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Megan M. La Belle
*The Catholic University of America, Columbus School of Law*

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Since the World Wide Web was introduced in the early 1990s, it has infiltrated so many aspects of our personal and professional lives. We use the Internet to communicate, conduct business, shop, socialize, entertain ourselves, and gather information. In many ways, the Internet has made our lives easier and better.

***Megan La Belle*** *is an Assistant Professor at the Catholic University of America, Columbus School of Law, where she teaches intellectual property and procedural courses. Before joining the faculty, Professor La Belle spent several years as a commercial litigator with the Los Angeles law firm of Munger, Tolles & Olson where her practice focused on intellectual property and other complex civil matters. She also served as a law clerk at the United States Court of Appeals for the Ninth Circuit and the United States District Court for the Central District of California. Professor La Belle's research interests include intellectual property and civil procedure, and particularly the intersection between the two disciplines. She is the author of* Standing to Sue in the Myriad Genetics Case *(2 Cal. L. Rev. Circuit 68 [2011])*, Patent Litigation, Personal Jurisdiction, and the Public Good *(18 George Mason Law Review 43 [2010]), and* The "Rootkit Debacle": The Latest Chapter in the Story of the Recording Industry and the War on Music Piracy *(84 Denv. U.L. Rev. 79 [2006]).*

Yet by facilitating and increasing contact with the rest of the world, the Internet potentially expands the doctrine of personal jurisdiction and exposes individuals and corporations to suit in distant and inconvenient locations.

For the past two decades, courts have struggled with the question of how Internet-related contacts should be treated in the personal jurisdiction analysis. Some courts have utilized the traditional minimum contacts framework of *International Shoe v. Washington*,[1] while others have devised new tests to accommodate this technological evolution.[2] So when the US Supreme Court granted certiorari in two personal jurisdiction cases last term—*Goodyear Dunlap Tires v. Brown*[3] and *J. McIntyre v. Nicastro*[4]—many believed these unsettled questions of Internet-related personal jurisdiction would finally be resolved. Disappointingly for litigants, lower courts, and academics, however, *Goodyear* and *McIntyre* give little guidance about the future of personal jurisdiction in our virtual world.

## PERSONAL JURISDICTION BEFORE *GOODYEAR* AND *MCINTYRE*

Before last term, it had been nearly a quarter of a century since the Supreme Court considered the doctrine of personal jurisdiction. To better understand the issues decided by the Court, our starting point is the state of personal jurisdiction jurisprudence before *Goodyear* and *McIntyre*. The test for personal jurisdiction involves a two-step inquiry: (1) Does the forum state's long-arm statute authorize personal jurisdiction? and (2) Would the exercise of jurisdiction comport with due process?[5] Since most state long-arm statutes are co-extensive with the limits of due process, the two inquiries frequently collapse into one, and so the question is whether the assertion of personal jurisdiction would violate the Due Process Clause.[6]

The touchstone of due process for personal jurisdiction over absent defendants is whether they have meaningful "contacts, ties, or relations" with the forum state and thus could reasonably anticipate being haled into court there.[7] In other words, a court cannot force a party to defend a lawsuit in a state unless the defendant has the requisite "minimum contacts" with that state, and the exercise of jurisdiction would not offend "traditional notions of fair play and substantial justice."[8]

Two profiles of personal jurisdiction have evolved since *International Shoe*: general jurisdiction and specific jurisdiction. In order to be subject to a court's general jurisdiction, the defendant must have "continuous and systematic" contacts with the forum state.[9] Assuming such contacts exist, courts may exercise jurisdiction over the defendant with respect to any type of lawsuit, even if the action is not related to the defendant's contacts with the forum state.

