

Litigation Advisory

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U.S. Supreme Court Clarifies "Continuous And Systematic" Contacts Necessary For General Jurisdiction Over Non-Resident, Confirming "Stream of Commerce" Doctrine Confers Only Specific Jurisdiction

By Samuel W. Braver and Deborah A. Little

On June 27, 2011, in a unanimous opinion, the United States Supreme Court, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 2011 WL 2518815, addressed for the first time in nearly 30 years whether a non-resident (sister-state or foreign-country) corporation's contacts with a state were sufficiently "continuous and systematic" so as to justify the exercise of jurisdiction over it on claims unrelated to any activity in the state, the standard for general jurisdiction since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), decided over 60 years ago. The issue, as framed by Justice Ginsburg in this underlying products liability case, was very succinctly stated: are foreign subsidiaries of a United States parent corporation amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State?

The case involved a bus accident which occurred in France, killing two young North Carolina residents. A tire alleged to have caused the accident was manufactured in Turkey. The Goodyear USA subsidiaries at issue, organized in Turkey, France and Luxembourg, are not registered to do business in North Carolina, have no place of business, employees or bank accounts in North Carolina, do not design, manufacture or advertise their products in North Carolina, do not solicit business in North Carolina and do not themselves sell or ship tires to North Carolina customers. Only a small percentage of their tires, not including those of the type involved in the accident, were distributed in North Carolina by other Goodyear USA affiliates.

The North Carolina state court which asserted general jurisdiction over the foreign subsidiaries did so based upon the "stream of commerce" theory. Typically, stream of commerce cases involve a non-resident defendant acting *outside* the forum and placing in the stream of commerce a product that ultimately causes harm *inside* the forum. In *Goodyear*, both the act of fabricating the allegedly defective tire and the accident occurred outside the forum. Nothing in the record evidenced the foreign corporation defendants taking any affirmative action to cause tires which they had manufactured to be shipped into North Carolina.

The Supreme Court, reviewing the case under the Fourteenth Amendment's Due Process Clause, reversed the judgment of the North Carolina Court of Appeals, holding that such limited connections between the forum and a foreign corporation do not establish the "continuous and systematic" affiliation necessary to confer general jurisdiction over claims unrelated to the foreign corporation's contacts with the State. *Goodyear*, at *4. Comparing a corporation to an individual, the court reasoned that the forum must be "one in which the corporation is fairly regarded as at home," *Goodyear*, at *6, and stated that sporadic sales of tires in North Carolina "fall far short of 'the continuous and systematic general business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State." *Goodyear*, at *9-10, citing *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408, 416 (1984) (mere purchases made in forum State, even at

regular intervals, do not warrant assertion of general jurisdiction over a non-resident corporation in a cause of action not related to those transactions).

The defendants, the court observed, were "in no sense at home" with only "attenuated connections to the State." *Goodyear*, at *10. Further, in a footnote, the court clarified that even regularly occurring sales of a product in a State do not justify the exercise of general jurisdiction. *Goodyear*, at *10, n.6. Thus, under *Goodyear*, the stream of commerce doctrine clearly applies to specific jurisdiction only, where the claims at issue relate to the product placed in the stream of commerce.

With the *Goodyear* decision, foreign companies can now better predict where they may be subject to suit and develop business strategies to limit, where possible, their affiliations and connections with forums they do not consider their home, so as to avoid the risk of suit there.

For more information, email the author(s) at litigationadvisory@bipc.com.

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