliken v. Meyer*, 311 U.S. 457, 463 (1940)).

²⁷ *Int’l Shoe Co.*, 326 U.S. at 316.

²⁸ *Id.* at 317.

²⁹ *Id.*

³⁰ *See id.* at 320.

³¹ *See id.* (holding that International Shoe’s activities were “systematic and continuous,” and that International Shoe “received the benefits and protection of the laws of the state,” and that the suit arose out of those activities.).

³² *See id.* at 318 (“While it has been held . . . that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, there have been instances in

many cases delved into the scope of specific personal jurisdiction; ignoring general personal jurisdiction.

In its most liberal expression of the minimum contacts test, the United States Supreme Court held that a defendant corporation's single contact with a forum state was sufficient for a state court to exercise personal jurisdiction over that defendant.³³ McGee's son, a California resident, had a life insurance policy with International Life Insurance Company ("International Life") administered in California.³⁴ McGee's son paid his insurance premiums from California until his death.³⁵ As the beneficiary of the policy, McGee attempted to collect on the policy, but International Life refused.³⁶

Thereafter, McGee recovered a judgment in California state court, which she tried to collect in Texas, where International Life's principal place of business was located, however, the Texas court refused.³⁷ The Court applied the minimum contacts with a different focus.³⁸ Effectively, the Court determined that a single contractual relationship and the state's interest in providing a convenient forum for its residents to seek redress was sufficient to give a state court personal jurisdiction over a defendant.³⁹

C. ROLLING BACK STATE COURTS' PERSONAL JURISDICTION REACH: A RETURN TO STATE SOVEREIGNTY

In *World-Wide Volkswagen Corp. v. Woodson*,⁴⁰ the plaintiffs purchased an Audi from a Volkswagen dealership in New York and made their way down to Arizona.⁴¹ In Oklahoma, the plaintiffs' car caught on fire, which injured several members of the family after another car crashed into them.⁴² The plaintiffs subsequently brought a products liability suit against World-Wide Volkswagen ("Volkswagen") in Oklahoma.⁴³ Ultimately, the Court established factors that a state court should weigh to determine if the court's exercise of personal jurisdiction comports with "traditional notions of fair play and substantial justice."⁴⁴

which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.") (citations omitted).

³³ See *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 222 (1957) (explaining that throughout its history, the Court has clearly approached "expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents.") The Court held that International Life's single contractual relationship with McGee's son was sufficient to subject International Life to personal jurisdiction.

³⁴ See *id.* at 221–22.

³⁵ *Id.*

³⁶ *Id.* at 222.

³⁷ *Id.* at 221.

³⁸ *Id.* at 223 (emphasizing that weighing fairness to the plaintiff and the plaintiff's state's "manifest interest in providing effective means of redress for its residents," may cause inconvenience to a defendant, however, it does not "amount[] to a denial of due process.").

³⁹ *McGee*, 355 U.S. at 224.

⁴⁰ *World-Wide Volkswagen Corp.*, 444 U.S. 286.

⁴¹ See *id.* at 288.

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See *id.* at 292 (emphasizing that although the burden on the defendant is "a primary concern," it is not the sole factor in deciding whether a state court may exercise personal jurisdiction on a defendant. The burden on the

The Court noted that a state may assert 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.”⁴⁵ After analyzing those factors, the Court held that the Oklahoma court could not exercise personal jurisdiction over Volkswagen because minimum contacts did not exist between Volkswagen and Oklahoma.⁴⁶

In *Asahi Metal Industry Co. v. Superior Court of Cal.*,⁴⁷ Gary Zucher (“Zucher”) filed a products liability claim in a California state court against Cheng Shin Rubber Industrial Co., Ltd. (“Cheng Shin”) and other defendants after he was seriously injured and his wife was killed when he lost control of his motorcycle.⁴⁸ Zucher alleged that his accident was caused by defects in the motorcycle tire, tube, and sealant.⁴⁹ Cheng Shin, the Taiwanese manufacturer of the tube, filed a crossclaim seeking indemnification from its codefendants and Asahi Metal Industry Co. (“Asahi”), a Japanese corporation.⁵⁰ Cheng Shin incorporated Asahi’s tire valve assemblies into its tire tubes.⁵¹