Specific jurisdiction, on the other hand, requires less pervasive contacts between the defendant and the forum state. Under this doctrine, however, courts are only permitted to exercise jurisdiction over a defendant if the lawsuit arises out of—or is related to—the defendant's contacts with the forum. Moreover, the defendant's contacts with the forum state must be purposeful, and the assertion of jurisdiction must be reasonable and fair.[10] In this situation, the "'relationship among the defendant, the forum, and the litigation,' is the essential foundation of *in personam* jurisdiction."[11]

These jurisdictional constructs provide standards for courts and litigants regarding the personal jurisdiction analysis. Yet, because the question of whether a non-resident defendant is subject to personal jurisdiction in a forum state is heavily fact-dependent, the outcome of jurisdictional disputes is always difficult to predict; and when the defendant's only contacts with the forum state are indirect, the personal jurisdiction analysis becomes even more complicated.

## THE STREAM OF COMMERCE AND PERSONAL JURISDICTION

In the decades following *International Shoe*, the economy continued to grow and the flow of commerce between the states steadily increased. Consequently, corporations transacted significant business that crossed stated lines—they maintained stores and manufacturing facilities, sold goods and services, advertised, and employed people in other states. With this fundamental transformation of the national economy came more expansive theories of personal jurisdiction, namely, the stream-of-commerce doctrine.[12]

The stream-of-commerce doctrine is not a distinctive theory of personal jurisdiction, but provides a methodology for satisfying the purposeful availment requirement of specific jurisdiction. Plaintiffs rely on this jurisdictional doctrine when the defendant's only contacts with the forum state are that its products were placed into the stream of commerce and were ultimately sold in the state. The question, therefore, is whether a defendant purposefully avails itself of a forum state by "deliver[ing] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state."[13]

The Supreme Court last addressed the stream-of-commerce issue almost twenty-five years ago in *Asahi Metal Industry v. Superior Court*.[14] Unfortunately, the parameters of the stream-of-commerce doctrine were not well defined in *Asahi*; thus, there has been great confusion in this area for a long time now. In *Asahi*, a majority of the justices could not agree as to the requirements for personal jurisdiction under a stream-of-commerce theory. One opinion, authored by Justice O'Connor, found that "[t]he placement of a product into the stream-of-commerce, without more, is not an act of the defendant purposefully directed toward the forum State," and that the requisite something "more" might be marketing, advertising, service, or design done with the forum in mind.[15] Justice Brennan opined, by contrast, that placing a product in the stream of commerce with an awareness "that the final product is being marketed in the forum State" is all that is necessary for purposeful availment.[16]

In the wake of *Asahi*, many appellate courts adopted either Justice O'Connor's or Justice Brennan's approach to stream-of-commerce jurisdiction.[17] Other courts disregarded *Asahi* since there was not a majority opinion and instead have followed earlier personal jurisdiction cases like *World Wide Volkswagen Corp. v. Woodson*.[18] The result is an extremely complicated jurisprudential landscape, which the Internet has made even more difficult to navigate.

## INTERNET-RELATED CONTACTS AND PERSONAL JURISDICTION

The Internet has had a profound impact on the way we communicate, conduct business, and engage in commercial transactions. The volume of transstate and transnational contacts has increased dramatically and so questions of personal jurisdiction have moved to the forefront in the Internet age. While some courts have continued to apply the traditional

minimum contacts test to Internet-based jurisdiction, others have taken a different tack. *Zippo Manufacturing v. Zippo DOT Com*,[19] for example, established a sliding scale of Internet activity test that has gained popularity with many other courts.

The *Zippo* case arose in the context of a trademark dispute, but it has had far-reaching implications. The question in *Zippo* was whether the defendant—a California corporation whose principal business was an Internet news service that allowed online users to access newsgroups through its Web site—was subject to specific personal jurisdiction in Pennsylvania. The primary issue was whether the defendant had purposefully availed itself of Pennsylvania by engaging in electronic commerce with residents of that forum. To answer this question, the court introduced a sliding-scale test that characterizes virtual contacts as falling into three categories.[20] At one end of the scale are "active" Web sites used to conduct business transactions. At the opposite end of the spectrum are "passive" Web sites where a defendant simply makes information available on a Web site that may be accessed by residents of other states. And in the middle of the sliding scale are "interactive" Web sites, which allow for the exchange of information between the Web site's host and non-residents, but where business transactions do not necessarily occur. Under this sliding scale test, the maintenance of an active Web site amounts to purposeful availment, while the maintenance of a passive Web site does not. Interactive Web sites may or may not subject the defendant to personal jurisdiction depending on the specific nature of the site.[21]

