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ARTICLE

IS IT TIME FOR A NEW MARYLAND LONGARM STATUTE?

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Introduction

Please imagine the following variation of a familiar television commercial: Little Jimmy of Hagerstown, Maryland, slams a walk-off triple to win the tri-county Little League championship. A local newspaper reporter asks him what he is going to do. He replies, of course, "I'm going to Disney World!"

Only things don't work out so well in the Magic Kingdom. Little Jimmy is hurt on a ride. His injuries require medical treatment in Florida. Upon returning to Maryland, Jimmy's parents want to sue Disney World, but, of course, they do not want to travel to Florida to do so.

Why not simply sue in Maryland? It seems that there are Disney stores in every mall. And there seems to be Disney programming on all of the cable channels in Maryland. And television stations in Baltimore and other cities in Maryland carry advertising beckoning Marylanders to Orlando. Can't Jimmy and his parents teach "The Mouse" that it IS a small world, after all?[1]

In a well-regarded article in the *Maryland Law Review* that provided the academic welcome to the longarm statute in Maryland,[2] Professor

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[1]With apologies to Richard M. and Robert B. Sherman. This scenario is not fanciful. The question of personal jurisdiction in roughly the same circumstances has often been litigated, with varying results. Sometimes personal jurisdiction in the plaintiff's state of residence has been upheld: Boily v. Walt Disney World, No. 08-4967, 2009 WL 1228463 (D.N.J. May 1, 2009); Sigros v. Walt Disney World, 129 F. Supp. 2d 56 (D. Mass. 2001); Weintraub v. Walt Disney World, 825 F. Supp. 717 (E.D. Pa. 1993). Sometimes it has not been upheld: Harter v. Disney Enterprises, No. 4:11CV2207, 2012 WL 2565024 (E.D. Mo. July 2, 2012); G.C. ex rel. Conner v. Disney Destinations, No. 3 12-CV-54, 2012 WL 1205637 (E.D. Tenn. Apr. 11, 2012); Capizzano v. Walt Disney World, 826 F. Supp. 53 (D.R.I. 2003). More recently, mostly because of the development of the jurisprudence of personal jurisdiction in the Supreme Court discussed herein, the climb is establishing personal jurisdiction in this scenario has become steeper: Barth v. Walt Disney Parks & Resorts U.S., 697 F. App'x 119 (3d Cir. 2017) (no jurisdiction in Pennsylvania); Lewis v. Walt Disney Parks & Resorts U.S., No. 18-11947-DJC, 2019 WL 1505964, (D. Mass. Apr. 5, 2019).

[2] Bernard Auerbach, *The "Long Arm" Comes to Maryland*, 26 MD. L. REV. 13, 14 (1966).

Bernard Auerbach (Prof. Auerbach)[3] contemplated just such a possibility in employment of what has been regarded as the general jurisdiction provision of the longarm statute.[4] Prof. Auerbach stated that a defendant whose negligence had occurred outside of Maryland might be subject to personal jurisdiction in Maryland if "he earns substantial revenue from the sales of his products in Maryland."[5]

For Jimmy's parents to bring their claim in a Maryland circuit court, they would have to exercise general personal jurisdiction, sometimes called dispute-blind jurisdiction. Because it does not depend upon where the claim arose,[6] and the Supreme Court has wreaked much havoc on the notion of general jurisdiction since Maryland adopted its longarm statute. Indeed, it has wreaked much havoc on flexibility for plaintiffs in forum selection generally. Since 1958[7], the world has become a much friendlier place for defendants, and since the Supreme Court has used the Due Process Clause of the Federal Constitution to impose its jurisdictional miserliness upon the states, the states have no choice but to get in line. The thesis of this article is that it is time to consider change to the Maryland longarm statute. In support of this thesis the article will explore four areas:

I. Supreme Court imposition of its narrow view of appropriate forum selection upon the states.
II. How this jurisprudence has affected the interpretation and application of state longarm statutes in the state and federal courts.

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[3] *See* William L. Reynolds, John Brumbaugh & Melvin J. Sykes, *Tributes to Professor Bernard Auerbach,* 52 MD. L. REV. 257 (1993).

[4] MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(4) (West 2000), which provides for jurisdiction over an out-of-state defendant who commits tortious injury by an act or omission outside of the state if "he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State." At the time Prof. Auerbach was referring to Law of 1957, §75, §96(a)(4), *renumbered in* 1973, Leg. 1st Spec. Sess., ch. 2, §1. The Maryland longarm was patterned upon Art. I of the Unif. Interstate & Int'l Proced. Act (Unif. L. Comm'n 1962) (repealed *Midyear Meeting,* 86 Handbook of Nat'l Conf. of Comm's on Unif. St. Laws and Proc. of the Annual. Conf. Meeting 114, 118).

[5] Auerbach, *supra* note 2, at 43. Indeed, Prof. Auerbach noted that at the time of the adoption of the longarm in 1964, Maryland already had a statute that allowed jurisdiction over "[e]very foreign corporation doing intrastate or interstate business in this State . . . on any cause of action arising outside of this State." 1951 Md. Laws, ch. 135, § 88 (a), (b), *repealed by* 1975 Md. Laws, c. 311, §1. The statute had a provision that as to an out of state plaintiff that such action not be "an undue burden upon the defendant or upon interstate commerce." *Id*.

[6] *See* Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 613 (1988). This may be contrasted with specific personal jurisdiction, which requires that the suit must arise out of the defendant's contacts with the forum. *See* Bristol-Myers Squibb v. Super. Ct. of Cal., 137 S. Ct. 1773 (2017).

[7] The year when *Hanson v. Denckla*, 357 U.S. 235 (1958), was decided.

III. How Maryland has interpreted its longarm statute since its inception.
IV. Possible alternatives for revision of the Maryland longarm statute.

The article will conclude that perhaps the most sensible alternative may be to adopt the approach of many states, to simply permit personal jurisdiction whenever it is constitutional under the Due Process jurisprudence of the Supreme Court and, that whatever, if anything, the Maryland General Assembly does with the longarm statute, the judiciary should not unduly constrict the scope of specific jurisdiction in response to how the Supreme Court has restricted general jurisdiction.

I -- The Supreme Court's Imposition of Its Narrow View of Appropriate Plaintiff Forum Selection upon the States.

The modern approach to personal jurisdiction originated in 1945 with *International Shoe Co. v. Washington*.[8] Even in distorting it to impose an inflexibility Chief Justice Stone could never have intended, Justice Ginsburg, in *Daimler AG v. Bauman*, called that decision "canonical."[9] If Justice Ginsburg truly intended the primary meaning of canonical, then she and many of her contemporaries and predecessors on the Court have expounded a good deal of heresy since *International Shoe* was decided.[10]

International Shoe was itself an easy case that depended for its outcome on the resolution of a long-standing conundrum: what is a suitable surrogate for "presence" of an incorporeal entity for purposes of amenability of such entity to jurisdiction outside the place of its organization?[11] It was an easy case because the suit by Washington State to collect unemployment taxes arose out of activities in Washington State, a case of specific jurisdiction.[12] The principal question is whether the activities in the forum are sufficient qualitatively and quantitatively to warrant imposing the burden of defense of a suit there, or otherwise, there must be "[a]n 'estimate of the

[8] International Shoe Co. v. Washington, 326 U.S. 310 (1945).
[9] Daimler AG v. Bauman, 571 U.S. 117, 126 (2014) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 923 (2011)).
[10] *See generally International Shoe*, 326 U.S. 310 (1945).
[11] The tortuous history of the Court and the courts of the states to fashion bases of personal jurisdiction over out-of-state corporations was ably summarized by then-law student Antonin Scalia in *Developments in the Law: State-Court Jurisdiction,* 73 HARV. L. REV. 909 (1960).
[12] *International Shoe*, 326 U.S. at 317 (Justice Stone stating "'[p]resence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given.").

inconveniences' which would result to the corporation from a trial away from its 'home.'"[13]

The Court addressed general jurisdiction, i.e., suits against a foreign corporation not related to activities in the forum, obliquely, as if to distinguish such instances as distinct from what was involved in *International Shoe*.[14]

If there is anything "canonical" about *International Shoe* it is that the inquiry of personal jurisdiction over foreign corporations does not entail resort to litmus tests.[15] Perhaps to put it more poetically, Judge Hand stated in *Hutchinson,* which the Court had cited: "It is quite impossible to establish any rule from the decided cases; we must step from tuft to tuft across the morass."[16]

Indeed, the Court in the decades since *International Shoe* has now and then pledged fealty to a case-by-case analysis of the sufficiency of contacts as a test of personal jurisdiction of foreign corporations, or at least it used to.[17] In several instances, however, the Court has added factors to the inquiry that are decisive regardless of how the "estimate of inconveniences" would otherwise work out, as discussed below.

The Court addressed what we now call general jurisdiction in the odd *Perkins v. Benguet Consol. Mining Co. c*ase.[18] It was odd for procedural reasons and because of its unusual factual circumstances.[19] The defendant was a Philippine business entity similar to a corporation that, because of

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[13] *Id.* (quoting Hutchinson v. Chase & Gilbert, Inc., 45 F.2d 139, 141 (2d Cir. 1930) (L. Hand, J.)). Judge Learned Hand stated further: "We are to inquire whether the extent and continuity of what it has done in the state in question makes it reasonable to bring it before one of its courts. Nor is it anomalous to make the question of jurisdiction depend upon a practical test." *Hutchinson*, 45 F.2d at 141.

[14] *Hutchinson*, 45 F.2d at 142; *but see International Shoe*, 326 U.S. at 318 (Stone, C.J., stating "[T]here have been instances in 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.").

[15] *International Shoe*, 326 U.S. at 319 (stating "[i]t is evident that the criteria by which we mark the boundary line between those activities which justify subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative.").

[16] *Hutchinson*, 45 F.2d at 141.

[17] *See* Kulko v. Sup. Court of Cal., 436 U.S. 84, 92 (1978) ("Like any standard that requires a determination of 'reasonableness,' the 'minimum contacts' test of *International Shoe* is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present . . . We recognize that this determination is one in which few answers will be written 'in black and white. The greys are dominant and even among them the shades are innumerable." (first quoting *Hanson*, 357 U.S. at 246; then quoting Estin v. Estin, 334 U.S. 541, 545 (1948)); *accord* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 485-86 (1985).

[18] Perkins v. Benguet Consol. Mining, Co., 342 U.S. 437 (1952).

[19] *Id.* at 450 (Minton, J., dissenting) (noting procedurally it was odd because the Court should probably have dismissed the writ of certiorari).

wartime occupation of the Philippines, was managed by its president from his home in Ohio.[20] The separation between the operations constituting an entity's business and its headquarters is not unusual.[21] The Court's constructively treating a single place as one's jurisdictional home in that context is significant given the talismanic significance *Perkins* has attained in the Court's new world of general jurisdiction. What has become the Court's exemplar of general jurisdiction is a unicorn.

The first thumb on the scale, or litmus test, added by the Court in the post-*International Shoe* era came in *Hanson v. Denckla.*[22] In that case, a Delaware trust company that had begun dealings with a Pennsylvania resident continued such dealings between 1944, when the person who created the trust, Mrs. Donner, moved to Florida and then died in 1952.[23] During that period, the defendants continued to carry on with what the Court called "bits of trust administration" with her in Florida.[24]

After Mrs. Donner's death, two of her daughters who were beneficiaries and residuary legatees under Mrs. Donner's will, contended that the trust was invalid, which would have diverted the trust corpus from Mrs. Donner's appointees, trusts the beneficiaries who were two grandchildren of Mrs. Donner, to the two daughters contesting the trust's validity.[25] All interested parties other than the Delaware trust company were subject to process in Florida, and entitlement to the trust proceeds might have been conclusively resolved there.[26] In order to entertain litigation concerning validity of a trust, Florida required presence of the trust.[27] But the Florida Supreme Court held that Florida could exercise jurisdiction over the two Delaware trust companies involved.[28]

In rejecting Florida's assertion of personal jurisdiction over the two Delaware defendants, the Court addressed both *in rem* and *in personam*

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[20] *Id.* at 447-48 (explaining the president, *inter alia*, paid salaries, maintained bank accounts and held directors' meetings in Ohio).

[21] *See* Jan Ting, *Why Do So Many Corporations Choose to Incorporate in Delaware?*, WHYY (Apr. 27, 2011), https://whyy.org/articles/why-do-so-many-corporations-choose-to-incorporate-in-delaware/ (last visited Aug. 3, 2021).

[22] Hanson v. Denckla, 357 U.S. 235 (1958).

[23] *Id.* at 238-39.

[24] *Id.* at 252.

[25] *Id.* at 240.

[26] *Id.* at 242; *see* RESTATEMENT (SECOND) OF JUDGMENTS § 34(2) (AM. L. INST. 1982).

[27] *Hanson*, 357 U.S. at 245 (first citing Martinez v. Balbin, 76 So. 2d 488, 490 (Fla. 1954); and then citing Florida Land Rock Phosphate Co. v. Anderson, 39 So. 392, 396 (Fla. 1905)).

[28] *Hanson*, 357 U.S. at 242-43. The trial court held that it lacked jurisdiction over the Delaware defendants because of lack of personal service in Florida and because the trust corpus was outside the state. *Id.* at 242. As to other parties, the court held that the appointment to the trust was invalid, and that the corpus would pass under the residuary clause of the will. *Id.*

theories asserted by the plaintiffs to justify the Florida court's personal jurisdiction.[29] As to the former, the Florida court had held that its power to construe the will in probating the estate of its domiciliary, Mrs. Donner, permitted it to exercise jurisdiction with respect to the decedent's property wherever it was located; the Florida court essentially asserted that there may be national service of process with respect to the estate proceeding in a decedent's domicile.[30] The Court stated bluntly that "[t]he fact that the owner is or was domiciled within the forum State is not a sufficient affiliation with the property upon which to base jurisdiction *in rem*."[31]

The Court then moved on to whether the business done by the Delaware defendants with Mrs. Donner after she moved to Florida until her death might justify assertion by Florida of *in personam* jurisdiction.[32] Plaintiffs relied principally upon *McGee v. Int'l Life Ins. Co.,*[33] no doubt the high-water mark of state assertion of personal jurisdiction in Supreme Court jurisprudence in the post-*International Shoe* era.[34]

In *McGee*, which seems quaint in light of what the Court has done since 2011, it upheld jurisdiction in California for a suit against a Texas insurance company on a life insurance policy by a California plaintiff.[35] The Court assumed that the insured was the defendant's only California insured.[36]

The Court added two factors to the minimum contacts analysis: the interest of the plaintiff in having a forum and the interest of the forum state.[37] Since the suit related to the defendant's albeit skimpy dealings in California, *McGee* involved specific jurisdiction.[38] In a plurality opinion much later in the context of general jurisdiction, the Court did not rule out considering these two factors in the context of general jurisdiction.[39] At any rate, the

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[29] *Id*. at 246-51.
[30] *Id.* at 247-48.
[31] *Id.* at 249.
[32] *Id.* at 250-51.
[33] *Hanson*, 357 U.S. at 250-53; *see, e.g.,* McGee v. Int'l Life Ins. Co., 355 U.S. 220 (1957)).
[34] *See generally McGee*, 355 U.S. 220 (1957).
[35] *Id.* at 221, 224.
[36] *Id.* at 222.
[37] *Id.* at 222-23. The Court noted that requiring one such as the plaintiff with a small or moderate claim to go to a foreign forum would render the insurer essentially judgment on such claims. *Id.* at 223. California asserted jurisdiction based upon a statute that subjected insurers that sold policies to residents of the state to suits based upon such policies. *Id.* at 221. Cal. Ins. Code §§ 1610-20 (West 2013).
[38] *See McGee*, 355 U.S. at 224.
[39] Asahi Metal Indus., Co. v. Super. Ct. of Cal., 480 U.S. 102, 114 (1987); *contra* Daimler AG v. Bauman, 571 U.S. 117, 139 n.20 (2014) (noting the two factors were a "superfluous" second step in an analysis which now focused solely upon whether a foreign corporation is "at home").

Court in *Hanson* declined to allow the plaintiffs to slip over this low bar. The Court noted that, unlike California in *McGee*, Florida had enacted no statute imposing amenability to jurisdiction in such a situation.[40]

More importantly, the Court noted that, unlike the insurance company defendant in *McGee*, the first move in creating the link between the defendant and Florida was made by Mrs. Donner.[41] The defendant had simply continued to deal with her when she moved there.[42] The Court stated:

> The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The applicability of the rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant *purposefully avails* itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.[43]

This purposeful availment requirement has essentially created a game of "Simon Says" between out-of-state defendants and state judiciaries that the Court has refined in its later jurisprudence. Notwithstanding the lack of inconvenience in defending a suit in a foreign forum,[44] the plaintiff is out of luck if the defendant did not make the first move in establishing its connection with the forum. This is a hard and fast rule seemingly eschewed by the "canonical" *International Shoe*.[45]

In *World-Wide Volkswagen Corp. v. Woodson*,[46] the purposeful availment requirement doomed the "stream of commerce" analysis of personal jurisdiction of products liability cases that originated with the Supreme Court of Illinois in *Gray v. Am. Radiator & Standard Sanitary Corp*.[47] In that case the Illinois plaintiff was injured when a radiator, manufactured in Pennsylvania with a valve manufactured in Ohio,

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[40] *Hanson*, 357 U.S. at 252.
[41] *Id.*
[42] *Id.*
[43] *Id.* at 253 (emphasis added).
[44] *Id.* at 251.
[45] *See generally* Int'l Shoe Co. v. Washington, 326 U.S. 310 (1945). Years later the Court reaffirmed this approach with an animate defendant in *Kulko v. Sup. Court of Cal.*, 436 U.S. 84 (1978), in which it held that a mother who moved to California after separating from and divorcing her husband could not maintain an action for child support in California against her former husband, and the father of her two who continued to live in New York, because she had created the connection to California by moving there. *Kulko*, 436 U.S. at 101.
[46] *See generally* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).
[47] *Id.* at 298; *see, e.g.,* Gray v. Am. Radiator & Standard Sanitary Corp., 176 N.E.2d 761 (1961).

exploded.[48] There was no indication how the radiator made its way to Illinois, but the Illinois longarm statute permitted jurisdiction over a defendant who commits a tort in the state.[49] The court relied upon the Restatement's choice of law rule[50] and case law reckoning the time of injury from when the injury occurred.[51] The court appeared empowered in its ingenuity in linking the foreign defendants to the forum by what had transpired since *International Shoe*:

We do not think . . . that doing a given volume of business is the only way in which a nonresident can form the required connection with this State. Since the *International Shoe* case was decided the requirements for jurisdiction have been further relaxed, so that at the present time it is sufficient if the act or transaction itself has a substantial connection with the State of the forum.[52]

Suffice to say, this analysis was not prescient.

Woodson involved a serious automobile accident in which three members of a family moving from New York to Arizona were injured in a collision in Oklahoma.[53] The plaintiffs had purchased the vehicle in which they were traveling, an Audi, from Seaway Volkswagen in Massena, New York.[54] Seaway, in turn, had obtained the vehicle from a regional distributor named, somewhat grandiloquently it turned out, Worldwide Volkswagen, which served New York, New Jersey and Connecticut.[55] Plaintiffs, husband and wife, sued the manufacturer, the importer, Seaway and Worldwide.[56] Only the latter two objected to personal jurisdiction, seeking *mandamus* from the Supreme Court of Oklahoma, which denied their motions to dismiss.[57]

The Oklahoma Supreme Court upheld personal jurisdiction based upon the following reasoning:

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[48] *Gray*, 176 N.E.2d at 762, 764.
[49] *Id.* at 762 (citing Ill. Rev. Stat., ch. 110, § 17(1)(b) (1959) (current version Ill. Comp. Stat. Ann., Art. 5 § 2-209(a)(2) (West 2013)).
[50] *Gray*, 176 N.E.2d at 763; *see, e.g.,* RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 377 (AM. LAW INST. 1934).
[51] *Gray*, 176 N.E.2d at 763 (first citing Madison v. Wedron Silica Co., 184 N.E. 901 (1933); and then citing Leroy v. City of Springfield, 81 Ill. 114 (1876)).
[52] *Gray*, 176 N.E.2d at 764.
[53] World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 288 (1980).
[54] *Id.* at 288-89.
[55] *Id*. at 290.
[56] *Id.* at 288.
[57] *Id.* at 289.