After settlements with Cheng Shin and the other codefendants, only Cheng Shin’s indemnity claim against Asahi was left.⁵² The court followed its reasoning in *World-Wide Volkswagen Corp.* to determine whether the California state court could exercise personal jurisdiction over Asahi.⁵³ The Court determined that, in order to establish minimum contacts, a plaintiff must show that defendant’s placement of its product into the stream of commerce is “purposefully directed” toward that state.⁵⁴ The Court held that the California court may not exercise personal jurisdiction over Asahi because, even if Cheng Shin established that Asahi was

defendant must be considered “in light of [the four] other relevant factors.” The other factors to be considered include the forum state’s interest in the dispute; the plaintiff’s interest in obtaining relief; the most efficient judicial resolution of the dispute; and the furtherance of social policies.)

⁴⁵ *Id.* at 298 (noting that the possibility of revenues from products that can be used in a state is “far too attenuated a contact to justify that State’s exercise of in personam jurisdiction over [a foreign corporation].”)

⁴⁶ See *World-Wide Volkswagen Corp.*, 444 U.S. at 295 holding that Volkswagen did not:

carry on [any] activity in Oklahoma . . . close any sales [or] perform services there . . . avail [itself] of [any] of the privileges and benefits of Oklahoma law . . . solicit [any] business there either through salespersons or through advertising reasonably calculated to reach [Oklahoma] . . . [and] did not sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market.

⁴⁷ *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102 (1987).

⁴⁸ *Id.* at 105.

⁴⁹ *Id.* at 106.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Asahi*, 480 U.S. at 109–10 (citing *World-Wide Volkswagen Corp.*, 444 U.S. 286) (noting that even though a court may exercise personal jurisdiction over a defendant corporation who inserts its product into the “stream of commerce,” that action must not be “an isolated occurrence [and must] arise[] from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States . . .”).

⁵⁴ *Id.* at 112 (listing several examples that a defendant corporation has intended to purposefully avail itself of the forum state, such as: “designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.”)

aware that its valves would be incorporated into Cheng Shin's tire tubes and sold in California, it would not be sufficient to prove that Asahi purposefully availed itself of California's market.⁵⁵

On January 11, 2011, the Court addressed the two facets of personal jurisdiction in two separate cases; *Goodyear Dunlop Tires Operations, S.A. v. Brown* ("Goodyear")⁵⁶ addressed general personal jurisdiction and *J. McIntyre Mach., Ltd. v. Nicastro* ("Nicastro")⁵⁷ addressed specific personal jurisdiction.

In *Goodyear*, two thirteen year-old boys from North Carolina died when the bus they were riding on overturned on a road outside of Paris, France.⁵⁸ The boys' parents filed a wrongful death suit against Goodyear Dunlop and three of its foreign subsidiaries in North Carolina.⁵⁹ The North Carolina court held that it had general jurisdiction over defendants because the defendants' tires reached North Carolina through the stream of commerce.⁶⁰ In a unanimous decision, authored by Justice Ginsburg, the United States Supreme Court reversed, holding that the North Carolina court could not exercise personal jurisdiction over the foreign subsidiaries on claims unrelated to their activities in North Carolina.⁶¹ The Court rejected basing general personal jurisdiction solely on a defendant's continuous and systematic sales in the forum state.⁶²

In *Nicastro*, a metal-shearing machine, manufactured by J. McIntyre, seriously injured Robert Nicastro's hand.⁶³ J. McIntyre was incorporated and operated its principal place of business in England, however, the machine reached New Jersey, where the accident occurred, through a third party distributor.⁶⁴ Nicastro then filed a products liability claim in New Jersey.⁶⁵ The New Jersey state court held that it could exercise personal jurisdiction over J. McIntyre and the New Jersey Supreme Court affirmed. The United States Supreme Court held that the New Jersey courts improperly exercised personal jurisdiction over J. McIntyre.⁶⁶

⁵⁵ *Id.* (elaborating that the exercise of personal jurisdiction over Asahi exceeds the limits of due process because Asahi has not purposefully availed itself of the California market.) Asahi "does not do business[;] has no office, agents, employees, or property [;] does not advertise or otherwise solicit business in California[;] did not create, control, or employ the distribution system that brought its valves to California; [and] did not design its product in anticipation of sales in California."

⁵⁶ See *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. 915 (unanimous opinion).

⁵⁷ See *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011).