In theory, the use of a bright-line test like the one announced in *Zippo* is beneficial. It should increase predictability for litigants and ease the burden on the courts in deciding difficult jurisdictional questions. But this "one-size-fits-all" approach contradicts the Supreme Court's mandate that personal jurisdiction be decided on a case-by-case basis.[22] Moreover, many courts have reflexively followed the *Zippo* test without regard to either the basic tenets of the personal jurisdiction doctrine or the particular factual circumstances of the case. For example, some courts have subjected defendants to general jurisdiction under the *Zippo* sliding-scale test even though *Zippo* applies only to the specific jurisdiction analysis.[23] Other courts applying *Zippo* have diverged over the definition of interactivity or have tweaked *Zippo* to require a target audience in the forum or a history of actual interaction with forum residents.[24]

Thus, the supposedly simple-to-apply *Zippo* test has, in actuality, contributed to the creation of a body-of-case law on Internet-related personal jurisdiction that is confusing, inconsistent, and sometimes even inaccurate. When the Supreme Court granted certiorari in *Goodyear* and *McIntyre* last term, many hoped these unsettled questions regarding personal jurisdiction would finally be resolved.

## THE *GOODYEAR* AND *MCINTYRE* CASES

The *Goodyear* and *McIntyre* cases share many commonalities: they involved product liability claims; the defendants were foreign entities; and the Supreme Court ultimately determined that personal jurisdiction was lacking in both cases. Yet there are also distinctions between *Goodyear* and *McIntyre*. Most significantly, *Goodyear* was a general jurisdiction case, while the plaintiff in *McIntyre* was relying on a theory of specific jurisdiction.

### *Goodyear Dunlap Tires v. Brown*

The dispute in *Goodyear* revolved around a bus accident in Paris, France, that killed two thirteen-year-old boys from North Carolina who were traveling with their soccer team.[25] Alleging that faulty tires caused the accident, the boys' families sued Goodyear USA and its Turkish subsidiary ("Goodyear Turkey"), the manufacturer of the tires involved in the accident, in state court in North Carolina. The state court held that Goodyear Turkey was subject to general jurisdiction in North Carolina because it had continuously and systematically placed products into the stream of commerce destined for North Carolina. Specifically, the court cited Goodyear Turkey's significant volume of tire sales in the state between 2004 and 2007 as the basis for subjecting the defendant to general jurisdiction in North Carolina.[26]

The US Supreme Court granted certiorari to answer the following question: "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?"[27] Before answering that question, however, the Court made clear that there was no basis for exercising specific

jurisdiction in this case because the defendant's contacts with North Carolina—the sale of tires in that state—did not relate to the plaintiff's claim. The Court explained that the accident did not occur in North Carolina, the tires were not manufactured there, and none of the tires involved in the accident had been sold in North Carolina. Thus, there was no nexus between the plaintiff's claim and the defendant's contacts with the forum as required by specific jurisdiction principles.[28]

Turning then to general jurisdiction, the Court first indicated that the North Carolina courts' reliance on stream of commerce was misplaced since this was a general jurisdiction case and that the theory applies only in the specific jurisdiction context.[29] With that clarification, the Court held that general jurisdiction over a non-resident defendant is appropriate when the defendant's contacts with the state are so continuous and systematic as to render the defendant essentially "at home" in the forum State.[30] While declining to explicate this "at home" standard, the Court applied it to the case at bar, determined that Goodyear Turkey was not subject to personal jurisdiction in North Carolina, and reversed the decision of the lower court.[31]