In the case before us, the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can foresee its possible use in Oklahoma. This is especially true of the distributor, who has the exclusive right to distribute such automobile in New York, New Jersey, and Connecticut. The evidence presented below demonstrated that goods sold and distributed by the petitioners were used in the State of Oklahoma, and under the facts we believe it reasonable to infer, given the retail value of the automobile, that the petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma. This being the case, we hold that under the facts presented, the trial court was justified in concluding that the petitioners derive substantial revenue from goods used or consumed in this State.[58]

In reversing, the Court rejected this imaginative assertion of jurisdiction, the Court acknowledged "the forum state's interest in adjudicating the dispute"[59] as well as "plaintiff's interest in obtaining convenient and effective relief." [60]

Critically, as in *Hanson*, it was someone other than the defendants, in this case the plaintiffs in driving their Audi through Oklahoma, who created the connection of the objecting defendants to Oklahoma.[61] As in *Hanson,* the Court thus found a lack of purposeful availment of the benefits and protections of Oklahoma law because "whatever marginal revenues [defendants] may receive by virtue of the fact that their products are capable of use in Oklahoma is far to attenuated a contact to justify that State's exercise of *in personam* jurisdiction over them."[62]

Although the Court did not reject the notion that mishaps involving products, defendants sold might foreseeably occur in Oklahoma, or that such foreseeability might be relevant in the jurisdictional inquiry,[63] that foreseeability was trumped by a new shibboleth that was to become much more important decades later, the capacity of a defendant to arrange its affairs to avoid remote litigation:

> The Due Process Clause, by ensuring the "orderly administration of the laws," gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum

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[58] World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351, 354 (Okla. 1978).
[59] *World-Wide Volkswagen*, 444 U.S. at 292 (citing McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223 (1957)).
[60] *World-Wide Volkswagen*, 444 U.S. at 292 (citing Kulko v. Super. Ct. of Cal., 436 U.S. 84, 92 (1978)).
[61] *See World-Wide Volkswagen*, 444 U.S. at 298-99.
[62] *Id.* at 299.
[63] *Id.* at 297.

assurance as to where that conduct will and will not render them liable to suit.[64]

While perhaps one might sympathize with Justice Blackmun's musings in his dissenting opinion about why the plaintiffs might have wanted to sue their local dealer and its distributor when other clearly amenable, at least then, defendants were available,[65] and perhaps regard the contention in Justice Marshall's dissent that entailed[66] in the sale of the vehicle in New York was the value that it could be driven to Oklahoma, it is difficult to ignore the interests of the plaintiffs, as well as the forum state itself, in maintaining litigation concerning the accident in Oklahoma.[67] As Justice Brennan stated in his dissent involving *World-Wide Volkswagen* as well as its companion case *Rush v. Savchuk*, "[T]he interest of the forum State and its connection to the litigation is strong. The automobile accident and the underlying litigation occurred in Oklahoma. The plaintiffs were hospitalized in Oklahoma when they brought suit. Essential witnesses and evidence were in Oklahoma."[68]

Justice Marshall conceded in his dissent that the matter was "a difficult case, and [that] reasonable minds may differ as to whether [the plaintiffs] have alleged a sufficient 'relationship among the [defendants], the forum and the litigation.'"[69] And Justice Brennan conceded in his dissent that affirming the results below in the companion cases might "approach the outer limits of *International Shoe's* jurisdictional principle."[70]

But the fact that the defendants had not taken the first move in creating a connection with Oklahoma and the perceived need of the majority to allow defendants to arrange their affairs in order to determine where they might be amenable as defendants to the state courts trumped any need for balancing of interests created by *International Shoe* and particularized by *McGee*.[71]

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[64] *Id.* (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945)).
[65] *World-Wide Volkswagen*, 444 U.S. at 317-18 (Blackmun, J., dissenting).
[66] *Id.* at 314-15 (Marshall, J., dissenting).
[67] *Id.* at 314-15 (Brennan, J., dissenting).
[68] *Id.* at 313-14 (Marshall, J. and Brennan J., dissenting); *see* Rush v. Savchuk, 444 U.S. 320 (1980).
[69] *World-Wide Volkswagen*, 444 U.S. at 313 (Marshall, J., dissenting) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)).
[70] *Rush*, 444 U.S. at 307-08 (Brennan, J., dissenting).
[71] *See generally World-Wide Volkswagen*, 444 U.S. at 296-99.

After three decades of near silence in personal jurisdiction,[72] beginning in 2011 with *Goodyear Dunlop Tire Operations, S.A. v. Brown*[73] and *J. McIntyre Machinery, Ltd. v. Nicastro*[74], the Court embraced restrictive interpretations of the scope of personal jurisdiction in the realms of general jurisdiction and specific jurisdiction respectively.[75]

In *Goodyear* the plaintiffs' assertion of personal jurisdiction in North Carolina over foreign subsidiaries, Goodyear Turkey, Goodyear France and Goodyear Luxembourg, of a large United States tire manufacturer, Goodyear USA, no doubt pushed the envelope.[76] Plaintiffs' decedents, North Carolina residents, had been killed in a bus accident in Paris.[77] The foreign subsidiaries, though they did no business directly in the forum, were charged with supplying the defective tires involved in the occurrence.[78] But because the tires the foreign subsidiaries manufactured were of a type occasionally needed in the United States, a small but consistent volume of the output of the foreign defendants made its way to North Carolina.[79]

The North Carolina courts relied upon this flow of products of the foreign corporations into the state to support jurisdiction over them with respect to an occurrence elsewhere.[80] This was an assertion of general jurisdiction.[81] The Court might easily have rejected jurisdiction over the foreign defendants on the basis that the amount of business with the forum was insufficient to satisfy Due Process, consistent with the then extant framework of *Helicopteros Nacionales de Colombia v. Hall*,[82] but it did not take that approach.[83] Instead it engaged in a rather bizarre comparison of the number of its decisions involving specific jurisdiction (more) with those involving general jurisdiction (fewer) and concluded that "specific

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[72] Note the exceptions in this time frame were: Asahi Metal Indus. Co. v. Super. Ct. of Cal., 480 U.S. 102 (1987) (holding the Court modified *Int'l Shoe* by bifurcating it into "minimum contacts" and "reasonableness" analyses); Calder v. Jones, 465 U.S. 783 (1984) (upholding personal jurisdiction in a defamation claim); Keeton v. Hustler Mag., Inc., 465 U.S. 770 (1984) (upholding personal jurisdiction in a defamation claim); Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) (upholding jurisdiction over a local franchisee in Michigan for a suit at the franchisor's international headquarters, refused the consideration to the interests of David that it was thereafter to accord to those of Goliath).

[73] Goodyear Dunlop Tires Operations S.A. v. Brown, 564 U.S. 915 (2011).

[74] J. McIntyre Mach., Ltd., v. Nicastro, 564 U.S. 873 (2011).

[75] *See Goodyear*, 564 U.S. at 915; *see also Nicastro*, 564 U.S. at 873.

[76] *Goodyear*, 564 U.S. at 920-21.

[77] *Id.* at 918.

[78] *Id.*

[79] *Id.* at 927.

[80] *Id.* at 927-28.

[81] *Goodyear*, 564 U.S. at 927-28.

[82] Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 413-14 (1984).

[83] *Goodyear*, 564 U.S. at 919.

jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction plays a reduced role."[84] This sort of "Facebook likes" approach to jurisdiction analysis obscures the fact that perhaps cases involving general jurisdiction occurred more rarely, at least in the Supreme Court, but when they did appear were decided upon their own distinct principles.

The *Goodyear* Court's assertion that it had not addressed as many general jurisdiction cases as those involving specific jurisdiction was true, but in identifying *Perkins v. Benguet Consol. Mining Co.*[85] As the only viable setting for general jurisdiction as a matter of due process it cast aside the reasoning of its other general jurisdiction decision, *Helicopteros Nacionales de Colombia v. Hall*.[86] Although the plaintiffs' assertion therein was rejected, *Helicopteros*' reasoning, which was consistent with the "canonical" *International Shoe*,[87] was widely employed by the federal courts[88] and state courts[89] and indeed was "taught to generations of first-year law students."[90]

That approach was to require, in cases when the cause of action did not arise in the forum and the defendant was not sued in its principal place of business or where it was incorporated, that the defendant's contacts with the forum be continuous and systematic.[91]

The facts of *Helicopteros* demonstrate how the analysis worked. A Columbian corporation contracted to provide helicopter transportation services to a Peruvian consortium, the alter ego of a joint venture that had its headquarters in Houston, Texas.[92] Defendant's only contacts with Texas were sending its chief executive there to negotiate the contract with the consortium, accepting into its New York bank account checks from the consortium drawn on a Texas bank, training services sent from a Texas manufacturer and sending its personnel to the manufacturer's facility in Texas for training.[93]

Plaintiffs' decedents were killed in the crash of the defendant's helicopter in Peru.[94] Plaintiffs sued for wrongful death in a Texas state

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[84] Goodyear, 564 U.S. at 924-25.
[85] *Id.* at 925 (citing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952)).
[86] *Goodyear*, 564 U.S. at 925 (citing *Helicopteros*, 466 U.S. 408 (1984)).
[87] *Goodyear*, 564 U.S. at 925.
[88] *See* Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc., 334 F.3d 390 (4th Cir. 2003).
[89] *See* Beyond Sys., Inc. v. Realtime Gaming Holding Co., 388 Md. 1, 878 A.2d 567 (2005).
[90] Daimler, AG v. Bauman, 571 U.S. 117, 153-54 (Sotomayor, J., concurring).
[91] *See id.*
[92] Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 410-11 (1984).
[93] *Id.* at 410-12.
[94] *Id.* at 410.

court.[95] The Texas Supreme Court upheld jurisdiction over the defendant.[96] The Supreme Court reversed.[97]

The Court noted that the defendant was not authorized to do business in Texas, it had never performed helicopter operations in Texas, had never sold any product that reached Texas, had never based employees there, owned real or personal property or maintained an office or establishment there.[98]

Concerning general jurisdiction, the Court stated that even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum state, "due process is not offended by a State's subjecting the corporation to its [personal] jurisdiction when there are sufficient contacts between the State and the foreign corporation."[99] Quoting its own opinion in *Perkins*, the Court noted that the defendant therein "[had] been carrying on in Ohio a continuous and systematic, but limited, part of its general business[.]"[100] Because the parties conceded that the cause of action did not arise out of the defendant's contacts with Texas, the Court said, "We thus must explore the nature of Helicol's contacts with the State of Texas to determine whether they constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*."[101]

While the Court did not find the defendant's connections with Texas sufficiently systematic and continuous to support jurisdiction, it clearly did not do so because it did not find that it was not "at home" in Texas the way the Court had determined, in retrospect, that the defendant in *Perkins* was "at home" in Ohio, when it could not conduct its business in its home in the Philippines during World War II.[102] The Court in *Helicopteros* did not isolate one fact from among the defendant's scant contacts with Texas as a litmus test.[103] The Court conducted the analysis called for by Chief Justice Stone in *International Shoe*.[104] It viewed one trip by defendant's chief executive to negotiate the transportation services contract as not "continuous and systematic"[105] It viewed acceptance of check drawn on a Texas bank as "of negligible significance" for the purpose of determining whether Helicol had

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[95] *Id*. at 412.
[96] Hall v. Helicopteros Nacionales de Colombia, 638 S.W.2d 870 (Tex. 1982).
[97] Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 418-19 (1984).
[98] *Id.* at 411-12.
[99] *Id.*, at 414 (citing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952)).
[100] *Helicopteros*, 466 U.S. at 415-16 (quoting *Perkins*, 342 U.S. at 438).
[101] *Helicopteros*, 466 U.S. at 415-16.
[102] *Id.* at 416 (emphasis added).
[103] *See id.*
[104] *Id.* at 416-17.
[105] *Id.* at 415-16.

sufficient contacts in Texas.[106] The checks themselves were drawn by another entity, thus the contact was created by the unilateral act of another.[107] Citing *Rosenberg Bros. v. Curtis Brown Co.*, the Court stated that the purchases of helicopters in Texas could not themselves be a sufficient basis of jurisdiction. [108]

Again, while the plaintiffs in *Helicopteros* did not make a showing sufficient to establish personal jurisdiction in Texas for an action related to a helicopter crash in Peru, the *Goodyear* Court's analysis of why that was so established a new framework for general jurisdiction that discarded the continuous and systematic activity approach that had guided state and lower federal courts.[109]

In *Asahi Metal Industry Co., Ltd. v. Super. Ct. of California, Solano Cnty.*, the Court also addressed an assertion of jurisdiction by an out-of-state claimant, a third-party claim by a Taiwanese defendant in a personal injury action in California against a Japanese manufacturer of a component in defendant's product.[110] The alleged basis of jurisdiction in California over the Japanese third-party defendant was the volume of its product, tire valve stems, that indirectly made their way to California through sales by the defendant and other intermediaries.[111]

In a portion of the opinion that garnered a majority, the Court held that the strictures of the Due Process Clause forbid a state court to exercise personal jurisdiction "under circumstances that would offend" traditional notions of fair play and substantial justice.[112] The Court viewed the burdens on the defendant in defending itself in a foreign legal system as severe;[113] with the personal injury suit already resolved by settlement; the Court saw the interests of California as "slight."[114]

The Court stated that in deciding whether to exercise personal jurisdiction a court must make "a careful inquiry into the reasonableness of

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[106] *Helicopteros*, 466 U.S. at 416.
[107] *Id.* at 417 (first citing Kulko v. Cal. Super. Ct., 436 U.S. 84, 93 (1978); and then citing Hanson v. Denckla, 357 U.S. 235, 253 (1958)).
[108] *Helicopteros*, 466 U.S. at 417 (citing Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923)).
[109] Arthur R. Miller, *What Are Courts For: Have We Forsaken the Procedural Gold Standard?* 78 LA. L. REV. 739, 747 (2018).
[110] Asahi Metal Indus. Co. v. Superior Ct. of Cal., 480 U.S. 102 (1987).
[111] *Id.* at 107. In an odd passage in the factual narrative, the Court related that a lawyer for one of the litigants discovered 65 valve stems bearing the third-party defendant's trademark in a bicycle store in the forum in California. *Id.*
[112] *Id.* at 113 (citing International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).
[113] *Asahi*, 480 U.S. at 114.
[114] *Id.*

the assertion of jurisdiction in a particular case" [115] The Court held that the burden on the third-party defendant under the circumstances was unreasonable.[116]

The significance of this portion of the Court's analysis is the application of a reasonableness metric, and the assessment of relative benefits and burdens to the parties and tribunals to what is arguably an assertion of general jurisdiction—Asahi's negligence did not occur in California.[117]

Whether one agrees that general jurisdiction was involved in *Asahi*, the Court's next foray into general jurisdiction after *Goodyear* was in *Daimler, AG v. Bauman*.[118] It would be tendentious to suggest that the assertion of jurisdiction in California by the plaintiffs for a suit concerning human rights violations decades before in Argentina was anything other than a stretch. The conduct at issue was collaboration by a German corporation in Argentina's "Dirty War" conducted by its junta between 1976 and 1983.[119] The defendant was sued in the United States District Court for the Northern District of California on account of the extensive operations there by Mercedes Benz USA (MBUSA), an entity separates from the defendant that distributes the defendant's vehicles to independent dealerships throughout the United States.[120]

While the plaintiffs' reluctance to seek justice in Argentina, the locus of the injury, is obvious, there were also good reasons pertaining to international comity not to let them proceed in the United States. [121]

Nevertheless, the activities of MBUSA in California were a great deal more extensive than those of Goodyear's subsidiaries in North Carolina.[122] Vehicles sold in California were 10% of Daimler's sales in the United States and 2% of its worldwide sales.[123] MBUSA also had multiple facilities in

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[115] *Id.* at 113.
[116] *Id.* at 114.
[117] *Id.* at 117 (Brennan, J., concurring) (stating it does not matter that "[a] defendant who has placed goods into the stream of commerce benefits economically from the retail sale of the final product in the forum state, and the State's laws that regulate and facilitate commercial activity. The benefits accrue regardless of whether the participant directly conducts business in the forum State or engages in additional conduct directed toward that State."). The Court did not state whether the third-party plaintiff's claim is an assertion of general or specific jurisdiction. *Id.*
[118] *See* Goodyear Dunlop Tires Operations S.A. v. Brown, 564 U.S. 915 (2011); *see, e.g.,* Daimler, AG v. Bauman, 571 U.S. 117 (2014).
[119] *Daimler*, 571 U.S. at 121.
[120] *Id.*
[121] *Id.* at 141-42 (explaining the Solicitor General stated that expansive state personal jurisdiction had impeded negotiation of international agreements pertaining to reciprocal recognition and enforcement of judgments).
[122] *Id.* at 123.
[123] *Id.*

California.[124] The plaintiffs contended that MBUSA should be treated as Daimler's agent for purposes of personal jurisdiction.[125]

The purported parent/subsidiary relationship between Daimler and MBUSA was no more availing for jurisdiction purposes than the reverse had been for the plaintiff in *Goodyear*.[126] At any rate, this observation was not decisive since the Court concluded:

Even if we were to assume that MBUSA is at home in California, and further to assume that MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with California hardly renders it at home there.[127]

The Court rejected the plaintiffs' attempt to rely on the basis of jurisdiction *Helicopteros* had appeared to sanction—continuous and systematic activity in the forum, noting that it had not sanctioned that basis in *Goodyear.*[128] The Court repeated *Goodyear's* specious contention that Chief Justice Stone had limited the applicability of a continuous and systematic analysis to specific jurisdiction.[129]

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[124] *Daimler*, 571 U.S. at 123.

[125] *Id.*

[126] Goodyear Dunlop Tires Operations S.A. v. Brown, 564 U.S. 915, 930-31 (2011) (first citing Brilmayer & Paisley, *Personal Jurisdiction and Substantive Legal Relations: Corporations, Conspiracies, and Agency*, 74 CAL. L. REV. 1, 14, 29-30 (1986); and then citing Brown v. Meter, 199 N.C. App. 50, 64, 681 S.E.2d 382, 392 (2009)).
In *Goodyear*, plaintiffs asserted a "single enterprise" theory that attempted to consolidate ties of the foreign Goodyear subsidiaries to those of the parent, which therein did not contest general jurisdiction in North Carolina. *Goodyear*, 564 U.S. at 930. The Court rejected this argument as untimely. *Id.*
In *Daimler* the Court noted that the agreement between Daimler and MBUSA denoted the latter as an independent contractor. *Daimler*, 571 U.S. at 123. The Court noted that the plaintiffs had not referred to MBUSA as Daimler's alter ego, which Daimler contended was required. *Id.* at 134-35. The Court noted skeptically that "[a]gencies . . . . come in many sizes and shapes . . . ." but deprecated the Ninth Circuit's attribution of MBUSA's activities to Daimler on the basis that the former's services were important to the latter as "always yield[ing] a pro-jurisdiction" answer. *Id.* at 135.

[127] *Daimler*, 571 U.S. at 136.

[128] *Id.* at 139 (citing *Goodyear*, 564 U.S. at 919).