⁵⁸ See *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 920.

⁵⁹ See *id.* (alleging that the accident causing the boys' death was caused by a defective tire manufactured in Turkey by a Goodyear Dunlop subsidiary and distributed by other subsidiaries).

⁶⁰ See *id.* at 921 (reasoning that because "a small percentage" of the three foreign subsidiaries' tires reached North Carolina the foreign subsidiaries had sufficient minimum contacts to reasonably anticipate being haled into court in North Carolina).

⁶¹ See *id.* at 920 (holding that the North Carolina court lacked specific jurisdiction because the accident occurred in France and the tires on the bus were not manufactured nor distributed in North Carolina).

⁶² See *id.* at 919 (holding that a court should instead look at whether the corporation's affiliations in the forum state render it "essentially at home" in the forum state).

⁶³ See *Nicastro*, 564 U.S. at 878.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 887 (holding that J. McIntyre did not engage in "any activities in New Jersey that reveal an intent to invoke or benefit from the protection of its laws.").

In early 2014, the United States Supreme Court decided two cases, further restricting state courts' personal jurisdiction authority over out-of-state defendants.⁶⁷ In *Daimler AG v. Bauman* twenty-two Argentinian residents sued Daimler AG, a German subsidiary of Daimler in California federal court.⁶⁸ The district court granted Daimler AG's motion to dismiss for lack of personal jurisdiction and the Ninth Circuit initially affirmed, but then reversed.⁶⁹ Justice Ginsburg once again penned the Court's decision, reversing the Ninth Circuit's holding.⁷⁰ The Court held that Daimler's "slim contacts with [California] hardly render it at home there."⁷¹

A few weeks later the Court heard *Walden v. Fiore*.⁷² Plaintiffs sued an Atlanta Drug Enforcement Administration ("DEA") agent in federal court in Nevada, alleging that the DEA agent violated their Fourth Amendment rights.⁷³ The allegations stem from when the DEA agent seized and kept \$97,000 the plaintiffs won in a San Juan casino and drafted a probable cause affidavit in support of the forfeiture knowing that it contained false statements.⁷⁴ The plaintiffs also allege that the DEA agent willfully sought forfeiture of the money while withholding exculpatory information from the plaintiffs and the United States Attorney's Office.⁷⁵ The DEA agent moved to dismiss for lack of personal jurisdiction, which the district court granted.⁷⁶ The Ninth Circuit reversed.⁷⁷

Justice Thomas authored the unanimous opinion, which spelled out the requirements necessary to meet "minimum contacts" for a court to be able to exercise specific personal jurisdiction over an out-of-state corporate defendant.⁷⁸ The Court held that due process primarily focused on protecting the "nonresident defendant[s]" liberty.⁷⁹ The Court further held that a plaintiff or third-party's contacts with the forum state is not sufficient to satisfy the "minimum

⁶⁷ See *Daimler*, 134 S. Ct. 746 (applying the test created in *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 920 (unanimous opinion), narrowing the scope of general personal jurisdiction to only two forums, the state of incorporation and the principle place of business); *Walden*, 134 S. Ct. at note 6 (unanimous opinion) (using the definition of "'specific' or 'case-linked' jurisdiction" outlined in *Goodyear*, 564 U.S. at 919, to determine that a state court may only exercise specific personal jurisdiction over an out-of-state corporate defendant if the claim arises from an activity that occurred in the forum state).

⁶⁸ *Daimler*, 134 S. Ct. at 751 (alleging that during Argentina's "Dirty War," Daimler's Argentinian subsidiary collaborated with the military dictatorship to "kidnap, detain, torture, and kill . . . plaintiffs or [people] closely related to plaintiffs.").

⁶⁹ *Id.* at 752–53.

⁷⁰ *Id.* at 760–61 (emphasizing that a defendant's contacts within a state must be so continuous and systematic as to render the defendant "at home there.").

⁷¹ *Id.*

⁷² *Walden*, 134 S. Ct. 1115 (unanimous opinion).

⁷³ See *id.* at 1120.

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See *id.*

⁷⁷ See *id.* (holding that although the district court correctly determined that "the DEA agent's search and seizure in [Atlanta] could not support exercise of jurisdiction Nevada . . . [it] could properly exercise jurisdiction over 'the false probable cause affidavit aspect of the case' . . . [because] the DEA agent 'expressly aimed' his submission of the allegedly false affidavit at Nevada by submitting the affidavit with knowledge that it would affect persons with a 'significant connection' to Nevada.").