***J. McIntyre v. Nicastro***

Unlike *Goodyear*, the *McIntyre* case raised questions about the specific jurisdiction doctrine.[32] In *McIntyre*, the plaintiff Robert Nicastro seriously injured his hand while using a metal-shearing machine manufactured by the defendant J. McIntyre Machinery ("J. McIntyre"). Although the accident occurred in New Jersey, the machine was manufactured in England where J. McIntyre is incorporated and operates. Nicastro's employer, Curcio Scrap Metal ("Curcio"), did not purchase the machine directly from J. McIntyre. Instead, J. McIntyre sold its machines to a US distributor in Ohio who then sold one of the machines to Curcio in New Jersey.[33]

Nicastro sued J. McIntyre in New Jersey state court alleging that the machine was defective, and J. McIntyre challenged personal jurisdiction. The case made its way to the New Jersey Supreme Court, which adopted Justice Brennan's position from *Asahi* and held that J. McIntyre had subjected itself to personal jurisdiction in New Jersey. Invoking the stream-of-commerce theory, the court held that a defendant like J. McIntyre purposefully avails itself of a foreign state so long as it "knew or reasonably should have known that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states."[34]

The US Supreme Court granted certiorari and reversed. Although six justices agreed that J. McIntyre was not subject to personal jurisdiction in New Jersey, the Court failed to muster a majority on any particular rationale. Writing for the plurality, Justice Kennedy first stated that, in products liability cases like this one, personal jurisdiction depends on the defendant's purposeful availment.[35] The plurality then acknowledged that a defendant may purposefully avail itself by sending goods, rather than agents, into a forum state.[36] However, the plurality explained, "[t]he defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State."[37] In other words, the plurality in *McIntyre* appears to have adopted Justice O'Connor's stream-of-commerce "plus" test for purposeful availment.

The plurality did not stop there, however. A significant portion of the opinion is spent attempting to explain why the Constitution limits states like New Jersey from exercising personal jurisdiction over defendants like J. McIntyre. While conceding that the personal jurisdiction doctrine is grounded in the Due Process Clause, the plurality argued that notions of state sovereignty also limit the exercise of personal jurisdiction over non-residents.[38]

Despite this in-depth discussion of state sovereignty, the plurality ultimately decided the case based on its evaluation of the purposeful availment prong of the specific jurisdiction test. In the plurality's view, J. McIntyre did not purposefully avail itself of New Jersey because the defendant only intended to serve the US market as a whole, not New Jersey in particular; the defendant's officers attended trade shows in several states, but not New Jersey; and only four of the machines involved in the accident ended up in New Jersey.[39] Under these circumstances, the plurality held that the exercise of jurisdiction would offend due process.[40]

In addition to the plurality, there were also concurring and dissenting opinions in *McIntyre*. Like the plurality, the concurrence of Justices Breyer

and Alito held that J. McIntyre was not subject to personal jurisdiction in New Jersey; for a number of reasons, however, the concurrence declined to join the plurality's opinion. First and foremost, the concurrence did not believe this was an appropriate case in which to fashion new jurisdictional rules based on our evolving global economy.[41] While acknowledging that commerce and communication has undergone significant transformation in recent years, the concurrence emphasized that the machine at issue in *McIntyre* ended up in New Jersey through traditional commercial channels. Nicastro did not claim that J. McIntyre was subject to jurisdiction in New Jersey based on its "virtual" contacts with the state. Unlike in many modern cases, there were no allegations that the defendant maintained a Web site or engaged in e-commerce. Accordingly, Justice Breyer believed it unwise to rework the personal jurisdiction doctrine "without a better understanding of the relevant contemporary commercial circumstances."[42]

With this concern in mind, the concurrence held that the jurisdictional question in *McIntyre* could be resolved by looking to the facts and adhering strictly to prior precedent, thereby avoiding any broad pronouncements regarding personal jurisdiction jurisprudence. Unlike the plurality, Justices Breyer and Alito did not choose sides in the stream-of-commerce debate because they believed that defendant had not purposefully availed itself of New Jersey under either test.[43] Focusing exclusively on the facts presented to the lower court and refusing to consider anything outside the record, the concurrence concluded that J. McIntyre was not subject to personal jurisdiction in New Jersey.[44]