[129] *Daimler*, 571 U.S at 138 (citing International Shoe Co. v. Washington, 326 U.S. 310 (1945)). The Court stated: "[t]urning to all-purpose jurisdiction, in contrast, *International Shoe*" distinguished from cases that fit within the specific jurisdiction categories ". . . . instances in which the continuous corporate operations within a state [are] so substantial [] as to justify suit [against it] on . . . causes of action arising from dealings entirely distinct from those activities."

The entire quotation, without examples cited, does not make such a distinction:

The Court crowed that its "list" of approved general jurisdiction venues "offered plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims,"[130] likely cold comfort when that sanctioned venue happens to be overseas. [131]

It is true, as the Court stated in *Daimler,* that allowing the suit against Daimler in California based on what had happened in Argentina decades before "would scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where their conduct will and will not render them liable to suit.'"[132] But this stringent limitation of amenability to process as a means of enhancing corporate planning could be viewed as unnecessarily generous in light of other available means to curb inconvenient litigation.

For example, under *Asahi's* reasonableness analysis a court may decline to exercise jurisdiction even when a defendant's contacts with the

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While it has been held in cases on which appellant relies that continuous and systematic corporation be amenable to suits unrelated to that activity . . . . there have been instances in 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 entirely distinct from those activities.

International Shoe, 326 U.S. at 318 (first citing Missouri, K. & T.R. Co. v. Reynolds, 255 U.S. 565 (1921); and then citing Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917); *cf.* St. Louis S. W. R. Co. v. Alexander, 227 U.S. 218 (1913)).

The quotation clearly indicates that sometimes continuous and systematic activities in a state had justified the exercise of what is now called general jurisdiction, and sometimes they have not. There would have been no occasion to take sides concerning the validity of such prior holdings as the issue of general jurisdiction was not presented in *International Shoe.*

Earlier in the opinion in *International Shoe* the Court stated: "'Presence' in the state in this sense [i.e. specific jurisdiction] has never been doubted when the [actions] of the corporation there have been not only continuous and systematic but also give rise to the liabilities sued upon." *International Shoe*, 326 U.S. at 317.

This reasoning was applied in *International Shoe,* in the sense that it fit the facts of the case. But there was no basis in *International Shoe* for the "at home" limitation of general jurisdiction and, indeed, none was apparent nearly four decades later in *Helicopteros*. *See generally Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984).

[130] *Daimler*, 571 U.S. at 137.

[131] *Id.* at 159-59 (Sotomayor, J., concurring, describing this as shifting "the risk of loss from multinational corporations to the individuals harmed by their actions."). The Court's solicitude for the ability of defendants to control where they may be amenable to jurisdiction is not new. In World-Wide Volkswagen v. Woodson, the Court stated that the Due Process Clause gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct will and will not render them liable to suit. World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980) (citing International Shoe, Co. v. Washington, 326 U.S. 310, 319 (1945)).

[132] *Daimler*, 571 U.S. at 139 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985)).

forum would otherwise satisfy due process.[133] In *Asahi*, the Court determined that with the settlement by the personal injury plaintiff the California court had little interest in adjudicating the remaining third-party claim that would require the Japanese third party defendant to litigate in California.[134] The Court in *Daimler* might have seen little interest for California in litigating the plaintiffs' claims vis-à-vis the interests of Germany, where Daimler is incorporated.[135]

Like the "purposeful availment" test originating in *Hanson,* the "at home" requirement places a thumb on the scale when it is failed.[136] Like the test in *Hanson,* it puts the defendant in the driver's seat in the matter of forum selection.[137] The *Daimler* Court cashiered the reasonableness prong in general jurisdiction cases.[138]

While Justice Sotomayor conceded that the applicability of reasonableness in the context of general jurisdiction had not previously been resolved, she noted that lower federal courts had uniformly upheld its applicability.[139] Indeed the Maryland Court of Appeals was compelled to apply the reasonableness test by the Supreme Court by the remand of its initial decision in *Camelback Ski Corp. v. Behning*.[140] The Court of Appeals had held that the assertion of general jurisdiction in Maryland over an out-of-state ski resort in Pennsylvania failed to satisfy the purposeful availment requirement.[141] The court, however, did not consider *Asahi's* reasonableness factors. On remand the Court of Appeals addressed the reasonableness of exercising jurisdiction—and still found no jurisdiction in Maryland.[142]

Justice Sotomayor also suggested application of forum *non conveniens* as an alternative to what she called the Court's "unforced error."[143] To add heft to its refusal to exercise jurisdiction, the Court stated that the lower court had paid little heed to "the risks to international comity its expansive view of general jurisdiction posed,"[144] noting also the views of

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[133] Asahi Metal Indus. Co. v. Super. Ct. of California, 480 U.S. 102, 114-15 (1987).
[134] *Id.* at 114.
[135] *Daimler*, 571 U.S. at 139, n.20.
[136] *See id.* at 754; *see also* Hanson v. Denckla, 357 U.S. 235, 253 (1958).
[137] *See Hanson*, 357 U.S. at 253.
[138] *Daimler*, 571 U.S. at 139, n. 20.
[139] *Id.* at 144, n. 1 (Sotomayor, J., concurring).
[140] Camelback Ski Corp. v. Behning, 307 Md. 270, 513 A.2d 874 (Md. 1986), *vacated and remanded sub nom*, Behning v. Camelback Ski Corp., 480 U.S. 901 (1987), *on remand sub nom*, Camelback Ski Corp. v. Behning, 312 Md. 330, 539 A.2d 1107 (Md. 1988).
[141] Behning v. Camelback Ski Corp., 480 U.S. 901 (1987).
[142] Camelback Ski Corp. v. Behning, 312 Md. 330, 342-43, 539 A.2d 1107, 1112-13 (Md. 1988).
[143] *Daimler*, 571 U.S. at 143 (Sotomayor, J. concurring) (emphasis added).
[144] *Id.* at 141.

the Solicitor General of the United States that domestic court's expansive view of general jurisdiction "have impeded negotiations of international agreements on reciprocal recognition and enforcement of judgments."[145] Sensitivity to international comity or the orderly conduct of foreign relations may be legitimate considerations in declining to exercise jurisdiction under forum *non conveniens* or otherwise.[146]

Like the reasonableness prong of the personal jurisdiction analysis, forum *non conveniens* permits a trial court discretion in whether to entertain a case or to transfer or dismiss (in state court). But the "at home" test makes this decision a matter of constitutional command. Justice Sotomayor predicted that the Court's approach to general jurisdiction would "unduly curtail the State's sovereign authority to adjudicate disputes against corporate defendants who have engaged in continuous and [systematic] business operations within their boundaries."[147]

Justice Sotomayor stated the Court's proportionality approach to a corporation's activities in competing forums would treat small businesses unfairly in comparison to multinational corporations.[148] A smaller enterprise is more likely to be regarded as at home than a far-flung multinational. An individual could be sued on any cause of action if he or she can be served on one visit to the forum.[149]

Justice Sotomayor's criticism that the Court's view impinges upon the sovereign power to the states to adjudicate the obligations of corporations that engage in extensive activities within their borders was foreshadowed by Justice Black in *International Shoe,* in which he merely concurred in the result.[150] Viewing the assessment of state adjudication under due process as an infringement of their Tenth Amendment prerogatives, Justice Black stated:

[T]here is no reason for reading the due process clause so as to restrict a State's power to tax and sue those whose activities affect persons and businesses within the State, provided that proper service can be had. Superimposing the natural justice on the Constitution's specific prohibitions could operate as a drastic abridgement of democratic safeguards they embody, such as freedom of speech, press and religion, and the right to counsel.[151]

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[145] *Id.* at 141-42 (quoting Brief for United States at 2, Daimler, AG v. Bauman, 571 U.S. 117 (2014) (No. 11-965)).
[146] *See generally* American Ins. Ass'n v. Garamendi, 539 U.S. 396 (2003).
[147] *Daimler*, 571 U.S. at 157 (Sotomayor, J. concurring).
[148] *Id.* at 158 (Sotomayor, J. concurring).
[149] *Id.*
[150] *See Id.; see also* International Shoe Co. v. Washington, 325 U.S. 310, 326 (1945) (Black, J., concurring).
[151] International Shoe, 326 U.S. at 326 (concurring opinion of Black, J.).

In a sense, the course of the Court's decisions since *Hanson* have given credence to Justice Black's warning in *International Shoe* that the due process analysis for personal jurisdiction would impinge upon the prerogatives of the states.[152]

The Court's remaining decision to date concerning general jurisdiction is *BNSF Ry. Co. v. Tyrell*.[153] To be fair, the best thing that could be said for the plaintiffs' choice of forum in *BNSF* — Montana — is that it was not as "creative" as that of the plaintiffs in *Daimler*.[154] Plaintiffs sued under the Federal Employers Liability Act.[155] One plaintiff was a resident of North Dakota; in the other case the personal representative of a deceased employee was a resident of South Dakota.[156] Neither complaint alleged that the injuries involved had arisen in Montana or that the employees involved had ever worked for the railroad in Montana.[157] But the defendant, which operates in 28 states, had 2,061 miles of track (about six percent of its total trackage), 2,100 workers (less than five percent of its total workforce) and generated less than 10% of its total revenue in Montana.[158] The Montana Supreme Court concluded that it was "doing business" in Montana, making it subject to personal jurisdiction under FELA and Mont. Rule Civ. Pro. 4(b)(1).[159]

The Court reversed the Montana Supreme Court finding that FELA was solely a venue provision and, more significantly for present purposes, that the defendant was not "at home" in Montana.[160] Under *Daimler,* the Court could not have concluded otherwise![161] The result was reducible to a simple syllogism: For general jurisdiction under *Daimler* a defendant's "affiliations with the State [must be] so 'continuous and systematic' to render [it] essentially at home . . . ."[162] "BNSF, we repeat is not incorporated in Montana and does not maintain its principal place of business there;"[163] "[i]n

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[152] *See* Richard D. Freer, *Justice Black was Right about International Shoe, but for the Wrong Reason*, 50 U. PAC. L. REV. 587, 598 (2019); *see also* James P. Rooney, *Rethinking the Longarm Statute,* 100 MASS. L. REV. 57 (2019).
[153] *See* BNSF Ry. Co. v. Tyrell, 137 S. Ct. 1549 (2017).
[154] *See id.* at 1553.
[155] *Id.*; *see* 45 U.S.C. § 56 (West 2018).
[156] *BNSF*, 137 S. Ct. at 1554.
[157] *Id.* at 1554.
[158] *Id.*
[159] *Id.*; *see* MONT. R. CIV. PRO. 4(b)(1) ("All persons found within the state of Montana are subject to the jurisdiction of Montana courts.").
[160] *BNSF*, 137 S. Ct. at 1559-60.
[161] *See id.* at 1558-59.
[162] *Daimler*, 571 U.S. at 152.
[163] *BNSF*, 137 S. Ct. at 1559.

short, the business BNSF does in Montana . . . . does not suffice to permit the assertion of general jurisdiction over claims like [the plaintiffs'].”[164]

Justice Sotomayor again voiced her disapproval at the reiteration of the “comparative Contacts analysis invented in *Daimler* and its likely, in her mind, consequences, “[I]ndividual plaintiffs harmed by the actions of far-flung foreign corporation[s] . . . will bear the brunt of the majority's approach and be forced to sue in distant jurisdiction in which they have no contacts or connection.”[165]

But could this restrictive post-*Goodyear* attitude of the Court toward general jurisdiction infect its view of specific jurisdiction at well? For a time, that did not appear to be an unrealistic concern. In *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S. F. Cnty*, the Court required a high degree of connection between the plaintiffs' claims and defendant's connection with the forum in order to support specific jurisdiction under due process .[166]

Bristol-Myers involved an action against the manufacturer of Plavix, a widely used blood thinning drug, that consolidated the separate claims of over 600 plaintiffs, most of whom were not California residents.[167]

The defendant is incorporated in Delaware, has its headquarters in New York and it maintains substantial business operations in New York and New Jersey.[168] Although the defendant did not develop or manufacture Plavix in California, nor create a marketing strategy for it there, it maintained five research and laboratory facilities there employing around 160 employees.[169] It also employs about 250 sales representatives in California and maintains a small advocacy office in its capital.[170] Between 2006 and 2012 its sales of Plavix in California were more than $900 million, a little more than one percent of its nationwide revenue.[171]

All plaintiffs asserted 13 claims under California law against the defendant.[172] The nonresident plaintiffs did not allege that they obtained the drug through California physicians or any other California source.[173]

The California trial court denied the defendant's motion to dismiss for lack of personal jurisdiction and, ultimately, the California Supreme Court upheld jurisdiction over the claims of the nonresident plaintiffs.[174]

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[164] *Id.*
[165] *Id.* at 1561 (Sotomayor, J., dissenting).
[166] Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty., 137 S. Ct. 1773 (2017).
[167] *Id.* at 1777.
[168] *Id.* at 1777-78.
[169] *Id.* at 1778.
[170] *Id.*
[171] *Bristol-Myers*, 137 S. Ct. at 1778.
[172] *Id.*
[173] *Id.*
[174] *Id.* at 1783-84; *see also* Bristol-Myers Squibb v. Super. Ct., 377 P. 3d 874 (Cal. 2016).

The California Supreme Court employed a sliding scale that permitted specific jurisdiction based on a less direct connection between plaintiffs' claims and defendant's forum conduct if the defendant's forum conduct is extensive.[175] The California court held this test met as to the nonresidents' claims because of the similarity of their claims to those of California residents.[176]

In reversing the California Supreme Court, the Court noted that specific jurisdiction requires that the suit "must arise out or relat[e] to the defendant's contacts with the forum."[177] This meant that "specific jurisdiction is conferred to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction."[178]

Noting that in determining whether personal jurisdiction exists a court must consider a variety of interests, and that the primary concern is the burden on the defendant,[179] the Court then leapt to the notion, critical in *Hanson,* that assessing the burden on the defendant "encompasses the more abstract matter of submitting to the coercive power of the State that may have little legitimate interest in the claim in question."[180] In cases such as *World-Wide Volkswagen* and *Bristol-Myers,* the Court does not make it clear what constitutes a legitimate interest for a state in entertaining a lawsuit, or precisely why states would desire to entertain lawsuits for reasons that are not legitimate.[181] In essence, the Court again permits the defendant to assert the interests of other states that would have legitimate interests in entertaining the claims of the non-California residents, irrespective of the burdensomeness, *vel non,* for the defendant of litigating in the forum state.[182] The Court concluded:

Our settled principles regarding specific jurisdiction control this case. In order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy, principally, [an] activity or occurrence on the forum State.'[183]

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[175] *Bristol-Myers*, 137 S. Ct. at 1778-79.
[176] *Id.* at 1779.
[177] *Id.* at 1780 (quoting Daimler, AG v. Bauman, 571 U.S. 117, 118 (2014)).
[178] *Bristol-Myers*, 137 S. Ct. at 1780 (quoting Goodyear Dunlop Tire Operations v. Brown, 564 U.S. 915, 919 (2011)).
[179] *Id.* at 1776 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980)).
[180] *Id.* at 1776.
[181] *See generally World-Wide Volkswagen*, 444 U.S. 286; *see also Bristol-Myers*, 137 S. Ct. 1780.
[182] *See World-Wide Volkswagen*, 444 U.S. at 294.
[183] *Bristol-Myers*, 137 S. Ct. at 1781 (quoting *Goodyear*, 564 U.S. at 919).

Nonresident plaintiffs were not prescribed and did not take Plavix in California. Simple as that: "[no] connection between the forum and the specific claims at issue."[184] As is true with the Supreme Court's approach to general jurisdiction, the analysis in *Bristol-Myers* permits a defendant to Balkanize its activities in particular jurisdictions in order to Balkanize identical claims against it that happen to arise on different sides of state borders.[185]

Justice Sotomayor, again in dissent, predicted that the Court's rule that a defendant's in-state conduct must actually cause a claim "is likely to have consequences far beyond this case."[186] First, she contended that it would make it difficult to consolidate claims of plaintiffs injured in different states other than where a defendant is at home.[187] Second, plaintiffs may not be able to sue jointly in mass tort actions or two or more defendants not at home in the same places, or against one defendant who is not incorporated or have headquarters in the United States.[188]

The discussion in *Bristol-Myers* did not prevent the California resident plaintiffs from going forward.[189] They ingested the drug in California.[190] But how precise must the connection between plaintiff's injury and the defendant's forum activity be? Do such activities need to directly cause the plaintiff's injury? The Court's requirement in *Bristol-Myers* of an "activity or occurrence [related to plaintiff's injury]"[191] might be ambiguous in other circumstances.

This ambiguity was addressed recently in *Ford Motor Co. v. Montana Eighth Judicial District Court*.[192] That case involved a personal injury suit against Ford in two states, Montana, and Minnesota.[193] In both cases, the accident-causing injury occurred where the plaintiff resided.[194] In neither case, however, was the vehicle designed, manufactured, or first sold in those states—the persons injured were operating used vehicles.[195]

In upholding the assertion of specific jurisdiction by both states, the Court, per Justice Kagan, began by describing Ford as "a global auto company. It is incorporated in Delaware and headquartered in Michigan. But

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[184] *Bristol-Myers*, 137 S. Ct. at 1781.
[185] *See generally id.* at 1783-84.
[186] *Id.* at 1788-89 (Sotomayor, J., dissenting).
[187] *Id.* at 1789.
[188] *Id.*
[189] *Bristol-Myers*,137 S. Ct. at 1778-79.
[190] *Id.* at 1781.
[191] *Id*. at 1776.
[192] Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct., 141 S. Ct. 1017 (2021).
[193] *Id.* at 1023.
[194] *Id.*
[195] *Id.*

its business is everywhere."[196] Although the Court expressed fidelity to *Bristol-Myers,* it stated that "[n]one of our precedents has suggested that only a causal relationship between the defendant's in-state activity and the litigation will do."[197]

Looking at Ford's efforts directed at the two states: advertising, dealerships, distribution of replacement parts to Ford and independent dealers, the Court focused on how Ford attempts to encourage persons such as the plaintiffs to become Ford owners: "Ford ha[s] systematically served a market in Montana and Minnesota for the very vehicles that plaintiffs allege malfunctioned and injured them in those states."[198]

The Court stated that such contacts as Ford had "might turn any resident of Montana or Minnesota into a Ford owner—even when he buys his car from out of state."[199] Ford's contention that its amenability to jurisdiction should have been limited to wherever it had designed, manufactured or first sold a vehicle would not have entailed a strained interpretation of *Bristol-Myers*.[200] The Court's decision not to accept such a limited view of amenability to jurisdiction limits the ability of a large corporation to slice and dice its conduct for purposes of litigation in forums most advantageous to itself.[201]

As to specific jurisdiction, the Court in *Ford Motor Co.* pulls back from where *Bristol-Myers* suggested it may have been heading.[202] Its requirements for specific jurisdiction appear less stringent than had appeared.[203] Justice Gorsuch chided: "The majority promises that its new test

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[196] *Id.* at 1022.
[197] *Ford Motor Co.*, 141 S. Ct. at 1026.
[198] *Id.* at 1028.
[199] *Id.* at 1029. The Court appeared remarkably willing to do the heavy lifting that has for so long been part of a plaintiff's responsibility in establishing personal jurisdiction. *Id.* It stated that the plaintiffs did not allege the litany of factors cited by the Court that Ford had used to induce consumers to buy its vehicles, and insisted that
"jurisdiction in cases like these [should not] ride on the exact reasons for an individual's purchase, or his ability to present persuasive evidence about them." *Id.* (footnote omitted).
[200] *Ford Motor Co.*, 141 S. Ct. at 1024-25; *see also* Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty., 137 S. Ct. 1773 (2017).
[201] *Ford Motor Co.*, 141 S. Ct. at 1029-30. For example, as to amenability on the basis of first sales, Ford contended it had first sold the vehicles involved in Washington and North Dakota. *Id.* at 1030. Because it is a national manufacturer, it is difficult to imagine that it would have been more inconvenient for Ford to litigate in those forums rather than Montana or Minnesota. On the other hand, it is less difficult to imagine that litigation in those forums, or Michigan or Delaware, would have been more difficult for the plaintiffs, residents of Montana or Minnesota.
[202] *Id.* at 1026.
[203] *Id.*

'does not mean anything goes,' but that hardly says what does."[204] Nevertheless, Justice Gorsuch concedes that the Court's test is less stringent than the strict causality rule. Justice Gorsuch, however, makes a remarkable concession to the personal jurisdiction *zeitgeist* since *Hanson*: "Nearly 80 years removed from *International Shoe*, it seems corporations continue to receive special jurisdictional protections in the name of the Constitution. Less clear is why."[205]

Whatever *Ford Motor Co.* may accomplish in restraining the tendency of defendants to prevail in Supreme Court litigation in which personal jurisdiction, at least in the matter of specific jurisdiction, as for general jurisdiction, *Roma dixit.* State courts and, in some instances, their legislatures, and perhaps that of Maryland, need to adapt.