⁷⁸ *Walden*, 134 S. Ct. at 1122 (elaborating on the definition of specific jurisdiction spelled out in *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. 915 (unanimous opinion)).

⁷⁹ See *id.* (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 291–92) (holding that the defendant's liberty is more important than the "convenience of the plaintiffs or third parties.").

contacts’ inquiry,” the relationship must arise from the contacts created by the defendant.⁸⁰ Additionally, those contacts must be directly with the forum state; not with a plaintiff or third party who has contact with the forum state.⁸¹

After another three-year hiatus, the United States Supreme Court decided to revisit personal jurisdiction in mid-2017. This is a new facet to personal jurisdiction jurisprudence because the previous rulings have not concerned themselves with suits where the plaintiffs are also out-of-state citizens.⁸² The Court once again bifurcated its focus on personal jurisdiction by addressing specific jurisdiction in one case and general jurisdiction in another.⁸³

BNSF Railway Co. v. Tyrrell involves two separate actions against defendant, BNSF Railway (“BNSF”), under the Federal Employers’ Liability Act (“FELA”) in Montana state court.⁸⁴ Plaintiffs, a former BNSF employee and the widow of another of BNSF’s employees, sued for money damages for the employees’ on-the-job injuries.⁸⁵ Neither plaintiff resided in Montana.⁸⁶ BNSF is a railroad company, which has its principal place of business in Texas and is incorporated in Delaware.⁸⁷ However, BNSF has 2,061 miles of railroad track in Montana, employs around 2,100 workers there, and maintains one of its automotive facilities there.⁸⁸ The Montana Supreme Court consolidated the two cases and held that BNSF’s contacts were such that Montana courts could exercise general personal jurisdiction over it.⁸⁹

The court further held that the *Daimler* rule did not apply because “*Daimler* did not involve a FELA claim or a railroad defendant.”⁹⁰ Justice Ginsburg authored the opinion of the United States Supreme Court once more. The Court granted certiorari to determine whether a state is authorized to exercise general personal jurisdiction over a corporate defendant that does business in the state but is not incorporated or headquartered there.⁹¹ The Court relied on Justice Ginsburg’s opinions in *Daimler*⁹² and *Goodyear* to hold that the Montana courts could not

⁸⁰ See *id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

⁸¹ See *id.* (citing *Burger King*, 417 U.S. at 478) (“it is the defendant’s conduct that must form the necessary connection with the forum [s]tate that is the basis for its jurisdiction over him.”)

⁸² See *BNSF Ry.*, 137 S. Ct. 1549 (8–1 decision) (addressing a claim where neither the plaintiffs nor the defendant was a citizen of Montana, where the claim was brought); *Bristol-Myers Squibb Co.*, 137 S. Ct. 1773 (8–1 decision) (addressing a claim where numerous out-of-state plaintiffs wished to join a class action suit with in-state plaintiffs against an out of state defendant).

⁸³ See *Bristol-Myers Squibb*, 137 S. Ct. at 1776 (analyzing specific personal jurisdiction); *BNSF Ry.*, 137 S. Ct. at 1558 (analyzing general personal jurisdiction).

⁸⁴ See *BNSF Ry.*, 137 S. Ct. at 1553.

⁸⁵ See *id.* at 1554.

⁸⁶ See *id.* at 1553.

⁸⁷ See *id.* at 1554.

⁸⁸ See *id.*

⁸⁹ See *id.* (holding that “both FELA and Montana law authorized the ‘exercise of personal jurisdiction’ over BNSF because ‘BNSF is both ‘doing business’ and ‘found within’ [Montana]”).

⁹⁰ *BNSF Ry.*, 137 S. Ct. at 1554–55.

⁹¹ See *id.* at 1555.