In contradistinction to the plurality and concurrence, the dissent—which was authored by Justice Ginsburg and joined by Justices Sotomayor and Kagan—held that New Jersey's exercise of personal jurisdiction over J. McIntyre was constitutional.[45] In reaching this decision, the dissent highlighted J. McIntyre's connection with New Jersey, especially the fact that the machine was in New Jersey and that is where Nicastro was injured. The dissent distinguished *Asahi* on the grounds that the defendant in that case was only a component-part manufacturer and did not itself seek out customers in the United States, unlike J. McIntyre.[46] The dissent also rejected the plurality's rationale, concluding "the constitutional limits on a state court's adjudicatory authority derive from considerations of due process, not state sovereignty."[47] Finally, after noting that fairness is the touchstone of personal jurisdiction, the dissent held that there is nothing unfair about subjecting a corporate defendant like J. McIntyre to jurisdiction in New Jersey—the forum where its product was sold and caused the plaintiff's injury.

## THE FUTURE OF INTERNET-RELATED PERSONAL JURISDICTION

When the US Supreme Court granted certiorari in *Goodyear* and *McIntyre*, many believed that the decisions would provide greater guidance on the doctrines of general and specific jurisdiction, particularly in the Internet context. Unfortunately, *Goodyear* and *McIntyre* failed to resolve certain outstanding questions related to personal jurisdiction, such as the split in *Asahi* between Justices O'Connor and Brennan. Moreover, *Goodyear* and *McIntyre* raise a whole host of new issues about the future of the personal jurisdiction doctrine. Yet, until the Court speaks on these issues again, litigants and lower courts are left to extrapolate the lessons to be learned from these two cases.

Of the two cases, *Goodyear*'s impact on Internet-related personal jurisdiction is easier to predict. Before *Goodyear*, some courts held that a defendant's virtual contacts with a forum state were sufficient under the *Zippo* sliding scale test to support general jurisdiction. *Gator.com Corp. v. L.L. Bean, Inc.*, is a good example.[48] In that case, the Ninth Circuit held that the defendant L.L. Bean was subject to general jurisdiction in California because it conducted business over the Internet, and its Internet business contacts with California were substantial, continuous, and systematic. The court reasoned that "an online store can operate as the functional equivalent of a physical store," and the nature of L.L. Bean's commercial activity in California was substantial enough that it "approximated physical presence" sufficient for general jurisdiction.[49]

Similarly, in *Gorman v. Ameritrade Holding Corp.*,[50] the US Court of Appeals for the District of Columbia Circuit held a non-resident defendant subject to general jurisdiction based on its virtual contacts with the District. In the court's opinion, defendant Ameritrade Holding Corp., an online

brokerage firm, had subjected itself to jurisdiction by maintaining a Web site through which it conducted business in the District. Specifically, customers in the District could use the Web site to open accounts, transmit funds to those accounts electronically, use the accounts to buy and sell securities, and enter into binding contracts with the defendant. In turn, defendant would transmit electronic confirmations, account statements, and other financial information back to its customers in the District.[51] If these contacts between Ameritrade and its customers were substantial, continuous, and systematic, general jurisdiction would lie in the District.[52]

The decision in *Goodyear* casts doubt on the holding and rationale of *L.L. Bean*, *Ameritrade*, and similar cases basing general jurisdiction on continuous and systematic virtual contacts with the forum state.[53] The *Goodyear* Court attempted to provide additional guidance for gauging general jurisdiction and explained that the defendant not only must have continuous and systematic contacts with the forum state, but must be "at home" there too.[54] Although the Court did not define this "at home" standard, it held unanimously that Goodyear Turkey's continuous and systematic sale of its products into North Carolina fell short. Thus, the looming question after *Goodyear* is whether any sort of "doing business" jurisdiction survives, or whether corporate defendants will only be subject to general jurisdiction where they are actually at home, meaning where they are incorporated and headquartered. Either way, it is plain that *Goodyear* narrowed the breadth of the general jurisdiction doctrine.