II -- Post-*Goodyear* Litigation Involving General Jurisdiction in the United States District Court for the District of Maryland

While Maryland appellate courts have somehow managed so far to avoid coming to grips with the inconsistency between the Supreme Court's general jurisdiction jurisprudence and paragraph (b)(4) of the Maryland longarm, or even general jurisdiction itself, United States district judges in Maryland have repeatedly had to confront plaintiffs' assertions of general jurisdiction in cases filed in or removed to that court.[206] Maryland law, of course, is subject to the limits of due process.[207]

Observance of the limitations of *Daimler* in the federal trial courts in Maryland has taken many forms. Of course, in some cases, the courts have simply rejected the application of (b)(4) on the basis of *Daimler, Goodyear*, or both.[208] But sometimes the outcomes have not been that

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[204] *Id.* at 1035 (Gorsuch, J., concurring).

[205] *Id.* at 1038; *contra* Cassandra Burke Robertson & Charles W. Rhodes, *The Business of Personal Jurisdiction*, 67 CASE W. RES. L. REV. 775, 777 (2017) (resistance to allowing United States courts to serve as magnet for international litigation); but *cf.* Pamela Bookman, *Judicial Isolationism*, 67 STAN. L. REV. 1081, 1085 (2015) (promoting separation of powers and international comity); *compare with* Arthur R. Miller, *supra* note 108, at 746.

[206] *See* Fed. R. Civ. P. 4(k)(1)(A); *see also* MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(4) (West 2021). Unless some other provision is applicable, the federal court in Maryland is generally required to follow the personal jurisdiction provisions of Maryland. *See* Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc., 334 F.3d 390, 396 (4th Cir. 2003).

[207] *See, e.g.,* Bond v. Messerman, 391 Md. 706, 721, 895 A.2d 990, 999 (Md. 2006); *see also* Farrar v. McFarlane Aviation, Inc. 823 F. App'x. 161, 165 (4th Cir. 2020) (citing Roe v. Dep't of Def., 947 F.3d 207, 232 (4th Cir. 2020) (explaining that the Fourth Circuit, of course, has acknowledged *Daimler's* strict limitations on general jurisdiction).

[208] *See* Barnett v. Surefire Med., Inc., No. JFM-17-1332, 2017 WL 4279497 (D. Md. Sep. 25, 2017).

straightforward.[209] In some instances, decisions have applied the general jurisdiction of (b)(4).[210] For example, in *Barnett v. Surefire Medical, Inc.*, an action against a corporate and an individual defendant for correction of ownership of six patents and for unjust enrichment against the individual defendant, the plaintiff asserted general jurisdiction on the basis that the corporate defendant regularly solicits business and does business in Maryland.[211] In rejecting general jurisdiction, the court fell back on *Goodyear* and *Daimler*.[212] But interestingly, it considered the language of (b)(4) in its specific jurisdiction sense, i.e., plaintiff's alleging an injury inside Maryland resulting from conduct out of state.[213] Regarding the statute as requiring "extensive, continuous and systematic contacts,"[214] the court found that the defendant's modest sales and presence of a single sales associate with regional responsibilities, could not be regarded as "extensive" or "systematic."[215] The "injury in the state" provision of (b)(4) offers a means around Supreme Court strictures on general jurisdiction when a person in Maryland has allegedly suffered injury from out-of-state conduct, but the defendant's connection with Maryland must apparently be as strong as if the injury was suffered elsewhere at the hands of conduct occurring elsewhere.[216]

In *Clarke Veneers and Plywood, Inc. v. Mentakab Veneer & Plywood, SDN BHD,* an out-of-state corporation sued a Malaysian LLC for a number of causes of action including breach of contract and negligence concerning the quality of plywood plaintiff imported for resale for use outside of Maryland.[217] The court found that plaintiff's allegations of general jurisdiction did not meet (b)(4) in that plaintiff did not allege that defendant "regularly does business or solicit business from Maryland or otherwise

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[209] *See* Clarke Veneers & Plywood, Inc. v. Mentakab Veneer & Plywood, No. GLR-19-1738, 2019 WL 7565450 (D. Md. Oct. 23, 2019); *see also* Cranford v. Tennessee Steel Haulers, Inc., No. ELH-17-2768, 2018 WL 3496428 (D. Md. Jul. 20, 2018); *see also* Cutcher v. Midland Funding, LLC, No. ELH-13-3733, 2014 WL 2109916 (D. Md. May 19, 2014).
[210] *See* Stewart v. Jayco, Inc., No. ELH-16-3494, 2017 WL 193296 (D. Md. Jan. 18, 2017).
[211] *Barnett,* 2017 WL 4279497, at *1 (D. Md. Sept. 25, 2017).
[212] *Id.* at *2.
[213] *Id.* at *3-*4.
[214] *Id.* at *8-*9.
[215] *Id.* at *10-*11.
[216] *See* MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(4) (West 2021). The Supreme Court has also imposed an important limit upon the extent to which the impact of injury at the forum may be the basis of jurisdiction for conduct which has occurred elsewhere. *See* Walden v. Fiore, 571 U.S. 277 (2014) (holding that a defendant's doing something outside the forum that affects a plaintiff in the forum is not sufficient to create jurisdiction).
[217] Clarke Veneers & Plywood, Inc. v. Mentakab Veneer & Plywood, No. GLR 19-1738, 2019 WL 7565450 *243-44 (D. Md. Oct. 23, 2019).

engages in a persistent course of conduct in the State" and the imported plywood "was not used or consumed in the State."[218]

In *Cranford v. Tennessee Steel Haulers, Inc.*,[219] a Maryland resident sued in Maryland a Texas corporation that had its principal place of business in Tennessee[220] concerning a traffic accident that occurred in Virginia. In support of personal jurisdiction in Maryland, plaintiff alleged that defendant advertised itself as a national transportation company that has "contracts for pickup and deliveries in the State of Maryland."[221] The court cited and discussed (b)(4) but ultimately concluded that it lacked general jurisdiction because the plaintiff's allegations did not establish that it was "at home" in the sense of *Daimler* and *Goodyear*,[222] and that plaintiff had not established that the circumstances presented the exceptional case referred to in *BNSF Ry. Co. v. Tyrell*.[223] The court, however, transferred the case to the Eastern District of Virginia, where the accident occurred, at the behest of the plaintiff.[224]

In *Cutcher v. Midland Funding, LLC*,[225] the plaintiff brought two claims under the Fair Debt Collection Practices Act against three corporations that had principal places of business in California .[226] Plaintiff contended only that the court had general jurisdiction.[227] In support of his contention, plaintiff asserted that defendants maintained places of business in Baltimore, had Maryland employees, that two of the defendants had active collection agency licenses in Maryland and that the same two defendants had participated in over 2,000 suits in the United States District Court and the United States Bankruptcy Court in Maryland.[228] The court held that such allegations fell short of demonstrating that the defendants "were essentially domiciled" in Maryland.[229] Although the court discussed the Maryland longarm, its decision was based on *Daimler* and *Goodyear*.[230] As in

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[218] *Id.* at *9 (holding that the court did not have general jurisdiction over the defendant because it was not at home in Maryland invoking *Daimler* and *Goodyear*).
[219] Cranford v. Tennessee Steel Haulers, Inc., No. ELH-17-2768, 2018 WL 3496428, *3 (D. Md. Jul. 20, 2018).
[220] *Id.* at *1-*2.
[221] *Id.*
[222] *Id.* at *6, *8.
[223] *Id.* at *7; *see also* BNSF Ry. Co. v. Tyrell, 137 S. Ct. 1549, 1558 (2017) (referencing Perkins Consol. Mining Co. v. Benguet, 342 U.S. 437 (1952)).
[224] *Cranford*, 2018 WL 3496428, at *11.
[225] Cutcher v. Midland Funding, LLC, No. ELH-13-3733, 2014 WL 2109916, *1 (D. Md. May 19, 2014).
[226] *Id.*; 15 U.S.C.A. § 1692 *et seq.* (West 2012).
[227] *Id.* at *1, *6.
[228] *Id.* at *6.
[229] *Id.* at *7.
[230] *Cutcher*, 2014 WL 2109916, at *4-*6.

Cranford, however, the court did not dismiss, but rather transferred to the United States District Court for the Southern District of California.[231]

Another case in which the court at least cited (b)(4) though it decided on the basis of *Daimler* and *Goodyear*, *Stewart v. Jayco, Inc.*, demonstrates how far effects of *Daimler* and *BNSF* have developed from the facts of those cases themselves.[232] In that case an unhappy owner of a motorhome manufactured by the defendant sued the manufacturer for violations of the Magnuson-Moss Warranty Act.[233] Defendant was a "final stage manufacturer and distributor of recreational vehicles headquartered in Indiana."[234] Defendant alleged, *inter alia,* that it was not licensed to do business in Maryland and that it simply sold its products through independent dealers.[235] It alleged that it had only one dealer in Maryland which had three locations and that sales in Maryland represented only a small percentage of its motor home sales.[236] In granting the defendant's motion to dismiss for lack of personal jurisdiction the court quoted from the Maryland longarm statute, but held that it need not consider the application of the statute because personal jurisdiction "flies in the face of due process."[237] The court relied upon *Daimler* in rejecting jurisdiction over the defendant.[238]

The practical effect of this is to require Marylanders, such as plaintiffs in *Stewart*, to assert claims against a national manufacturer of vehicles, at least when that manufacturer sells through intermediaries, only where the manufacturer is "at home." Such a suit involving a consumer who has purchased a product from a local dealer of a national manufacturer that has carefully limited its local contacts with the forum is a far cry from Argentine torture victims suing a German manufacturer in California because of the volume its subsidiary does there, or even South Dakota and North Dakota plaintiffs seeking perhaps a more sympathetic forum for their FELA claims in Montana, as in *Tyrell*.[239]

The defendant in *Stewart v. Jayco, Inc.*, is concededly not one of the "big three" domestic auto manufacturers in the United States with dealerships in every sizable town.[240] But the court in *Stewart* bolstered its reasoning by

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[231] *Id.* at *9; *see also* Cranford v. Tennessee Steel Haulers, Inc., No. ELH-17-2768, 2018 WL 3496428, *11 (D. Md. Jul. 20, 2018).
[232] Stewart v. Jayco, Inc., No. ELH-16-3494, 2017 WL 193296, *6 (D. Md. Jan. 18, 2017).
[233] *Id.* at *1 (citing 15 U.S.C.A § 2301 *et seq.* (West 2012)).
[234] *Stewart*, 2017 WL 193296, at *1.
[235] *Id.* at *2.
[236] *Id.*
[237] *Id.* at *6.
[238] *Id.* at *6-*7.
[239] *See generally* BNSF Ry Co. v. Tyrell, 137 S. Ct. 1549 (2017).
[240] *See Stewart*, 2017 WL 193296, at *1.

citing *Pitts v. Ford Motor Co.*,[241] which held that Texas plaintiffs could not assert product liability claims against Ford in Mississippi and stated further that, "[m]any district courts around the country have reached the conclusion that no general jurisdiction exists over a defendant that is a national manufacturer where the defendant's primary contact with the state is the sale of products to in-state dealers."[242]

The Supreme Court's discussion in its recent decision in *Ford Motor Co. v. Montana Eighth Judicial District Ct.*,[243] in focusing so much on the pervasive advertising and distribution efforts of a legacy automobile manufacturer, likely would permit the exercise of specific jurisdiction under the Maryland longarm statute. But perhaps not as to smaller manufacturers,[244] sparing such entities the inconvenience of products liability and other claims convenient for plaintiffs unhappy with their products.

In *Micro Focus (U.S), Inc. v. American Express Co.*, the court gave thorough consideration to the applicability of (b) (4)'s general jurisdiction aspect.[245] Plaintiffs contended that the defendant had exceeded its license in its use of plaintiff's software.[246] On the issue of personal jurisdiction, the defendant asserted that "'Plaintiffs face an insurmountable problem' as 'the gravamen of this dispute simply did not occur in Maryland,'" and "American Express is not 'essentially at home' in this jurisdiction."[247]

Plaintiffs contended that defendants "continued and substantial operations enable it to perform financial transactions which are the core of [its] business"[248] gave rise to general jurisdiction under (b)(4). Plaintiffs underscored defendant's credit services available to thousands in Maryland, its offices in Maryland, its special line of credit to Costco Wholesale Corporation.[249]

In the face of the defendant's failure to negate such allegations, the court determined "I cannot conclude definitively that American Express is not subject to this Court's personal jurisdiction, given the number of continuous contacts that plaintiffs allege it has to this forum . . . ."[250] The

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[241] *Id.* at *7 (citing Pitts v. Ford Motor Co., 127 F. Supp. 3d 676, 686 (S.D. Miss. 2015)).
[242] *Stewart*, 2017 WL 193296, at *8.
[243] *See* Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.,141 S. Ct. 1017 (2021).
[244] *See, e.g.,* J. McIntyre Machinery Ltd. v. Nicastro, 574 U.S. 873 (2011) (noting this case would often stand in the way).
[245] Micro Focus (US), Inc. v American Express Co., No. PWG-14-2417, 2015 WL 3441991, *3-4 (D. Md. May 27, 2015).
[246] *Id.* at *1.
[247] *Id.*
[248] *Id.* at *3.
[249] *Id.* at *6.
[250] Micro Focus, WL 3441991, at *7.

court ordered additional discovery pertaining to personal jurisdiction.[251] Although this was not a finding of jurisdiction, the court's inquiry was directed at whether the defendant could be amenable to jurisdiction under (b)(4) for actions outside the state because of its activities inside the state.[252] The answer might ultimately depend upon whether the defendant might be considered "at home" in Maryland because of such activities.[253] It is difficult to imagine how the court could ultimately make such a determination under *Daimler*.[254]

Micro Focus, while the ultimate outcome of the jurisdictional inquiry is uncertain, represents the rare plaintiff asserting personal jurisdiction under (b)(4) getting past the threshold of the motion to dismiss under Federal Rule 12(b)(2).[255] Even when a court is willing to cite (b)(4) in addressing such a motion, its consideration of it is often quite perfunctory.[256] Notwithstanding, plaintiffs have found ways to surmount *Daimler* and *Goodyear's* hurdles concerning litigation of out-of-state occurrences in Maryland federal court.[257]

For example, in *Johnson v. Aecom Special Missions Services, Inc.* the plaintiff in the United States District Court for the District of Maryland was able to sue defendant for a slip and fall occurrence in Virginia because she proved that defendant's principal place of business was Maryland although the defendant contended that it was Virginia.[258]

A court may find specific jurisdiction over an out-of-state defendant instead of general jurisdiction as long as the cause of action relates to defendant's connections with the state.[259] In *Tulkoff Food Products Corp. v. Martin*, plaintiff sued an out-of-state company that had supplied it with spiced garlic from China over many years.[260] Defendant did not directly ship the product to plaintiff in Maryland.[261] The aggregate value of such shipments was $11.5 million.[262] The court rejected general jurisdiction on the basis of

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[251] *Id.*
[252] *Id.* at *4.
[253] *Id.* at *5.
[254] *See id.* at *7.
[255] *See id.* at *2, *8.
[256] *See, e.g.,* Richards v. NewRez LLC, No. ELH-20-1282, 2021 WL 1060286 (D. Md. Mar. 18, 2021).
[257] *See* Johnson v. Aecom Special Missions Servs., Inc., 434 F. Supp. 3d 359 (D. Md. 2020).
[258] *Id.* 434 F. Supp. 3d at 364, 368-69.
[259] *See* Tulkoff Food Products v. Martin, No. ELH-17-350, 2017 WL 2909250 (D. Md. Jul. 7, 2017).
[260] *Id.* at *1.
[261] *Id.* at *1-*2.
[262] *Id.* at *3.

Daimler.[263] The court found (b)(1) of the longarm[264] satisfied because the defendant had been in an ongoing relationship for over 20 years "during which the parties have engaged in substantial business dealings worth over $11.5 million.[265] In so holding the court relied upon *Consulting Engineers Corp. v. Geometric Ltd*,[266] which articulated a three-part test for specific jurisdiction: "(1) the extent to which defendant purposefully availed itself of the privileges of conducting activity in the State; (2) whether the plaintiff's claims arise out of those actions directed at the State and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable."[267] As to the second prong of the *Consulting Engineers* test, plaintiff contended that the dispute directly related to its agreement for delivery of garlic to Maryland.[268] The court agreed that "the dispute in this case [was] directly related to [defendant's] contacts with Maryland."[269]

This is consistent with the Supreme Court's requirement pertaining to specific jurisdiction that the suit need only relate to, rather than arise from, defendant's contacts with a forum.[270]

The court in *Vogel v. Morpas* similarly found specific jurisdiction over an out-of-state actor concerning a traffic accident in Maryland.[271] The defendant engaged a separate trucking entity to deliver produce from Michigan to Pennsylvania.[272] The truck's itinerary called for two stops in Maryland.[273] The non-trucker defendant moved to dismiss on the basis that its relevant actions, bringing the trucker and the produce together, occurred outside Maryland.[274] Notwithstanding that it was the producer's choice to have the trucker stop in Maryland, the court applied section (b)(2) of the

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[263] *Id.* at *6.
[264] MD. CODE ANN., CTS & JUD. PROC. § 6-103(b)(1) (West 2021) (permits jurisdiction when the defendant "[t]ransacts any business or performs any character of work or service in the State").
[265] *Tulkoff*, 2017 WL 290250, at *6.
[266] *Id.* (citing Consulting Engineers Corps. v. Geometric Ltd., 561 F.3d 273, 278 (4th Cir. 2009)).
[267] *Tulkoff*, 2017 WL 2900250, at *6 (quoting *Consulting Engineers,* 561 F.3d at 278 (citing ALS Scan, Inc. v. Digital Service Consultants, Inc., 293 F.3d 707, 712 (4th Cir. 2002)).
[268] *Tulkoff*, 2017 WL 2900250 at *10.
[269] *Id.*
[270] Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct., 141 S. Ct. 1017, 1033 (2021) (Alito, J., concurring).
[271] Vogel v. Morpas, No. RDB-17-2143, 2017 WL 518776, at *6 (D. Md. Nov. 9, 2017).
[272] *Id.* at *1.
[273] *Id.*
[274] *Id.*

longarm[275] relying on a construction of that provision in *Rao v. Era Alaska Airlines*,[276] that it applies irrespective of where the contract was negotiated."[277]

Applying the second prong of the *Consulting Engineers* test discussed above,[278] whether the plaintiff's claim arose out of the activities directed at the forum, the court stated "[defendant's] conduct directed at Maryland gave rise to the Plaintiff's causes of action against it."[279]

As has been the case in a small number of Supreme Court cases, it appears that a court is more likely to find general jurisdiction in Maryland under (b) (4) in cases involving intentional torts.[280] For example, in *Crussiah v. Inova Health Systems, Inc.* a Maryland resident, acting pro se, sued a Virginia health provider concerning its alleged attempts to induce Maryland health providers to hide malpractice in the course of an MRI done upon referral by Inova in Virginia.[281] The court noted first that Inova's contacts with Maryland were not sufficient to make it "at home" there.[282] But it cited *Calder v. Jones*, a case in which the Court found personal jurisdiction over the author of an allegedly defamatory article written in Florida for the *National Enquirer* about plaintiff, a California resident, on the basis that the harm suffered by the plaintiff, a famed actress, was sustained in California.[283] The Court in *Calder* did not identify the plaintiff's assertion of jurisdiction as general or specific.[284] Referring to the actions of the article's author and editor, "[they] edited an article that they knew would have a potentially devastating impact upon [plaintiff], and they knew the brunt of that injury would be felt by [plaintiff] in the State [where] she lives and in which the [*National Enquirer*] has its largest circulation.[285]

The *Crussiah* court stated that this reasoning applied only to plaintiff's claims that Inova had interfered with its business relationship to

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[275] MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(2) (West 2021) (permits jurisdiction when defendant "[c]ontracts to supply goods, food, services, or manufactured products in the State").
[276] Rao v. Era Alaska Airlines, 22 F. Supp. 3d 529, 535 (D. Md. 2014).
[277] *Id.* at 535 (citing A Love of Food 1, LLC v. Maoz Vegetarian USA, Inc., 795 F. Supp. 2d 365, 370 (D. Md. 11)).
[278] Consulting Engineers Corp v. Geometric Ltd., 561 F.3d 273, 279 (4th Cir. 2009).
[279] Vogel v. Morpas, No. RDB-17-2143, 2017 WL 518776, at *6 (D. Md. Nov. 9, 2017).
[280] *See* Calder v. Jones, 465 U.S. 738, 786-87 (1984); *see also* Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 779-80 (1984).
[281] Crussiah v. Inova Health Systems, Inc., No. TDC-14-4017, 2015 WL 7294368, at *3 (D. Md. Nov. 19, 2015).
[282] *Id.* at *3-4 (citing Daimler, AG v. Bauman, 571 U.S. 117, 127 (2014)).
[283] Calder v. Jones, 465 U.S. 783, 798 (1984).
[284] *Id.* at 783, 789.
[285] *Id.* at 783-84.