⁹² See *id.* at 1559 (citing *Daimler*, 134 S. Ct. 746) (asserting that BNSF was not sufficiently engaged in an activity in the state in order to render it amenable to suit in Montana).

exercise general personal jurisdiction over BNSF because Montana was not a “paradigm” forum.⁹³

Bristol-Myers Squibb Co. v. Superior Court is the most recent iteration of specific personal jurisdiction jurisprudence.⁹⁴ Bristol-Myers Squibb Co. (“BMS”) is a large pharmaceutical company, which is incorporated in Delaware and headquartered in New York.⁹⁵ More than 600 plaintiffs filed suit against BMS, alleging injuries from one of BMS’ drugs called Plavix.⁹⁶ None of the out-of-state plaintiffs alleged that they “obtained Plavix [in California]; nor did they allege that they were “injured by Plavix or were treated for their injuries in California.”⁹⁷ The California Superior Court denied BMS’ motion to quash service of summons on the out-of-state residents.⁹⁸ Applying *Daimler*, the State Court of Appeal held, and the California Supreme Court affirmed, that California had authority to exercise specific personal jurisdiction over BMS.⁹⁹

The United States Supreme Court granted certiorari to determine if state courts may exercise personal jurisdiction over out-of-state plaintiffs’ claims against an out-of-state defendant.¹⁰⁰ The court held that the California courts could not exercise personal jurisdiction over the out-of-state plaintiffs’ claims against BMS.¹⁰¹ The Court left an option for the out-of-state plaintiffs, however; they could bring a “consolidated action in [one of the two s]tates that have general jurisdiction over BMS.”¹⁰²

II. EMPOWERING CORPORATE DEFENDANTS IN THE JUDICIAL SYSTEM BY MAKING THE BURDEN ON THE DEFENDANT THE PRIMARY CONCERN OF THE COURTS

Throughout the history of personal jurisdiction, the United States Supreme Court has narrowed the scope of personal jurisdiction to favor corporate defendants.¹⁰³ The recent holdings go so far as to even favor foreign defendants over a plaintiff’s right to seek redress in court for injuries caused by a defendant.¹⁰⁴ Moreover, these restrictions on personal jurisdiction are

⁹³ See *id.* at 1558 (citing *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 924) (reiterating that the “paradigm” forums in which a corporate defendant is ‘at home,’ . . . are the corporation’s place of incorporation and its principal place of business.”).

⁹⁴ See *Bristol-Myers Squibb Co.*, 137 S. Ct. 1773 (8–1 decision) (analyzing specific personal jurisdiction where some of the plaintiffs and the corporate defendant are out-of-state residents).

⁹⁵ See *id.* at 1777.

⁹⁶ See *id.* at 1778 (noting that only eighty-six of the plaintiffs were California residents, while the other 592 were residents of thirty-three other states).

⁹⁷ *Id.*

⁹⁸ See *id.*

⁹⁹ See *id.* (holding that general personal jurisdiction was lacking, but California had authority to exercise “specific [personal] jurisdiction over the [out-of-state plaintiff]s’ claims against BMS”).

¹⁰⁰ See *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1779.

¹⁰¹ See *id.* at 1781 (holding that even though California courts could exercise personal jurisdiction over the in-state plaintiffs’ claims, “[t]he mere fact that [in-state] plaintiffs . . . sustained the same injuries as did the [out-of-state plaintiffs]—does not allow the [s]tate to assert specific jurisdiction over the [out-of-state plaintiffs]’ claims.”).

¹⁰² *Id.* at 1783.

¹⁰³ See discussion *supra* Part I.

¹⁰⁴ See *BNSF Ry.*, 137 S. Ct. at 1560 (Sotomayor, J., dissenting)

antiquated at best; they do not take into account the rapid globalization of the world.¹⁰⁵ Making the burden on the defendant the primary concern of the courts, instead of weighing each factor equally severely limits plaintiffs' ability to seek redress.¹⁰⁶ The Court runs afoul of the personal jurisdiction rule enunciated in *International Shoe Co.*¹⁰⁷ In *International Shoe Co.* the Court determined that Washington courts could exercise personal jurisdiction over International Shoe Co. because it had "received the benefits and protections of the laws of the state, including the right to resort to the courts for enforcement of its rights."¹⁰⁸