It is harder to foresee how *McIntyre* might affect personal jurisdiction jurisprudence. As is already becoming evident, courts will respond differently to this decision. Some courts will continue to rely on earlier cases in resolving personal jurisdiction disputes since there was no majority opinion in *McIntyre*.[55] Others will follow *Marks v. United States*, which held that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as the position taken by those Members who concurred in the judgments on the narrowest grounds…."[56] Applying this test, one court recently decided that *McIntyre* stands for the proposition that "specific jurisdiction must arise from a defendant's deliberate connection with the forum state," rather than with the United States as a whole.[57] Finally, there will be courts that mistakenly treat the plurality decision in *McIntyre* as a majority opinion, the result of which will be a much stricter interpretation of the specific jurisdiction doctrine.[58]

While it is difficult to predict how lower courts will interpret and apply *McIntyre*, there is a good chance that the Supreme Court will provide additional guidance on personal jurisdiction sometime soon. Three of the nine members of the Court—Justices Ginsburg, Sotomayor, and Kagan—dissented and likely would welcome the opportunity to reconsider the jurisdictional issues left unresolved by *McIntyre*. Perhaps more significantly, the concurrence stated explicitly that *McIntyre* was not the proper case for retooling the personal jurisdiction doctrine: "Because the incident at issue in this case does not implicate modern concerns and because the factual record leaves many open questions, this is an unsuitable vehicle for making broad pronouncements that refashion basic jurisdictional rules."[59] This strongly suggests that Justices Breyer and Alito are open to hearing another personal jurisdiction case—most likely one involving Internet-related contacts—in the near future.

## CONCLUSION

Personal jurisdiction questions, particularly those concerning Internet-related contacts, arise often in civil lawsuits. Despite the frequency with which these issues arise, however, the personal jurisdiction doctrine has been plagued by complexity and confusion for many years. The Supreme Court's decision last term to review *Goodyear* and *McIntyre* provided hope for a resolution to some of these outstanding problems surrounding the personal jurisdiction analysis. Unfortunately, though, the opinions issued by the Court—especially in *McIntyre*—fall far short of the clear-cut guidance that lower courts and litigants seek.

If there is a silver lining in these decisions it is that *Goodyear* clearly distinguishes between general and specific jurisdiction and affords some guidance as to the scope of general jurisdiction with its new "at home" standard. As for *McIntyre*, the highly splintered opinion is so muddled and fact specific, that its application to other cases should be limited. Finally, and most importantly, several members of the

Supreme Court appear to recognize that in today's fast-paced and increasingly borderless global economy, traditional constructs of personal jurisdiction may no longer be viable. Thus, it is unlikely that the Supreme Court will wait another quarter of a century to revisit these pressing jurisdiction issues.