Maryland providers.[286] Claims for defamation, false imprisonment, malicious prosecution, and civil conspiracy all arose in Virginia.[287] Nevertheless, because all of plaintiff's claims arose from a common nucleus of operative fact,[288] the court exercised personal jurisdiction over all under pendent personal jurisdiction.[289]

A similar finding of specific jurisdiction for alleged intentional tortious conduct of an out-of-state actor was made in *Ryan v. TEV Corp.*, in which a Maryland shareholder in a close Rhode Island corporation sued the corporation's sole officer and director (plaintiff's father) of Florida.[290] The court rejected general jurisdiction, but found specific jurisdiction under (b)(4).[291] The court noted that "what constitutes a 'persistent course of conduct' in Maryland is not entirely clear,"[292] but found the requirement met in defendant's sending materials to plaintiff's Maryland residence, interacting with Maryland tax authorities, and the appearance of the corporation's accountant electronically in Maryland Tax Court.[293]

With respect to due process, the court invoked the *Consulting Engineers Test*[294] and with respect to that test's first prong, purposeful availment, the court cited *Calder v. Jones* stating that "even in the absence of substantial presence in the forum—where defendant intentionally targets the forum and those acts have harmful effects in the forum state,"[295] purposeful availment may exist. The court held that *Calder* was satisfied because defendant's conduct was deliberate, plaintiff felt the brunt of the alleged financial harm where he lived, in Maryland, and defendant aimed the tortious conduct in Maryland, as evidenced by his filing false information with

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[286] *Crussiah*, 2015 WL 7294368, at *4-*5.
[287] *Id.* at *6.
[288] *Id.*
[289] *Id.* (citing ESAB Grp., Inc. v. Centricut, Inc., 126 F.3d 617, 628 (4th Cir. 1997). In a sense, the exercise of personal jurisdiction was a Pyrrhic victory for the plaintiff since the court dismissed on the merits the claims over which it otherwise would not have been able to exercise jurisdiction.
[290] Ryan v. TEV Corp., No. ELH-18-cv-3852, 2019 WL 5683400, at *1, *9 (D. Md. Nov. 1, 2019).
[291] *Id.* at *11; *see* MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(4) (West 2021) (permits jurisdiction over a defendant who causes tortious injury inside the state by an act or omission outside the state if "he regularly does or solicits business, [or] engages in any other persistent course of conduct in the State . . . ").
[292] *Ryan*, 2019 WL 5683400, at *3.
[293] *Id.*
[294] Consulting Engineers Corps. v. Geometric Ltd., 561 F.3d 273, 278 (4th Cir. 2009)); *see supra* text accompanying note 267.
[295] *Ryan,* 2019 WL 5683400, at *6 (citing Calder v. Jones, 465 U.S. 783, 789 (1984)).

Maryland tax authorities as well as with the IRS.[296] The court concluded that "the plaintiff's claim for constructive fraud directly arose from the defendant's contacts with the forum.[297]

The distinction between both *Crussiah* and *Ryan* on one hand, and *Daimler* or *Tyrell* on the other is clear; in the latter two cases defendants had done nothing in either forum, in the former, allegedly they had.[298] *Crussiah* and *Ryan* are distinguishable from other decisions of the United States District Court for the District of Maryland previously discussed because the court in both found specific jurisdiction.[299] In most other such cases discussed thus far the court, at least to some extent, considered applicability of (b)(4), but rejected general jurisdiction.

In a not insignificant number of cases the Maryland federal court has perfunctorily rejected applicability of general jurisdiction under (b)(4) or simply not considered the longarm's applicability on the basis of *Daimler* and/or *Goodyear*.[300] For example, in *Hunt v. Aldi*, a Fair Labor Standards Act

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[296] *Id.* at *10, *compare* Walden v. Fiore, 571 U.S. 277, 290 (2014) (rejecting personal jurisdiction in Nevada of a suit by a Nevadan against defendant, was as a DEA deputized officer seized a large amount of cash as a result of a search in the Atlanta airport, on the basis that no part of the defendant's conduct occurred in Nevada. The alleged injury to the plaintiff of the delayed return of his funds in Nevada was not along sufficient to confer jurisdiction over defendant. The residence on the plaintiff is relevant is establishing jurisdiction only if the defendant has formed a contact with that state.)

[297] *Ryan,* 2019 WL 5683400, at *11, *compare* Brown Inv. & Advisory Tr. Co. v. Allen, No JKB-19-2332, 2020 WL 5833034 (D. Md. Sep. 29, 2020) (explaining the investment adviser for funds of an individual filed an interpleader action against the individual and his brother and daughter, the latter two claiming to have durable powers of attorney with respect to the individual's funds. The daughter filed a defamation crossclaim against the brother, whom she also sued separately for defamation. The brother did not reside in Maryland, and he filed motions to dismiss the interpleader claim and the crossclaim on the basis of lack of personal jurisdiction. In dealing with this issue, the court focused on correspondence the brother had with the financial advisor in Maryland. Viewing it as not occurring in Maryland, the court considered only the applicability of (b)(4), not specifying whether it was viewing the matter as one of specific or general jurisdiction. The court found (b)(4) applicable, that the brother's requests for approval of payment of bills for the individual for at least six months was a persistent course of conduct. The court did not cite *Daimler* or *Goodyear.* The court viewed the communications into Maryland as related to the interpleader action concerning the holder of the power of attorney as well as forming the basis of the defamation suit by the sister. Unlike *Crussiah* and *Ryan* the court did not address the issue of where the impact of the harm of the alleged defamation, would occur, as the daughter's residence was not clear in the opinion.)

[298] *See* Crussiah v. Inova Health Systems, Inc., No. TDC-14-4017, 2015 WL 7294368, at *3 (D. Md. Nov. 19, 2015); *see also* Ryan v. TEV Corp., No. ELH-18-cv-3852, 2019 WL 5683400 (D. Md. Nov. 01-2019); *compare with* Daimler, AG v. Bauman, 571 U.S. 117, 127 (2014), *and* BNSF Ry Co. v. Tyrell, 137 S. Ct. 1549 (2017).

[299] *Crussiah*, 2015 WL 7294368, at *6; *Ryan*, 2019 WL 5683400, at *11.

[300] *See* Hunt v. Aldi, No. 8:18-cv-2485-PX, 2020 WL 1248944 (D. Md. Mar. 16, 2020).

(FLSA)[301] action against a supermarket chain with 47 stores in Maryland,[302] the court[,] rejected both general and specific jurisdiction, the latter as to the non-resident plaintiffs, without any consideration of the longarm as to general jurisdiction and a perfunctory citation to the longarm concerning specific jurisdiction.[303]

In *Grabowski v. Northrop Grumman Systems Corp.*, the court dismissed a suit for unjust enrichment related to the defendant's acquisition of Essex Corporation notwithstanding plaintiff's contention that the defendant employs 11,000 in Maryland.[304] There is no discussion of the Maryland longarm in the court's opinion, which relies mostly upon *Tyrell*, *Daimler*, and *Goodyear*.[305]

In *Keralink Int'l, Inc. v. Stradis Healthcare, LLC*, the court did not need to consider (b)(4) because it held that exercising personal jurisdiction over a defendant's claim against a California third party defendant would offend due process.[306] The court relied upon *Daimler* and *Goodyear*.[307]

In *Perry v. Nat'l Ass'n of Home Builders*, *Cricket Group, Ltd. v. Highmark, Inc,* and *Varian v. BIS Global,* the courts dismissed, for lack of personal jurisdiction, suits by Maryland residents for breach of contract against out-of-state employers concerning services plaintiffs had performed in Maryland with no consideration of the Maryland longarm.[308]

It is not asserted here that any of these cases were decided correctly or incorrectly. But, the Maryland Court of Appeals has often stated that the purpose of the longarm statute is "to expand jurisdiction to the limits" permitted by due process.[309] Decisions of the Maryland federal courts demonstrate that the language of the longarm statute, in one significant respect, is no longer in sync with the Supreme Court's general jurisdiction jurisprudence. Fidelity to the courts and the legislature's purpose would counsel amending the statute.

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[301] *Id.* at *1 (citing 29 U.S.C.A. § 201 *et seq.* (West 2018)).
[302] *Hunt,* 2020 WL 1248944, at *1.
[303] Id. at *7 n.6.; *see also* Stinger v. Fort Lincoln Cemetery, LLC, No. TDC-20 -1052 (D. Md. Mar. 23, 2021) (dismissing an out-of-state defendant without citation of the longarm).
[304] Grabowski v. Northrup Grumman Systems Corp., No. GLR-16-3492, 2017 WL 3190647, at *3-*4 (D. Md. Jun. 30, 2017).
[305] *Id.* at *3.
[306] Keralink Int'l, Inc. v. Stradis Healthcare, LLC, No. CCB-18-2013, 2018 WL 6790305, at *2 (D. Md. Dec. 26, 2018).
[307] *Id.* at *4.
[308] Perry v. Nat'l Assoc. of Home Builders of U.S., No. TCD C-20-2445, 2020 WL 5759766, at *1, *3 (D. Md. Sep. 28, 2020); Cricket Grp., Ltd. V. Highmark, Inc., 198 F. Supp. 3d 540, 542-43 (D. Md. 2016); Varieur v. BIS Global, No. PX-16-3111, 2017 WL 4387054, at *1-*2 (D. Md. Oct. 2, 2017).
[309] Geelhoed v. Jensen, 277 Md. 220, 226, 32 A.2d 818, 822 (1976).

III -- General Jurisdiction in the State Courts Post-*Goodyear*

A -- States Other than Maryland

Not surprisingly, the courts of last resort of many states, nearly half, have acknowledged the Supreme Court's "at home" rule in general jurisdiction cases, generally resulting in dismissal of claims by plaintiffs.[310] A significant number of intermediate appellate courts in other states have done the same, with the same result.[311]

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[310] *See generally* Hinrichs v. Gen. Motors of Canada, Ltd., 222 So. 3d 1114 (Ala. 2016); *see generally* Harper v. BioLife Energy Sys., Inc., 426 P.3d 1067 (Alaska 2018); *see generally* Magill v. Ford Motor Co., 379 P.3d 1033 (Colo. 2016); Genuine Parts Co. v. Cepec, 137 A.3d 123 (Del. 2016); *see generally* Russell v. SNFA, 987 N.E. d 778 (Ill. 2013); *see generally* Sioux Pharm., Inc. v Summit Nutritionals, Int'l, Inc., 859 N.W. 2d 182 (Iowa 2015); *see generally* Chevalier v. Charles, 295 So.3d 395 (La. 2020); *see generally* Bandemer v. Ford Motor Co., 931 N.W.2d 744 (Minn. 2019); *see generally* State ex rel. Norfolk Southern Co. v. Dolan, 512 S.W.3d 41 (Mo. 2017); *see generally* Buckles v. Continental Resources, Inc., 402 P.3d 1213 (Mont. 2020); *see generally* Urbanski v. Nat'l. Football League, Nos. 61524, 61732, slip op. (Nev. Jun. 8, 2015); *see generally* Beem USA Ltd. Liab. P'ship v. Grax Consulting, LLC, 838 S.E.2d 158 (N.C. 2020); *see generally* Montgomery v. Airbus Helicopters, Inc., 414 P. 3d 824 (Okla. 2018); *see generally* Barrett v. Union Pac. R.R. Co., 390 P.3d 1031 (Or. 2017); *see generally* Hammons v. Ethicon, Inc., 240 A.3d 537 (Pa. 2020); *see generally* St. Onge v. USAA Fed. Sav. Bank, 219 A.3d 1278 (R.I. 2019); *see generally* First Cmty. Bank, N.A. v. First Tenn. Bank, N.A., 489 S.W.3d 369 (Tenn. 2015); *see generally* Searcy v. Parex Res. Inc., 496 S.W.3d 58 (Tex. 2016); ClearOne, Inc. v. Revolabs, Inc., 369 P.3d 1269 (Utah 2016), *overruled by* Raser Technologies, Inc. by & through Houston Phoenix Grp., LLC v. Morgan Stanley & Co., 449 P.3d 150 (Utah 2019); *see generally* Yelp, Inc. v. Hadeed Carpet Cleaning, Inc., 770 S.E.2d 440 (Va. 2015); *see generally* State ex rel. Ford Motor Co. v. McGraw, 788 S.E.2d 319 (W. Va. 2016); *see generally* Segregated Acct. of Ambac Assurance Corp. v. Countrywide Home Loan, Inc., 898 N.W.2d 70 (Wis. 2017).

[311] *See generally* Malcomson v. IMVU, Inc., No. 1 CA-CV 18-0596, 2019 WL 2305013 (Ariz. Ct. App., May 30, 2019); *see generally* Lawson v. Simmons Sporting Goods, Inc., 553 S.W 3d 190 (Ark. Ct. App. 2018), *vacated by* Lawson v. Simmons Sporting Goods, Inc., 569 S.W.3d 865 (Ark. 2019); *see generally* T.A.W. Performance, LLC v. Brembo, S.P.A., 267 Cal. Rptr. 3d 771 (2020); *see generally* Air Shunt Instrument, Inc. v. Airfoil Int'l Aircraft Space Parts Co. WLL, 273 So.3d 104 (Fla. Dist. Ct. App. 2019); *see generally* Kearns v. N.Y. Cmty. Bank, 400 P.3d 182 (Kan. Ct. App. 2017); *see generally* Fletcher Fixed Income Alpha Fund, Ltd. v. Grant Thornton, LLP, 54 N.E.3d 570 (Mass. App. Ct. 2016); *see generally* Glenn v. TPI Petroleum, Inc. 854 N.W.2d 509 (Mich. Ct. App. 2014); *see generally* Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 164 A.3d 435 (N.J. Super. Ct. App. Div. 2017); *see generally* Sproul v. Rob & Charlies, Inc., 304 P.3d 18 (N.M. Ct. App. 2012); *see generally* Aybar v. Aybar, 93 N.Y.S.3d 159 (N.Y. App. Div. 2019); *see generally* XPX Armor and Equipment Inc. v. Skylife Co., No. L-20-1123, 2021 WL 3161202 (Ohio Ct. App. Jul. 23, 2021).

B -- General Jurisdiction in the Maryland Appellate Courts

None of the nearly endless parade of decisions of the Supreme Court reversing state and lower federal court decisions allowing general jurisdiction over defendants has emanated from a Maryland appellate court.[312] The Maryland courts have exercised great deliberation and caution in imposing general jurisdiction under the longarm statute. But unlike those of many other jurisdictions, the appellate courts of Maryland have not really acknowledged the significance of post-*Goodyear* general jurisdiction jurisprudence.

Repeatedly, the Maryland courts have stated that the reach of "the longarm statute is coextensive with the limit of personal jurisdiction [determined by the] Federal Constitution."[313] Practically, this has been understood to call for a two-step process in assessing whether jurisdiction exists over an out-of-state defendant: first, determining whether the requirements of the statute are met and, second, whether exercise of jurisdiction comports with due process.[314] Other than that, the meaning of that oft-stated assertion is obscure. If it means simply that every assertion of jurisdiction under the terms of the longarm statute must also satisfy the Due Process Clause, it is a truism. If, on the other hand, it interprets the Legislature as "expand[ing] the boundaries of permissible *in personam* jurisdiction to the limits permitted by the Federal Constitution,"[315] that might be taken as license to disregard the words of the statute itself and to assume that it is intended to permit jurisdiction under any circumstances in which the Supreme Court granted its imprimatur, the wording of that statute might just as well be the same at that of the longarm of California: "A court of that state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."[316] If that is how the Maryland longarm statute is supposed to be read, the Maryland appellate courts have not so

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[312] A modest caveat to that assertion is Camelback Ski Corp. v. Behning, in which the Court vacated a decision *denying* longarm jurisdiction over an out-of-state ski resort to which a Marylander had ventured and suffered injury. Camelback Ski Corp. v. Behning, 307 Md. 270, 513 A.2d 874 (Md. 1986), *vacated and remanded sub nom*, Behning v. Camelback Ski Corp., 480 U.S. 901 (1987), *on remand sub nom*, Camelback Ski Corp. v. Behning, 312 Md. 330, 539 A.2d 1107 (Md. 1988) (emphasis added). The Court ordered the Maryland Court of Appeals to reconsider its decision in light of the then recently decided Asahi Metal Industry Co., Ltd. v. Super. Ct. of California, 480 U.S. 102 (1987). *Id.* at 1111-12. The Maryland court reached the same result but addressed the reasonableness factors highlighted in *Asahi. Id.*

[313] Pinner v. Pinner, 467 Md. 463, 479, 225 A.3d 433, 443 (Md. 2020).

[314] Bond v. Messerman, 391 Md. 706, 721, 895 A.2d 990, 999 (2006).

[315] CSR, Ltd. v. Taylor, 411 Md. 457, 475, 983 A.2d 492, 502 (2009).