III. HOW THE RESTRICTION ON PERSONAL JURISDICTION ADVERSELY AFFECTS PLAINTIFF'S RIGHT TO SEEK REDRESS IN A COURT OF LAW

By denying courts the authority to exercise personal jurisdiction over out-of state corporations with continuous and systematic contacts with a state simply because they are not incorporated or headquartered there denies plaintiffs their right to seek redress in a court of law.¹⁰⁹ Courts should not compare the contacts a defendant has within a state and the other states in which it operates; the comparative contacts test only serves to aid a corporate defendant in evading litigation in forty-eight states regardless of how "continuous and systematic" the contacts within a state are.¹¹⁰ This directly affects plaintiffs' right to seek redress, specifically plaintiffs whose claims would be worth little if litigated separately.¹¹¹ The Court's opinion is also counterintuitive because it is not in the defendant's best interest to litigate multiple claims in multiple jurisdictions.¹¹² Furthermore, being fair to plaintiffs is not sufficiently unfair to corporate defendants, which usually have billions of dollars to limit the courts available to individual plaintiffs who likely cannot afford the cost of litigating a case in another state.¹¹³

I. CONCLUSION

¹⁰⁵ See *Nicastro*, 564 U.S. at 887 (Breyer, J., concurring) (stating that "there have been many recent changes in commerce and communication, many of which are not anticipated by our precedents.").

¹⁰⁶ See *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1789 (Sotomayor, J., dissenting).

¹⁰⁷ See *BNSF Ry.*, 137 S. Ct. at 1561 (Sotomayor, J., dissenting) (stating that the Court did not use a comparative contacts test to determine if the defendant was amenable to suit in a state).

¹⁰⁸ See *Int'l Shoe Co.*, 326 U.S. at 320 (describing the resources that International Shoe Co. took advantage of through its continuous and systematic contacts with the state of Washington).

¹⁰⁹ See *BNSF Ry.*, 137 S. Ct. at 1560 (Sotomayor, J., dissenting)

¹¹⁰ See *id.* (stating that the Court acknowledged that International Shoe Co. "maintained places of business in several States, [but] did not engage in a comparison between International Shoe [Co.'s] contacts within the State of Washington and the other States in which it operated."). The comparative contacts test would allow an out-of-state corporate defendant to avoid litigation in a state where it has more offices or factories, more contacts, and more employees than a smaller in-state corporation.

¹¹¹ See *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1784 (Sotomayor, J., dissenting) (stating that the majority's will severely impede "plaintiffs across the country whose claims may be worth little alone" from joining together in a class action lawsuit.)

¹¹² See *id.* (arguing that the majority rule "will result in piecemeal litigation and the bifurcation of claims.").

¹¹³ See *id.* ("There is nothing unfair about subjecting a massive corporation to suit in a State for a nationwide course of conducts that injures both forum residents and nonresidents alike.").

Courts should revert to the continuous and systematic test of *International Shoe Co.* rather than comparing the companies in-state contacts with its contacts in the entire country.¹¹⁴ It is unfair to weigh the burden on the defendant more heavily than right of plaintiffs to seek redress for injuries caused by the defendant.¹¹⁵ In the same manner that a corporate defendant that has continuous and systematic contacts with a state avails itself of the benefits and services of a state, such as courts, those same contacts should suffice to make it amenable to litigation in that state.¹¹⁶ Moreover, it is not unfair to allow out-of-state defendants to join an action or actions that are identical to the ones that the corporate defendant already faces.¹¹⁷ Additionally, separating the suits would be unfair to both the defendant and the plaintiffs.¹¹⁸ Therefore, the United States Supreme Court personal jurisdiction jurisprudence should revert to the rule set out in *International Shoe Co.* where the courts look to the continuous and systematic contacts the corporation has with the forum state, without comparing those contacts to the defendant's contacts in the entire country.¹¹⁹

¹¹⁴ See *BNSF Ry.*, 137 S. Ct. at 1561 (Sotomayor, J., dissenting) (“The focus should be on the quality and quantity of the defendant’s contacts in the forum State.”).

¹¹⁵ See *id.*

¹¹⁶ See *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1786 (Sotomayor, J., dissenting)

¹¹⁷ See *id.*

¹¹⁸ See *id.* at 1786–87 (arguing that the cost of litigation is greatly reduced for both sides if the claims could be “in a consolidated proceeding . . . [because it] allows them to . . . share discovery, and maximize recoveries on claims that may be too small to bring on their own.”).

¹¹⁹ See *BNSF Ry.*, 137 S. Ct. at 1561 (Sotomayor, J., dissenting) (“The focus should be on the quality and quantity of the defendant’s contacts in the forum State.”).