## NOTES

1. 326 U.S. 310 (1945).
2. *See, e.g.*, Zippo Mfg. v. Zippo DOT Com, 952 F.Supp. 1119 (W.D. Pa. 1997) (establishing a sliding scale of Internet activity test for personal jurisdiction).
3. 131 S.Ct. 2846 (2011).
4. 131 S.Ct. 2780 (2011).
5. *See, e.g.*, Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 574–75 (1999).
6. The jurisdiction of courts considering state law cases is constrained by the Due Process Clause of the Fourteenth Amendment, *see, e.g.*, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293–94 (1980), while the Due Process Clause of the Fifth Amendment limits jurisdiction in federal question cases. *See, e.g.*, Peay v. Bellsouth Med. Assistance Plan, 205 F.3d 1206, 1210 (10th Cir. 2000).
7. International Shoe Co. v. Washington, 326 U.S. 310 (1945).
8. *Id.* at 316.
9. Helicopteros Nacionales de Columbia S.A. v. Hall, 466 U.S. 408, 414–15 (1984).
10. *Id.* at 414 n.8.
11. *Id.* at 414.
12. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292–93 (1980).
13. *Id.* at 298.
14. 480 U.S. 102 (1987).
15. *Id.* at 112.
16. *Id.* at 117.
17. *Compare* Dehmlow v. Austin Fireworks, 963 F.2d 941, 947 (7th Cir. 1992) (adopting Justice Brennan's approach), *with* Bridgeport Music, Inc., v. Still N the Water Publ'g, 327 F.3d 472, 479–80 (6th Cir. 2003) (adopting Justice O'Connor's approach).
18. 444 U.S. 286, 298 (1980).
19. 952 F.Supp. 1119 (W.D. Pa. 1997).
20. *Id.* at 1123–24.
21. *Id.* at 1124.
22. *See, e.g.*, Shaffer v. Heitner, 433 U.S. 186, 204 (1977).
23. *See, e.g.*, Gator.com Corp. v. L.L. Bean, Inc., 341 F.3d 1072 (9th Cir. 2003), *vacated on other grounds by* 366 F.3d 789 (9th Cir. 2004); Gorman v. Ameritrade Holding Corp., 293 F.3d 506, 512 (D.C. Cir. 2002).
24. *See, e.g.*, Toys "R" Us, Inc., v. Step Two, S.A., 318 F.3d 446, 454 (3d Cir. 2003).
25. Goodyear Dunlap Tires Operations, S.A. v. Brown, 131 S.Ct. 2846 (2011)
26. *Id.* at 2852.
27. *Id.* at 2850.
28. *Id.* at 2855.
29. *Id.*
30. *Id.* at 2851.
31. *Id.* at 2857.
32. J. McIntyre Machinery, Ltd. v. Nicastro, 131 S.Ct. 2780 (2011).
33. *Id.* at 2786.
34. *Id.* at 2786 (internal quotations omitted).
35. *Id.* at 2788.
36. *Id.*
37. *Id.*
38. *Id.* at 2789.
39. *Id.* at 2790.
40. *Id.* at 2791.
41. *Id.*
42. *Id.* at 2794.
43. *Id.* at 2792.
44. *Id.* at 2794.
45. *Id.* at 2804.
46. *Id.* at 2803.
47. *Id.* at 2798.
48. 341 F.3d 1072 (9th Cir. 2003), vacated and rehearing en banc granted, 366 F.3d 789, dismissed as moot, 398 F.3d 1125 (9th Cir. 2005) (settlement agreement mooted merits controversy).
49. *Id.* at 1079.
50. 293 F.3d 506 (D.C.Cir. 2002).
51. *Id.* at 512–13.
52. *Id.*
53. Indeed, a recent decision from the Ninth Circuit suggests that the court is already moving away from its earlier Internet-related personal jurisdiction cases in response to *Goodyear*. *See* Mavrix Photo, Inc., v. Brand Tech., Inc., 647 F.3d 1218, 1227 (9th Cir. Aug. 8, 2011) ("The level of interactivity of a nonresident defendant's website provides limited help in answering the distinct question whether the defendant's forum contacts are sufficiently substantial, continuous, and systematic to justify general jurisdiction.").
54. *Goodyear*, 131 S.Ct. at 2850.
55. *See, e.g.*, Lindsey v. Cargotec USA, Inc., 2011 WL 4587583, *7 (W.D. Ky. Sept. 30, 2011) ("Because the Supreme Court in *McIntyre* did not conclusively define the breadth and scope of the stream of commerce theory, as there was not a majority consensus on a singular test, and given Justice Breyer's decision to rely on current Supreme Court precedents, the Court will continue to adhere to the Sixth Circuit's analysis of purposeful availment."); Ainsworth v. Cargotec USA, Inc., 2011 WL 4443626, *7 (S.D. Miss. Sept. 23, 2011) (recognizing the "limited…applicability" of *McIntyre* and holding that *Asahi* and Fifth Circuit precedent control instead).
56. 430 U.S. 188, 193 (1977).
57. Windsor v. Spinner Industry Co., Ltd., 2011 WL 5005199, *4 (D. Md. Oct. 20, 2011).
58. *See, e.g.*, Keranos, LLC v. Analog Devices, Inc., 2011 WL 4027427, *10 (E.D. Tex. Sept. 12, 2011) (referring to the "new minimum contacts analysis announced in *McIntyre*," and quoting the plurality's opinion).
59. *McIntyre*, 131 S.Ct. at 2792–93.