[316] CAL. CIV. PROC. CODE § 410.10 (West 2013).

stated. Often enough, however, it appears that in Maryland appellate courts, specific analysis of the language of the statute vanishes as it is merged with the constitutional due process analysis.[317]

Be that as it may, the court in *Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC* in prescribing the requirements for personal jurisdiction, has distinguished between specific and general jurisdiction.[318] For general jurisdiction, "the defendant's activities in the State must have been 'continuous and systematic.'"[319] As discussed earlier, this has been superseded by the Supreme Court in *Goodyear* and its progeny, as the Fourth Circuit has acknowledged.[320]

For specific jurisdiction the Court of Appeals has prescribed a three-part test which considers:

> (1) The extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiff's claims arise out of activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.[321]

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[317] *See, e.g.*, Pinner v. Pinner, 467 Md. 463, 479, 225 A.2d 433, 442-43 (2020) (quoting Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC, 388, Md. 1, 22, 878 A.2d 567, 580 (2005). For example, FLA. STAT. ANN. § 48.193(1)(a)(8) (West 2020) subjects a defendant to jurisdiction in Florida for "[b]reaching a contract in the state by failing to perform acts required by the contract to be performed in this State." The constitutionality of this provision was upheld in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Breaching a contract is not treated as a basis of exercising jurisdiction over an out-of-state defendant in the Maryland longarm statute, though perhaps, supported by the Supreme Court's interpretation of due process, a Maryland court could interpret a breach of contract to invoke MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(2) (West 2021) which provides for jurisdiction if a defendant "[c]ontracts to supply goods, food, services, or manufactured products in the State." But the contract defendant in *Burger King* was sued for allegedly breaking did not involve any of those things, though arguably the breach occurred in Florida. Surely, interpreting the Maryland longarm statute is consistent with due process, but what of the admonition of the Court of Appeals in *Whiting-Turner Contracting Co. v. Fitzpatrick*, that the pursuit of the goal of determining the real intention of legislation is to look to the words of the statute, giving them their common and ordinary meaning. *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 301, 783 A.2d 667, 670 (2001) (citing Derry v. State, 358 Md. 325, 335, 784 A.2d 478, 483 (2000)). Somehow the California approach, which essentially outsources drawing the boundaries of personal jurisdiction in California to the Supreme Court, seems more straightforward.

[318] Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC, 388 Md. 1, 22-27, 878 A.2d 567, 580-83 (2005).

[319] *Id.* at 580 (citing Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs, Inc., 334 F.3d 390, 397 (4th Cir. 2003), *aff'd* Pinner v. Pinner, 467 Md. 463, 225 A.2d 443 (2020)).

[320] *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011); *see also* Farrar v. McFarlane Aviation, Inc., 823 F. App'x. 161 (4th Cir. 2020).

[321] *Beyond Systems,* 288 Md. At 26, 878 A.2d at 582 (citing *Carefirst,* 334 F.3d at 397).

This test, with the yet-to-be-explored scope of the recent decision of the Supreme Court in *Ford Motor Co. v. Montana Eighth Judicial District Court*, concerning the second prong, "arising out of defendant's activities directed at the State," retains its vitality in analyzing specific jurisdiction.[322]

Unlike the courts of many other jurisdictions, the Maryland appellate courts, for the most part, have not rendered decisions reflecting the recent Supreme Court pronouncements concerning general jurisdiction. But Maryland decisions concerning general jurisdiction before *Goodyear* did not transgress the limitations of *Goodyear* and its progeny.[323]

The Maryland decision that most squarely addressed the appropriateness of general jurisdiction is *Camelback Ski Corp. v. Behning*.[324] In that case, a Maryland plaintiff, who suffered injury at a ski resort in Pennsylvania, sued the resort in Maryland for negligence.[325] The defendant moved to dismiss for lack of personal jurisdiction.[326] The defendant contended that its advertisement was focused on Pennsylvania, New York, and New Jersey though it knew that it had some visitors from Maryland.[327] It admitted that one of its sales representatives had visited travel agencies and military installations in Maryland to stimulate business but stated that this was not successful and was not repeated.[328] The court regarded the case as involving general jurisdiction as the cause of action "does not arise out of nor is directly related to, the conduct of the defendant in the forum," which requires that defendant's conduct be systematic and continuous.[329] The court concluded that the conduct of the defendant did not "mount up to the 'purposeful availment' of benefits of the State that will satisfy the test of minimum contacts."[330]

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[322] Ford Motor Co. v. Mont. Eighth Jud. Dist., 141 S. Ct. 1017, 1024 (2021).
[323] *See generally* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011).
[324] Camelback Ski Corp. v. Behning, 312 Md. 330, 539 A.2d 1107 (1988).
[325] *Id.* at 333, 539 A.2d at 1108.
[326] *Id.* at 335, 539 A.2d at 1109.
[327] *Id.* at 334, 539 A.2d at 1109.
[328] *Id.*
[329] *Camelback*, 312 Md. at 338, 539 A.2d at 1111 (citing Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984). "The court did not use the terms "general" or "specific," but rather described a "continuum that exists between two extremes . . . . recognizing that the quantum of contacts increases as the nexus between the contacts and the cause of action decreases." *Id.* at 339, 539 A.2d at 1111.
[330] *Camelback*, 312 Md. at 342-43, 539 A.2d at 1113. The court had concluded in the initial go-round that the defendant's contacts with Maryland were insufficient. *See* Camelback Ski Corp. v. Behning, 307 Md. 270, 513 A.2d 874 (1986), *vacated and remanded sub nom*, Behning v. Camelback Ski Corp., 480 U.S. 901 (1987), *on remand sub nom*, Camelback Ski Corp. v. Behning, 312 Md. 330, 539 A.2d 1107 (1988). On remand, at the apparent instigation of the Supreme Court, the Court of Appeals of Maryland assessed the

Camelback stands out, however, as the only case decided by the Court of Appeals of Maryland that involved a cause of action that arose *entirely* on the basis of conduct that occurred outside of Maryland.[331] All of the other decisions arguably involving general jurisdiction entailed conduct of the defendant in Maryland that had some relationship to the plaintiff's cause of action.[332]

For example, in *Geelhoed v. Jensen*, the court upheld amenability to Maryland jurisdiction of a California domiciliary with respect to conduct that occurred *outside* of Maryland, but that had its roots in Maryland.[333] Plaintiff sued the defendant for criminal conversation.[334] Defendant lived in Maryland from 1969 to 1971 while fulfilling his Selective Service obligation by working at The National Institutes of Health in Maryland and the Armed Forces Institute of Pathology in Washington, D.C.[335] At the latter he became acquainted with the plaintiff's wife.[336] Plaintiff could prove acts of intercourse between defendant and plaintiff's wife, the gravamen of the tort, only in Montreal, Canada, where both attended a medical conference.[337] Thus, the court considered the applicability of (b)(4) of the longarm establishing jurisdiction based upon an act or omission outside that state of the defendant "does or solicits business [or] engages in any other persistent course of conduct in the State."[338] The court construed the defendant's living in Maryland as a persistent course of conduct.[339] Citing *Perkins v. Benguet Mining Co.* the court rejected the plaintiff's contention that the tort must have arisen out of the defendant's conduct in Maryland.[340]

In a sense, the court foreshadowed the Supreme Court's analysis of general jurisdiction over intentional torts in *Calder v. Jones*[341] by highlighting that the defendant had become acquainted with the plaintiff's

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"reasonableness" factors of *Asahi Metal Indus. Co, Ltd. v. Super. Ct. of Cal.*, 480 U.S. 102 (1980), *i.e.,* the interest of the plaintiff in obtaining recovery, the interest of the defendant in avoiding burdensome litigation, and the interest of the State in providing a forum, and nevertheless reached the same result on the scarcity of defendant's contacts with Maryland. *Id.* at 335-36, 539 A.2d at 1109-10.

[331] *Camelback*, 312 Md. at 342-43, 539 A.2d at 1113 (emphasis added).

[332] *See generally* Geelhoed v. Jenen, 277 Md. 220, 352 A.2d 818 (1976); *see generally* Novack v. Nat'l Hot Rod Ass'n, 247 Md. 350, 231 A.2d 22 (1967).

[333] Geelhoed v. Jenen, 277 Md. 220, 352 A.2d 818 (1976).

[334] *Id.* at 221-22, 352 A.2d at 819-20 (noting this common law cause of action was abrogated in Kline v. Ansell, 287 Md. 585, 414 A.2d 929 (1980)).

[335] *Id.* at 222, 352 A.2d at 820.

[336] *Id.*

[337] *Id.*

[338] *Geelhoed*, 277 Md. at 223, 352 A.2d at 820-21.

[339] *Id.* at 230, 352 A.2d at 824.

[340] *Id.* at 232 (citing generally Perkins v. Benquet Mining Co., 342 U.S. 437 (1952)).

[341] Calder v. Jones, 465 U.S. 783 (1984).

wife in Maryland making it foreseeable to him that his conduct would have harmful effects there and that Maryland has a special interest in providing a remedy for alleged wrongs to the domestic relations of its citizens.[342]

Geelhoed differs from *Camelback* in that the roots of the tort apparently arose in Maryland.[343] But the court in *Geelhoed* clearly addressed it as a tort that arose out of state.[344] That was not as clearly so in the other cases in which the court has assumed that general jurisdiction has been at least alternatively involved.[345]

For example, in *Novack v. Nat'l Hot Rod Ass'n* two plaintiffs, one a driver injured at a drag race, the other the widow of a driver fatally injured at the same race, sued a California non-profit corporation that sponsored and regulated drag races in different states, including Maryland and which had inspected the track on which the injuries at issue had occurred.[346] The defendant moved to dismiss for lack of personal jurisdiction contending that the act of sanctioning the track occurred in California.[347]

The court appeared to have accepted that contention, but it deemed that the four visits that representatives of the defendant had made to inspect the track in 1964 and 1965, which preceded the four races it had sponsored there, to be a persistent course of conduct.[348] Without using the terms "general" or "specific" jurisdiction, which the Supreme Court did not use until later,[349] the court assumed that the exercise of either general *or* specific jurisdiction was permitted by due process:

The giving of the sanction which, it is alleged, brought about the damages sued for, could have been an act or omission in California of one who had engaged in a persistent course of conduct in Maryland or an act or omission in this State by [defendant's] inspector.[350]

The assertion of general jurisdiction in *Novack*, notwithstanding what were significant contacts with Maryland by the defendant, would not comport with due process as interpreted by *Daimler*.[351] Perhaps such contacts would suffice for specific jurisdiction under *Ford Motor Co. v. Montana Eighth Jud.*

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[342] *See Geelhoed*, 277 Md. at 233-34, *352* A.2d at 826.
[343] *Compare id.* at 222, 352 A.2d at 820, *with* Camelback Ski Corp. v. Behning, 312 Md. 330, 334-36, 539 A.2d 1107, 1109-11 (1988).
[344] *See, e.g., Geelhoed*, 277 Md. at 222, 352 A.2d at 820.
[345] *See Camelback*, 312 Md. at 338, 539 A.2d at 1111.
[346] Novack v. Nat'l Hot Rod Ass'n, 247 Md. 350, 351-52, 231 A.2d 22, 23-24 (Md. 1967).
[347] *Id.* at 352-53, 231 A.2d at 24.
[348] *Id.* at 357, 231 A.2d at 26.
[349] *See* Helicopteros Nacionales de *Colombia* v. Hall, 466 U.S. 408, 414 n.8-9 (1984).
[350] *Novack*, 247 Md. at 357, 231 A.2d at 26.
[351] *Id.* at 354-55, 231 A.2d at 25; *contra* Daimler, AG v. Bauman, 571 U.S. 117 (2014).

Dist. Ct. because the plaintiffs alleged injury related to the inspections that occurred in Maryland.[352]

Harris v. Arlen Props., Inc. also involved elements of both general and specific jurisdiction.[353] Plaintiff sued for a real estate commission on a sale of land in Maryland for a shopping center.[354] The contract of sale and the conveyance of the land occurred in Washington, D.C.[355] The plaintiff alleged that he brought together the buyer and seller.[356] Under the conveyance contract the seller, a New York partnership, agreed to be responsible for a broker's commission if one was claimed.[357]

As to several defendants, the court reversed the trial court's dismissal of the suit for lack of personal jurisdiction.[358] This included an employee of the partnership who had met with the plaintiff in Maryland to inspect numerous potential sites.[359] The appellate court concluded that the partnership filed a building permit with the county building inspector's office, negotiated easements with the telephone company and arranged for installation of storm drains at the site with the Washington Suburban Sanitary Commission.[360]

With respect to the defendant's contention that the contract for sale of the property was negotiated and executed outside Maryland, the court, invoking *Novack*, found that not decisive.[361] It regarded the activities as carried out by some of the out-of-state defendants amounted to a persistent course of conduct.[362] As in *Novack,* while the court assumed that the cause of action may have arisen out of state, important aspects of the defendants' conduct occurred in Maryland.[363] The court's allowance of personal jurisdiction did not entail pristine "dispute blind" [of] general jurisdiction.[364]

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[352] *See Novack*, 247 Md. at 352, 231 A.2d at 24; *see also* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1012 (2021).
[353] *See* Harris v. Arlen Properties, Inc., 256 Md. 185, 260 A.2d 22 (1969).
[354] *Id.* at 190-91, 269 A.2d at 25.
[355] *Id.* at 194, 269 A.2d at 26.
[356] *Id.* at 189, 269 A.2d at 24.
[357] *Id.*
[358] *Harris*, 256 Md. at 201, 260 A.2d at 30-31.
[359] *Id.* at 187, 201, 260 A.2d at 23, 30-31.
[360] *Id.* at 197, 260 A.2d at 28.
[361] *Id.* at 192-93, 196, 260 A.2d at 26-27.
[362] *Id.* at 196, 260 A.2d at 28.
[363] *See* Novack v. Nat'l Hot Rod Ass'n, 247 Md. 350, 357, 231 A.2d 22, 26 (1967).
[364] *See Harris*, 256 Md. at 202, 260 A.2d at 30; *see also* Zoe Niesel, *Daimler and the Jurisdictional Triskelion,* 83 TENN. L. REV. 833, 843-45 (2015) (discussing the distinction between general and specific jurisdiction). *See generally* Lamprecht v. Piper Aircraft Corp., 262 Md. 126, 277 A.2d 272 (1971) (explaining that direct activity in Maryland on the part of the defendant is significant where a Maryland resident who was forced to make a crash landing of a plane, he had bought in Maryland sued the manufacturer of the plane, a

Presbyterian Union Hospital v. Wilson, also involved elements of both general and specific jurisdiction.[365] In that case a Maryland resident who needed a liver transplant was referred to the defendant, a Pittsburgh, Pennsylvania hospital.[366] The defendant arranged for the plaintiff's travel to the hospital in Pittsburgh.[367] Upon arrival the plaintiff was not admitted because insurance coverage could not be confirmed.[368] The plaintiff died while awaiting approval of coverage for his transplant under Maryland Medical Assistance.[369] Two suitable livers became available during this period.[370]

Plaintiff, decedent's estate, sued the hospital and others in the Circuit Court for Baltimore City for negligence, negligent misrepresentation, fraud, breach of contract, intentional infliction of emotional distress and wrongful death.[371] The hospital moved to dismiss.[372] The trial court denied the motion and the Court of Special Appeals affirmed.[373] The Court of Special Appeals began its analysis by distinguishing between general and specific jurisdiction:

Generally speaking, when the cause of action does not arise out of, or is not directly related to, the conduct of the defendant within the forum, contacts reflecting continuous and systematic general business conduct will be required to sustain jurisdiction. On the other hand, when the cause of action

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corporation with its principal place of business in Pennsylvania. The plaintiff bought his plane from a Maryland dealer which, in turn, had bought it from a Virginia distributor. *Id.* at 127, 277 A.2d at 273. Piper made no sales in Maryland. *Id.* at 128, 277 A.2d at 274. The plaintiff emphasized Piper's national advertising campaign and responses to inquiries from Maryland residents concerning prices, referrals to dealers and regular correspondence with Maryland owners of Piper planes in urging reversal of the trial court's dismissal. *Id.* While the court stated that it "tend[ed] to the view that Piper did solicit business and engage in a persistent course of conduct in Maryland," in remanding in also stated that it "harbored lingering doubt that the quality and nature of its activities make it constitutionally fair to subject t to jurisdiction." *Id.* at 131, 277 A.2d at 275. In a sense, the outcome foreshadows the Supreme Court's refusal to allow an English manufacturer of a recycling machine to be sued in New Jersey for injury to a suer there on the basis that the machine had arrived in New Jersey solely through the efforts of an entity other than the defendant manufacturer. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873 (2011)).

[365] *See* Presbyterian Univ. Hosp. v. Wilson, 337 Md. 541, 654 A.2d 1324 (1995).

[366] *Id.* at 543-44, 654 A.2d 1326.

[367] *Id.* at 544, 654 A.2d at 1326.

[368] *Id.*

[369] *Id.* at 545, 654 A.2d at 1326.

[370] *Presbyterian Univ. Hosp.*, 337 Md. at 545, 654 A.2d at 1326.

[371] *Id.* at 545, 654 A.2d at 1327.

[372] *Id.*

[373] *Id.* at 546, 654 A.2d at 1327, *aff'g* Presbyterian Univ. Hospital v. Wilson, 99 Md. App. 305, 332, 637 A.2d 486, 500 (Md. Ct. Spec. App. 1994).

arises out of the contacts that the defendant had with the forum, it may be fair to permit the exercise of jurisdiction as to that claim.[374]

Plaintiffs contended that the defendant's contacts with Maryland warranted findings of both general and specific jurisdiction.[375] They contended that defendants' registration under the Code of Maryland Regulations as a Maryland Medical Assistance provider and as a transplant referral center were sufficient for general jurisdiction and that specific jurisdiction was appropriate because plaintiffs' cause of action arose out of those contacts.[376] The trial court determined that defendant's contacts with Maryland "may not have been sufficient to establish general jurisdiction" over the defendants but that in combination with defendant's contacts related to the plaintiffs' suit they provided a basis for specific jurisdiction.[377] The Court of Appeals agreed, noting that the determination that there was at least specific jurisdiction made it unnecessary to determine whether defendants' contacts with Maryland would warrant a finding of general jurisdiction.[378]

The Court of Appeals stated that as to either general or specific jurisdiction the court must find that the defendant's contacts meet the "general test of essential fairness."[379] While general jurisdiction requires "continuous and systematic contacts," specific jurisdiction involves more of a weighing of whether the contacts between the forum and the defendant "satisfy the threshold of fairness."[380]

The court's distinguishing of the defendant's contacts with Maryland from those of the defendant ski resort in *Camelback* is instructive.[381] Defendant had applied to become a provider under the Maryland Assistance programs.[382] It had to become certified as a Medicaid provider.[383] On the other hand, the ski resort did nothing to solicit Maryland residents to visit.[384] The court noted that the defendant's registration as a transplant provider for Maryland citizens "initially drew [plaintiffs' decedent] to [defendant] for

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[374] *Presbyterian Univ. Hosp.*, 337 Md. at 550, 654 A.2d at 1329 (quoting Camelback Ski Corp. v. Behning, 312 Md. 330, 338-39, 539 A.2d 1107, 1111 (1998) (citations omitted)).
[375] *Presbyterian Univ. Hosp.*, 337 Md. at 550, 654 A.2d at 1329.
[376] *Id.*
[377] *Id.* at 551, 654 A.2d at 1329.
[378] *Id.* at 551, 654 A.2d at 1330-31.
[379] *Id.* at 551-52, 654 A.2d at 1330 (quoting *Camelback Ski Corp. v. Behning*, 312 Md. 330, 336, 539 A.2d 1107, 1110 (Md. 1988).
[380] *Presbyterian Univ. Hosp.*, 337 Md. at 552, 654 A.2d at 1330 (quoting *Camelback*, 312 Md. at 336, 539 A.2d at 1110).
[381] *See Presbyterian Univ. Hosp.*, 337 Md. at 553-54, 654 A.2d at 1330-31.
[382] *Id.* at 554, 654 A.2d at 1331.
[383] *Presbyterian Univ. Hosp.*, 337 Md. at 554-55, 654 A.2d at 1331.
[384] *Id.* at 553, 654 A.2d at 1330.

treatment."[385] By establishing this connection with Maryland, the hospital "purposefully availed itself of the benefits conferred upon it by the State of Maryland."[386] But it was the additional contacts related specifically to plaintiffs' cause of action: the hospital's social worker arranging for decedent to travel to Pittsburgh, the hospital's convincing decedent to remain in Pennsylvania for a transplant and its extensive negotiations with Maryland Medical Assistance, decedent's insurer and his union to obtain coverage, that warranted specific jurisdiction.[387]

Though the court clearly implied that the defendant's contacts were not sufficient for general jurisdiction, in combination with circumstances of the plaintiffs' relationship with the hospital, they bolstered a finding of specific jurisdiction.[388] While the court ultimately checked the specific jurisdiction box, its holding represents a synthesis of general and specific jurisdiction factors that was foreshadowed by Justice Brennan in his dissent in *Helicopteros Nacionales v. Colombia v. Hall*.[389] Justice Brennan therein took the majority to task for viewing the case solely as one involving general jurisdiction.[390] In his analysis he combined years of connections of defendants to Texas pertaining to its helicopter fleet with the circumstances of the case, a helicopter crash.[391] He stated that "by refusing to consider any distinction between controversies that 'relate to' a defendant's contacts with the forum and causes of action that 'arise out of' such contacts, the Court may be placing severe limitations on the type and amount of contacts that will satisfy the constitutional minimum."[392]

The Court's recent decision in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.,* may lead to a broader interpretation of specific jurisdiction.[393] Although the Court of Appeals' view of general jurisdiction, standing alone, has been rejected in *Goodyear* and its progeny, perhaps its analysis of specific jurisdiction of claims "related to" a defendant's activities in or addressed at a forum, as sanctioned by *Ford Motor Co.,* potentially offers greater balance in the constitutional reconciliation of the interests in plaintiffs seeking a forum

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[385] *Id.* at 555, 654 A.2d at 1331.
[386] *Id.* at 555-56, 654 A.2d at 1332.
[387] *Id.* at 556, 654 A.2d at 1332.
[388] *See Presbyterian Univ. Hosp.*, 337 Md. at 555-56, 654 A.2d at 1332.
[389] *See id.* at 561-62, 654 A.2d at 1335; *see also* Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984) (Brennan, J., dissenting).
[390] *Helicopteros*, 466 U.S. at 420 (Brennan, J., dissenting).
[391] *Id.* at 423-24.
[392] *Id.* at 419-20.
[393] Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1012 (2021); *see supra notes* 192 through 205 and accompanying text.

against corporations with far flung-activities and the desire of such corporations to control their amenability to suit.[394]

In *Beyond Systems, Inc. v. Realtime Gaming Holding Co.* the Court of Appeals addressed general jurisdiction in the context of internet commerce.[395] Plaintiff sued several defendants under Maryland's Commercial Law Article for disseminating allegedly false or misleading emails.[396] The specific defendant who actually mailed the offending communications to the plaintiff was an individual in New Mexico.[397] He, in turn, had become an affiliate of www.windowscasino.com, an internet gaming site.[398] That site had in turn been authorized to license gaming software by Realtime Gaming, a Georgia corporation, which was a holding company for KDMS Int'l, LLC, a Delaware corporation, which had developed the software.[399] The individual defendant received fees for gamers referred by his emails to windowscasino.com.[400] The individual's activities made windowscasino's product available to Marylanders.[401]

Realtime and KDMS moved to dismiss for lack of personal jurisdiction.[402] The trial court granted this motion.[403] The Court of Appeals granted certiorari prior to consideration of the appeal by the Court of Special Appeals.[404]

The plaintiff asserted both general and specific jurisdiction over Realtime and KDMS because of the availability of the windowscasino website that made its gaming software in Maryland.[405] The plaintiff characterized the website as "highly interactive . . . creat[ing] lines of communication with people in Maryland and sources of substantial revenue."[406]

Plaintiff's contention that the defendant's site was highly interactive invoked the seminal internet personal jurisdiction case of *Zippo Mfg. Co. v. Zippo Dot Com, Inc.* which enunciated a sliding scale framework for

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[394] *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011); *see also* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1012 (2021).
[395] *See* Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC, 388 Md. 1, 878 A.2d 567 (2005).
[396] *Id.* at 15-16, 878 A.2d at 576 (quoting MD. CODE ANN., COM. LAW § 14-3002 (West 2021)).
[397] *Beyond Systems*, 388 Md. at 6, 878 A.2d at 570.
[398] *Id.*
[399] *Id.* at 5, 878 A.2d at 569-70.
[400] *Id.* at 6-7, 878 A.2d at 570-71.
[401] *Id.* at 7, 878 A.2d at 571.
[402] *Beyond Systems*, 388 Md. at 7-8, 878 A.2d at 571.
[403] *Id.* at 8, 878 A.2d at 572.
[404] *Id.* at 9-10, 878 A.2d at 572-73.
[405] *Id.* at 23, 878 A.2d at 580.
[406] *Id.*

assessing personal jurisdiction on the basis of availability of a defendant's website in a forum.[407] The end of the scale that warrants jurisdiction entails situations in which a defendant enters into contact with a resident of a foreign jurisdiction that involves knowing and repeated transmission of computer files over the internet.[408] The opposite end involves circumstances in which information is simply posted on a website that is available to persons in a forum.[409] The middle ground, where the plaintiffs asserted the defendants were situated, involved interactive websites, where a user can exchange information with a host computer.[410] In the absence of sufficient proof to the contrary, however, the court accepted the trial court's finding that the defendant's website was not highly interactive.[411] Furthermore, the court stated that "[t]hough the maintenance of a website is, conceivably, a continuous presence everywhere, the existence of a website alone is not sufficient to establish general jurisdiction in Maryland over [defendants]."[412]

Prior to *Goodyear*, the Maryland jurisprudence of general jurisdiction had largely been to reject its application or pigeon-hole the facts into specific jurisdiction instead.[413] The legacy of that handful of decisions is an obsolete test, i.e., continuous, and systematic activity though unrelated to a plaintiff's cause of action, that many other jurisdictions have specifically rejected.[414]

The analysis of two post-*Goodyear* appellate opinions portrays an unfortunate tendency, also seen in Supreme Court decisions, to reject jurisdiction in one forum simply because it would be more convenient or

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[407] *Beyond Systems*, 388 Md. at 23-24, 878 A.2d at 580-81 (first citing Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997), and then citing Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc., 334 F.3d 390, 399 (4th Cir. 2003)).

[408] *Beyond Systems*, 388 Md. at 23, 878 A.2d at 581 (citing *Zippo Mfg. Co.*, 952 F. Supp. at 1124).

[409] *Beyond Systems*, 388 Md. at 24, 878 A.2d at 581 (citing *Zippo Mfg. Co.*, 952 F. Supp. at 1124).

[410] *Beyond Systems*, 388 Md. at 24, 878 A.2d at 581 (citing *Zippo Mfg. Co.*, 952 F. Supp. at 1124).

[411] *Beyond Systems*, 388 Md. at 25, 878 A.2d at 581.

[412] *Id.* at 25, 878 A.2d at 582. Plaintiff's attempt to establish specific jurisdiction floundered on its inability to establish an agency relationship between Realtime and KDMS on one hand and windowscasino on the other. *Id.* at 26-27, 878 A.2d at 582. The court noted that the only evidence of any relationship was the fact that windowscasino contained a link to Realtime and KDMS where customers could download gaming software. *Id.* at 27, 878 A.2d at 582. Without an agency relationship, the court failed to see "any substantive contact with Maryland or contact with the conduct giving rise to this suit . . . ." *Id.* at 28, 878 A.2d at 583. The court thus found that it would not be constitutionally reasonable to exercise specific jurisdiction over Realtime Gaming and KDMS. *Id.*

[413] *See generally* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011).

[414] *See generally id.*

otherwise appropriate in another.[415] This amounts to a constitutional basis for rejecting jurisdiction when a non-constitutional basis, forum non conveniens, would suffice.

The first such decision to demonstrate this tendency is *Stisser v. SP Bancorp.*[416] That case involved a shareholder class action against a bank holding company, its board of directors (all nonresidents of Maryland) and a short-lived Maryland corporation used to facilitate a merger for breach of fiduciary duty.[417] The plaintiffs were nonresidents of Maryland and shareholders in SP Bancorp, which was incorporated in Maryland and headquartered in Texas.[418] SP had branches only in Texas and Kentucky.[419]

Plaintiffs filed suit following the merger of SP into a newly formed subsidiary of Green Bancorp, Inc., a bank holding corporation that was incorporated and had its principal place of business in Texas.[420] The merger was carried out by merging SP into a newly-formed Maryland subsidiary, Searchlight Merger Subsidiary.[421] Plaintiffs contended that SP's directors contrived the merger to advance their interests at the expense of the shareholders.[422] They filed suit in the Circuit Court for Baltimore City.[423] The court dismissed the SP directors and Green for lack of personal jurisdiction and dismissed the claims against SP and Searchlight for failure to state a claim.[424]

On appeal, the Court of Special Appeals held that Green was not subject to specific jurisdiction in Maryland because the quality and quantity of its contacts with Maryland in relation to the merger did not amount to transacting business under the longarm statute and because exercise of jurisdiction "would not comport with the traditional notions of due process under *International Shoe Co. v. Washington*."[425]

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[415] *See* Stisser v. SP Bancorp, Inc., 234 Md. App. 593, 174 A.3d 405 (2017); *see also* Pinner v. Pinner, 467 Md. 463, 225 A.3d 433 (2020).
[416] Stisser v. SP Bancorp, Inc., 234 Md. App. 593, 174 A.3d 405 (2017); *see, e.g.,* Matt Aslip, *Maryland's Court of Special Appeals Announces New Rules Addressing Personal Jurisdiction over Foreign Corporations*, 51 MD BAR J. 10 (2018).
[417] *Stisser*, 234 Md. App. at 601-02, 174 A.3d at 410-11.
[418] *Id.* at 601, 174 A.3d at 410.
[419] *Id.* at 611, 174 A.3d at 416.
[420] *Id.* at 601, 174 A.3d at 410.
[421] *Id.* at 601-02, 174 A.3d at 410-11.
[422] *Stisser*, 234 Md. App. at 602, 174 A.3d at 411.
[423] *Id.* at 601, 174 A.3d at 410.
[424] *Id.* at 602, 174 A.3d at 411.
[425] *Id.* at 603, 174 A.3d at 411 (citing International Shoe Co. v. Washington, 326 U.S. 310 (1945).

In support of its due process analysis, the court concluded that Green was not "at home" in Maryland for purposes of general jurisdiction.[426] The court asserted that "[c]onsistent with *Daimler*, we hold that a nonresident parent corporation is not subject to general jurisdiction in Maryland based solely on its incorporation of a subsidiary within Maryland."[427] The court also declined to impute SP's actions to its directors.[428]

The court in *Stisser* is correct that Green was not "at home" in the sense that the Supreme Court has required in general jurisdiction cases in recent years.[429] And in its assertion that creation of a subsidiary, by itself, does not make the parent amenable to jurisdiction where the subsidiary is created, at least concerning the result, *Stisser* is consistent with *Daimler*,[430] but *Daimler* made no broad assertion about that. [431] The Court of Special Appeals is surely entitled to pronounce as a matter of Maryland law that a foreign corporation's establishment of a Maryland subsidiary, by itself, does not render the parent "at home," and, no doubt, the Supreme Court would agree. But for purposes of specific jurisdiction, the inquiry is really about what the subsidiary *does* in the forum or what the parent *does with the subsidiary* that relates to the cause of action that matters.

The court relied heavily upon *Vitro Electronics, Div. of Vitro Corp. v. Milgray Electronics, Inc.*[432] In that case a Maryland government contractor ordered parts from the Maryland subsidiary of a New York manufacturer.[433] The Maryland contractor asked for a certification of compliance of such parts with government specifications.[434] Ultimately the contractor contended that the parts were not compliant and it sued both the New York manufacturer and its Maryland subsidiary for breach of contract, negligence and fraud.[435]

The court made much of whether the parent executed or delivered in Maryland the certification sought by the plaintiff:

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[426] *Stisser*, 234 Md. App. at 603, 174 A.3d at 411 (first citing Bristol-Myers Squibb Co. v. Super. Ct. of Cal., 137 S. Ct. 1773 (2017); then citing BNSF Ry Co. v. Tyrell, 137 S. Ct. 1549 (2017); then citing Daimler, AG v. Bauman, 571 U.S. 117 (2014); and then citing Goodyear Dunlop Tire Operations, S.A. v. Brown, 564 U.S. 915 (2011)).
[427] *Stisser,* 234 Md. App. at 624, 174 A.3d at 424.
[428] *Id.* at 603, 174 A.3d at 412.
[429] *See id.* at 603, 174 A.3d at 411.
[430] *Id.* at 603, 174 A.3d at 411-12.
[431] *Cf. Daimler,* 571 U.S. at 137 (stating that even if it assumed that *Daimler's* subsidiary was at home in California and then imputed its contacts to the parent, *Daimler's* slim contacts with California "hardly rendered it at home").
[432] *See* Vitro Electronics, Div. of Vitro Corp. v. Milgray Electronics, Inc., 255 Md. 498, 258 A.2d 749 (1969).
[433] *Id.* at 499-500, 258 A.2d at 750.
[434] *Id.* at 500, 258 A.2d at 750.
[435] *Id.*, 258 A.2d at 750.

We are of the opinion that had the execution of the certificate taken place in Maryland or even had manual delivery of it been made by the [New York parent] to the [Maryland subsidiary] in Maryland, or had the [New York parent] requested the [Maryland subsidiary] to deliver the certificate which it had addressed to the [plaintiff], such action would have constituted a purposeful act which could have, if the certificate had been fraudulently or negligently executed, caused tortious injury to [plaintiff].[436]

The view in *Vitro* that requires that an out-of-state parent must somehow have acted *in* a forum in order to be amenable to jurisdiction was not embraced by the Supreme Court in *Daimler* as a requirement of due process.[437]

Further, recent Maryland precedent acknowledges that, as a matter of due process, action directed at Maryland rather than simply occurring in Maryland may suffice; the issue is whether the defendant's actions "'create' a substantial connection with the forum state."[438]

As to specific jurisdiction, the court stated that Green had not transacted business within the meaning of the Maryland longarm statute.[439] Noting that plaintiffs contended that Green's act of filing articles of incorporation created a basis for specific jurisdiction, the court countered that "[Plaintiffs] do not allege—nor is there any indication—that Green was negligent, fraudulent, or otherwise tortious in its incorporation of Searchlight."[440]

But this puts the cart before the horse. Whether or not whatever "acts" carried out in Maryland amount to a wrong, in this case, a breach of fiduciary duty, entails an adjudication of the merits *if* the court has jurisdiction. It is the acts, wrongful or innocuous, that create jurisdiction. The court stated:

[Plaintiffs] appear to allege that Green, by a number of acts that took place in Texas, exerted improper influence over the SP Directors to aid and abet the Directors alleged breaches of fiduciary duty, culminating in their self-serving decision to merge with Green and Green's incorporation of Searchlight in Maryland.[441]

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[436] *Id.* at 506, 258 A.2d at 754.
[437] *Vitro Electronics*, at 506, 258 A.2d at 754; *contra* Daimler, AG v. Bauman, 571 U.S. 117 (2014).
[438] Hollingsworth & Vose Co. v. Connor, 136 Md. App. 91, 107, 764 A.2d 318, 327 (2000) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985)).
[439] Stisser v. SP Bancorp., Inc., 234 Md. App. 593, 638, 174 A.3d 405, 432-33 (Md. Ct. Spec. App. 2017); *see also* MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(1).
[440] *Stisser*, 234 Md. App. at 639, 174 A.3d at 433.
[441] *Id.*, 174 A.3d at 443.

True enough, there is no question that there would have been jurisdiction in a Texas court over Green concerning the plaintiffs' claim.[442] But that does not necessarily mean that a Maryland court would not have jurisdiction as well concerning acts related to the takeover of SP.[443]

The court denigrated the filing of articles of incorporation for Searchlight as only "tangentially related to [plaintiffs'] claim for aiding and abetting."[444] It also described machinations of Green among SP directors in Texas, stating: "[o]nce we remove Green's filing of Searchlight's Articles of Incorporation from our jurisdiction equation, there are no alleged activities by Green in Maryland—or directed at Maryland—left to consider."[445]

But it was the creation of Searchlight and its merger with SP that changed the character of SP's corporate identity to the alleged detriment of the plaintiffs.[446] The corporation allegedly harmed by this merger, and which was affected in Maryland, was a *Maryland* corporation![447]

In the Supreme Court's recent personal jurisdiction cases, much is made of a corporation's place of incorporation.[448] To be sure, the Supreme Court in *Daimler* addressed the corporation in that context as a defendant.[449] Nevertheless, when the character of a domestic entity is modified by a merger with another domestic entity created for that purpose, to the alleged detriment of the former's shareholders, is it sound policy to exclude the courts of the state of incorporation from inquiring into the propriety of the use of its legal machinations and arguably the benefits and protections of its laws? What if the other jurisdiction involved were Panama rather than another state, such as Texas?[450] Would that change the relative interests of the alternative forums?

The court buttresses its analysis by stating that plaintiffs did not identify any shareholders who were Maryland residents or that any alleged harm would be felt in the state.[451] That surely is a relevant consideration in

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[442] *See id.*, 174 A.3d at 433.
[443] *See id.*, 174 A.3d at 433.
[444] *Id.* at 640, 174 A.3d at 433.
[445] *Id.* at 641, 174 A.3d at 434.
[446] *Stisser*, 234 Md. App. at 643, 174 A.3d at 435.
[447] *Id.* at 608-09, 174 A.3d at 415 (emphasis added).
[448] *See generally* Daimler, AG v. Bauman, 571 U.S. 117, 137 (2014) (characterizing a corporation's place of incorporation and principal place of business as "paradigm forums" (quoting Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 628 (1988)).
[449] *See Daimler*, 571 U.S. at 125.
[450] *See* Walter Bogdanich, Ana Graciela & Jacqueline Wellers, *Panama Struggles to Shed Its Image for Shady Business Deals,* N.Y. TIMES (Dec. 3, 2016), at A10.
[451] *Stisser*, 234 Md. App. at 642, 174 A.3d at 435.

whether a court should exercise specific jurisdiction.[452] But under the circumstances of a shareholders' suit for breach of fiduciary duty, is it realistic to posit that the only harm from alleged wrongdoing is to shareholders? The fiduciary duty of the director of a corporation is owed both to the corporation and the shareholders.[453] This duty has been called "the constant compass by which all directors' actions for the corporation and interactions with its shareholders must be guided."[454] In that light, a suggestion that judicial supervision over the affairs of a Maryland corporation may be frustrated by the selection of out-of-state directors carefully acting outside of Maryland is remarkable.

In denigrating Green's contacts with Maryland, the court in *Stisser* engages in what Justice Sotomayor, in dissent in *Tyrell* and *Daimler,* called a comparative contacts analysis, although *International Shoe,* which Justice Sotomayor called "the springboard for our modern personal jurisdiction jurisprudence," applied no such requirement.[455] Such an approach awards jurisdiction exclusively to what a court deems is the best forum at the expense of forums that are constitutionally acceptable otherwise.[456] While this zero-sum approach is now mandatory with respect to general jurisdiction, it would be unfortunate to apply it as well to diminish significant forum interests because other forums have greater interests, or because litigation in such other forums would be more convenient.

This is especially so because the perhaps greater interests or convenience entailed in other forums may be accommodated by dismissal on the basis of forum non conveniens.[457] A Maryland court may dismiss an action based on forum non conveniens.[458] The court in *Stisser* is quite likely correct in the implication of its decision that Texas is a better forum for the plaintiffs' suit.[459] But in applying the comparative analysis to specific

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[452] *See generally* Bristol-Myers Squibb v. Super. Ct. of California, SF Cnty., 137 S. Ct. 1773 (2017).
[453] Storetrax.com v. Gurland, 397 Md. 37, 54, 915 A.2d 991, 1001 (2007) (citing Booth v. Robinson, 55 Md. 419, 436-71 (1881).
[454] *Storetrax.com*, 397 Md. at 54, 915 A.2d at 1001 (quoting Malone v. Brincat, 722 A.2d 5, 10 (Del. 1998)).
[455] *Stisser*, 234 Md. App. at 620-21, 174 A.3d at 422; *see, e.g.,* BNSF Ry. Co. v. Tyrell, 137 S. Ct. 1549, 1561 (2017); *compare* Daimler, AG v. Bauman, 571 U.S. 117 (2014); *and* International Shoe v. Washington, 326 U.S. 310 (1945).
[456] *Stisser*, 234 Md. App. at 620-21, 174 A.3d at 422.
[457] RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 84 (AM. L. INST. 1977) (stating "[a] state will not exercise jurisdiction if it is a seriously inconvenient forum for trial of the action provided that a more appropriate forum is available to the plaintiff").
[458] MD. CODE ANN., CTS. & JUD. PROC. § 6-104 (a); *see* Johnson v. G.D. Searle & Co., 314 Md. 521, 537, 552 A.2d 29 (1989).
[459] *See Stisser*, 234 Md. App. at 651-52, 174 A.3d at 440-41.

jurisdiction, the court goes beyond the command of *Daimler*.[460] It may do so as a matter of Maryland law, but it is not constitutionally required to do so.[461] In some circumstances, where the alternative forum is not a United States jurisdiction, it may not be wise to do so.

The decision in *Pinner v. Pinner* demonstrates a similar application of comparative contacts analysis approach to specific jurisdiction.[462] *Pinner* arose out of the distribution of the proceeds of a wrongful death action in Maryland.[463] Edwin Pinner was exposed to asbestos while working at an insulation plant in Maryland in 1952 and 1953.[464] He was later diagnosed with mesothelioma while he was living in North Carolina.[465] He had one son, Randy, who also lived in North Carolina.[466]

In 2010, he filed suit with his wife Mona against numerous defendants related to his mesothelioma in the Circuit Court for Baltimore City.[467] He died 8 months after filing suit.[468] Mona was appointed as personal representative in North Carolina, and she listed the asbestos suit as property of the estate.[469]

In 2013, Mona amended her complaint to add a claim for wrongful death.[470] Maryland allows only one such action for a decedent "which shall be for the benefit of the wife, husband, parent and child of the deceased person."[471] Maryland Rule 15-1001(b) requires joinder of all persons who may be entitled to claim damages to be joined as plaintiffs whether or not they join.[472] Those who do not join are designated as use plaintiffs.[473] The plaintiff is required to serve a copy of the complaint on use plaintiffs with a notice explaining the right to join the action.[474] Mona did not notify Randy of the action.[475] When he finally learned of it and attempted to intervene, he was

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[460] *Id.* at 624-25, 174 A.3d at 423-25.
[461] *See id.*, 174 A.3d at 435-25.
[462] Pinner v. Pinner, 467 Md. 463, 480-81, 225 A.3d 433, 443-44 (2020).
[463] *Id.* at 469, 225 A.3d at 436.
[464] *Id.* at 471, 225 A.3d at 437.
[465] *Id.*, 225 A.3d at 437.
[466] *Id.* at 471, 225 A.3d at 437-38.
[467] *Pinner*, 467 Md. at 471, 225 A.3d at 438.
[468] *Id.*, 225 A.3d at 438.
[469] *Id.*, 225 A.3d at 438.
[470] *Id.* at 472, 225 A.3d at 438.
[471] MD. CODE ANN., CTS. & JUD. PROC. § 3-904(a)(1), (f) (West 2021).
[472] MD. RULE § 15-1001(b) (West 2021).
[473] *Id.*
[474] *Id.* at § 15-1001(d).
[475] *Pinner*, 467 Md. at 472, 225 A.3d at 438.

barred by the statute of limitations.[476] Mona settled the suit in Maryland and deposited the funds into the decedent's estate in North Carolina.[477]

Randy sued Mona and her lawyers in the Circuit Court for Baltimore City alleging negligence in maintaining the asbestos action there.[478] The court granted the lawyers' motion to dismiss for failure to state a cause of action.[479] Mona did not respond to the suit and an order of default was entered.[480] Mona's motion to vacate the default was unsuccessful and the court entered a default judgment against her in favor of Randy for $99,856.84.[481] The Court of Special Appeals reversed the judgment and ordered dismissal on the basis of lack of personal jurisdiction.[482]

In the Court of Appeals, Randy asserted that Mona had purposefully availed herself of the benefits and protections of Maryland law by maintaining the asbestos litigation in Maryland for over six years which resulted in a substantial money payment.[483] Though Mona never went to Maryland in the course of the asbestos litigation, Randy imputed the actions of her lawyers to her under agency principles.[484] Randy contended that because of this litigation the court could exercise specific jurisdiction over Mona.[485]

Interestingly, though Randy did not invoke general jurisdiction, the court stated the now outdated test for it: "defendant's activities in the State must have been 'continuous and systematic.'"[486] Randy relied upon (b)(4) of the longarm for specific jurisdiction.[487]

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[476] *Id.* at 471, 225 A.2d at 439.
[477] *Id.* at 469-70, 225 A.2d at 437.
[478] *Id.* at 470, 225 A.3d at 437.
[479] *Id.*, 225 A.3d at 437.
[480] *Pinner*, 467 Md. at 470, 225 A.3d at 437.
[481] *Id.*, 225 A.3d at 437.
[482] Pinner v. Pinner, 240 Md. App. 90, 201 A.3d 26 (Md. Ct. Spec. App. 2019), *aff'd* 467 Md. 463, 225 A.2d 433 (2020).
[483] *Pinner*, 467 Md. at 478, 225 A.3d at 442.
[484] *Id.*, 225 A.3d at 442.
[485] *Id.* at 480, 225 A.3d at 443.
[486] *Id.*, 225 A.3d at 443 (first citing Beyond Sys., v. Realtime Gaming Holding Co, LLC, 388 Md. 1, 22, 878 A.2d 567, 580 (2005); and then citing Carefirst of Maryland, Inc. v. Carefirst Pregnancy Ctrs., Inc., 334 F.3d 390, 397 (4th Cir. 2003).
[487] *Pinner*, 467 Md. at 477-78, 225 A.3d at 441-42; MD. CODE ANN., CTS. & JUD. PROC. § 1-603(b)(4) (West 2021). Since the plaintiff alleged negligence in maintaining the suit in Maryland, it is not clear why he did also, or instead, rely upon (b)(3), which allows jurisdiction for the commission of a tort in Maryland, rather than (b)(4), which put him in the position of demonstrating, unavailingly as it turned out, that maintaining a single tort suit may amount to a "persistent course of conduct" in the state. MD. CODE ANN., CTS. & JUD. PROC. § 1-603(b)(3), (4) (West 2021). Alas, a court need not make the best case for a litigant; it decides based upon the case he or she has made.

Somehow, the court concluded that maintaining a lawsuit (in a breathtakingly duplicitous manner), for over six years did not amount to a purposeful availment.[488] Emphasizing that foreseeability of engagement in litigation is an element in finding purposeful availment,[489] the court remarkably found such foreseeability lacking because plaintiff "failed to produce any evidence that Mona [had ever been] to Maryland in connection with the Asbestos case . . . [and] [t]here is no evidence in the record that Mona was deposed or otherwise participated in the proceeding."[490] The court stated that "plaintiff made it clear that he was claiming damages on a theory arising from North Carolina law . . . ."[491] The court concluded that plaintiff has not established a "'substantial connection' with Maryland through the filing and prosecution of the Asbestos Case such that she should 'reasonably anticipate being hailed into [a Maryland court]."[492] In sum, when she failed to follow Rule 15-1001(b), i.e., to notify the only other potential beneficiary of the litigation award, a consequential failure from which she stood to be the sole beneficiary, she would nevertheless be "shocked, shocked!" that she might be called to account for actions, or actions on her behalf, in Maryland. [493] No doubt North Carolina would also have personal jurisdiction concerning Mona's alleged failure to fulfill her fiduciary responsibilities; perhaps it would be a superior forum. But the Supreme Court has not concocted the mandatory list of forums for the exercise of specific jurisdiction in the manner it has with general jurisdiction.

The plaintiff argued that the North Carolina estate case was significantly intertwined with the asbestos litigation in Maryland,[494] but the court rejected this contention on the basis that the asbestos case, a toxic tort action, and the allegedly negligent failure to comply with the Maryland Rules do not arise "from the same nucleus of operative fact."[495] That is true, but beside the point. Whatever the Maryland tort action involved, it eventuated in an asset of the estate; under Maryland law Randy was entitled to a portion of that asset.[496] Maryland Rule 15-1001(b), intended to protect Randy's interest, was flouted by Mona in the course of litigation *in Maryland*.[497] That

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[488] *Pinner*, 467 Md. at 484-85, 494, 225 A.3d at 446, 451.
[489] *Id.* at 483, 225 A.3d at 445 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295 (1980)).
[490] *Pinner*, 467 Md. at 483-84, 494, 225 A.3d at 445.
[491] *Id.* at 484, 225 A.3d at 446.
[492] *Id.* at 485, 225 A.3d at 445.
[493] *Id.* at 472, 225 A.3d at 438; CASABLANCA (Warner Bros. Pictures 1942) (With apologies to Claude Rains)
[494] *Pinner*, 467 Md. at 487, 225 A.3d at 447.
[495] *Id.*
[496] *See* MD. RULE § 15-1001(b) (West 2021).
[497] *See id.* (emphasis added).

this may also have created a cause of action in North Carolina indicates that actions or potential actions in both states arose out of the same nucleus of operative facts.[498]

The court addressed the plaintiff's contention that Mona was chargeable with the actions of her attorneys in the asbestos litigation.[499] The court distinguished cases in which action of agents of defendants were imputed to them to create personal jurisdiction.[500] None of the cases involved imputation of the Maryland law principle that the party is responsible for the conduct of his or her attorney.[501] A client is presumptively responsible for the actions of his or her attorney.[502] Though there may undoubtedly be circumstances when a client untrained in the law may resist this presumption, the circumstances of *Pinner* are not such a case. Whether or not her attorneys knew whether the decedent had any children, there is no indication Mona did not.[503]

And as in *Stisser,* where the court insulated corporate machinations in Maryland that were allegedly components of a breach of fiduciary duty from accountability in Maryland, the court's view of the where the alleged wrongdoing was centered in *Pinner* confers impunity in the Maryland courts for abusing those institutions as long as a potential defendant maintains a strategic distance from wrongdoing in litigation and such litigation involves consequences in another forum.[504] As in *Stisser,* such a circumstance would more appropriately be resolved by a nuanced analysis under forum non conveniens rather than by a zero-sum personal jurisdiction analysis.[505] The latter has not been mandated by the Supreme Court in the context of specific jurisdiction.

With respect to whether plaintiff's claim arose out of activities directed at the state, the court stated curiously that it agreed with the Court of Special Appeals that "the connection between Mona's breach of fiduciary

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[498] *Pinner*, 467 Md. at 486, 225 A.3d at 447.
[499] *Id.* at 489-90, 225 A.3d at 449.
[500] *Id*., 225 A.3d at 449; *see* Mackey v. Compass Mktg, Inc. 391 Md. 117, 892 A.2d 479 (2006); *see also* Mohamed v. Michael, 279 Md. 653, 370 A.2d 551 (1977); Harris v. Arlen Properties, Inc., 256 Md. 185, 260 A.2d 22 (1969).
[501] *See* Bland v. Hammond, 177 Md. App. 340, 358, 835 A.2d 457, 467 (Md. Ct. Spec. App. 2001) (citing Baltimore Luggage Co. v. Ligon, Ill, 208 Md. 406, 118 A.2d 665 (1955)).
[502] Salisbury Beauty Schools v. State Bd. of Cosmetologists, 268 Md. 32, 45, 300 A.2d 367, 376 (1973).
[503] *See Pinner*, 467 Md. at 476, 225 A.3d at 440.
[504] *Compare generally* Stisser v. SP Bancorp., Inc., 234 Md. App. 593, 631-41, 174 A.3d 405, 428-35 (Md. Ct. Spec. App. 2017), *with Pinner*, 467 Md. at 489, 225 A.3d at 449.
[505] *See Stisser*, 234 Md. App. at 617-18, 174 A.3d at 420.

duty in North Carolina and the maintenance of the asbestos case is tenuous, especially with respect to the administration of the estate."[506]

If the matter were ultimately litigated in North Carolina, one would hope that would not be so.[507] But that does not go to the issue of jurisdiction. The significance of the domicile of the decedent in matters such as distribution of intangible assets is undeniable.[508] But the right to recover the amount deposited in the estate in North Carolina in *Pinner* and the class of persons entitled to distribution therefrom were determined by the wrongful death law of Maryland, and the manner of its recovery regulated by the Maryland Rules.[509] While it might be more practicable to adjudicate Mona's alleged breach of fiduciary duty in North Carolina, and Maryland might sensibly defer to North Carolina as a matter of forum non conveniens, Mona's alleged conduct entailed an abuse of the judicial process in Maryland, and Maryland should not be precluded from inquiring into such conduct as a matter of due process. Although its factual circumstances are somewhat different from *Pinner*, *Hanson v. Denckla* recognized in a broad sense that states other than the state of primary administration may have matters related to the decedent that they may constitutionally address.[510]

In dissent Judge Getty, joined by one other judge, viewed the totality of Mona's contacts with Maryland quite differently from the majority: "[T]his is not a case merely of filing a lawsuit."[511] He viewed the nearly six-year asbestos litigation in Maryland as "inextricably intertwined" with the wrongful death action.[512] Because of Mona's conduct in Maryland "Randy was never given the opportunity to benefit" from the wrongful death suit,[513] which Judge Getty characterized as "a clear miscarriage of justice."[514] He stated further: "the harm due to lack of notice is the key 'occurrence' and 'controversy' that establishes jurisdiction," which Judge Getty described as having occurred in Maryland, not North Carolina.[515]

Judge Getty did not address the relative weight to be given to the interests of North Carolina, but he concluded: "[t]he majority opinion denied

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[506] *Pinner*, 467 Md. at 494, 225 A.3d at 452 (quoting Pinner v. Pinner, 240 Md. 90, 211, 201 A.3d 26, 39 (Md. Ct. Spec. App. 2019).
[507] *See Pinner*, 467 Md. at 396, 225 A.3d at 452.
[508] EUGENE F. SCOLES, ET AL., CONFLICT OF LAWS 1114, 4th ed. 2004.
[509] *See* Spangler v. McQuitty, 449 Md. 33, 40, 141 A.3d 156, 160 (2016).
[510] *Compare Pinner*, 467 Md. at 500, 225 A.3d at 455, *with* Hanson v. Denckla, 357 U.S. 235, 238-39 (1958).
[511] *Pinner*, 467 Md. at 501-02, 225 A.3d at 455 (Getty, J., dissenting).
[512] *Id.* at 501, 225 A.3d at 455.
[513] *Id.* at 501-02, 225 A.3d 455-56.
[514] *Id.* at 501, 225 A.3d at 455.
[515] *Id.* at 501, 225 A.3d at 456.

Randy access to Maryland's courts, that is rightfully provided for in the Maryland Rules."[516]

The net effect of *Stisser* and *Pinner* demonstrates that the Maryland courts have not yet had to address the impact of *Goodyear* and its progeny on general jurisdiction, though the courts in both cases in dictum stated the continuing applicability of the obsolete "continuous and systematic" activity analysis.[517] Nevertheless, a troubling phenomenon in both cases is the finding of lack of jurisdiction in both cases despite the presence of significant potential or actual interests because some other forums appeared to have more substantial interests. This is the comparative contacts analysis applied by *Goodyear* and later general jurisdiction cases.[518] Thus far, the Supreme Court has not applied this analysis in specific jurisdiction cases. Maryland may do so as a matter of choice, but is not constitutionally compelled to do so, and indeed, to do so would fly in the face of the constant assertion of Maryland courts that the Maryland longarm is intended to permit jurisdiction to the extent the Federal Constitution permits.[519]

IV -- So Where Does Maryland Go from Here?

As noted earlier, the Maryland longarm statute allows exercise of personal jurisdiction over any person who causes injury outside of the state if, "[H]e regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services or manufactured products used or consumed in the State."[520] Although it has not often been so construed by Maryland's appellate courts, to the extent that this permits personal jurisdiction over any claims not related to activities in the state, or at least activities outside the state that result in harm in the state, it runs afoul of *Daimler, AG v. Bauman*.[521]

As noted in Part II, the United States District Court for the District of Maryland, unlike the Maryland appellate courts, has confronted this longarm provision in cases in which general jurisdiction has been asserted over out-of-state defendants and it has generally rejected plaintiffs' assertion of general jurisdiction under the statute or has ignored the statute entirely.[522]

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[516] *Pinner*, 467 Md. at 502, 225 A.3d at 456 (Getty, J., dissenting).
[517] *See* Stisser v. SP Bancorp., Inc., 234 Md. App. 593, 620-22, 174 A.3d 405, 422-23 (Md. Ct. Spec. App. 2017); *see also Pinner*, 467 Md. at 480, 225 A.3d at 443.
[518] *See generally* Goodyear Dunlop Tire Operations, S.A. v. Brown, 564 U.S. 915 (2011).
[519] *See generally* Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC, 388 Md. 1, 15, 878 A.2d 567, 576 (2005).
[520] MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(4) (West 2021).
[521] *See* Daimler, AG v. Bauman, 571 U.S. 117, 139 (2014).
[522] *See supra* section.II.

Thus, it might be a good time for the Legislature of Maryland to enact a longarm statute that reflects developments in recent Supreme Court general jurisdiction, as its predecessor did half a century ago.

There are several alternatives among cognate statutes that other states have enacted. The simplest alternative is exemplified by Rhode Island's longarm statute:

Every foreign corporation, every individual not a resident of this state or his or her executor or administrator, and every partnership or . . . person not such residents, that shall have the necessary minimum contacts with the State of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island, and the courts of this state shall hold such foreign corporations or such nonresidents or their executors or administrators, and such partnerships or associations amenable to suit in Rhode Island in every case not contrary to the provisions of the constitution or laws of the United States.[523]

This was the first such longarm statute to simply permit jurisdiction in whatever circumstances the Supreme Court permitted under the Due Process Clause.[524] Eighteen states have longarm statutes that literally, or have been construed to, provide that same thing as Rhode Island.[525] The longarm statute of Vermont,[526] which does not refer to the United States Constitution, has been construed to permit personal jurisdiction when the Due Process Clause so permits.[527] California's statute is the simplest model of this sort of longarm.[528]

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[523] R.I. GEN LAWS § 9-5-33(a) (West 2021).
[524] Douglas D. McFarland, *Dictum Runs Wild: How Long-Arm Statutes Extended to the Limits of Due Process*, 84 B.U. L. REV. 491, 496, 530, n.176 (2004).
[525] ALA. R. CIV. P. 4.2(b) (2021); ARIZ. R. CIV. P. 4.2(a) (2021); ARK. CODE ANN. § 16-58-120(a) (West 2021); CAL CIV. PROC. CODE § 410.10 (West 2021); 735 ILL. COMP. STAT. ANN. 5/2-209(c) (West 2021); IND. R. TRIAL P. 4.4(A)(1); KAN. STAT. ANN. § 60-308(b)(1)(A) (2021); ME. REV. STAT., tit. 14, § 704-A(2)(A) (2021); MONT. R. CIV. P. 4(b)(1)(A); NEB. REV. STAT. § 25-536(2) (2021); NEV. REV. STAT. § 14.065(1) (2021); N.J. STAT. ANN. § 2A:4-30.129(a)(7) (2021); OKLA. STAT., tit. 12, § 2004(F) (2021); 42 PA. CONS. STAT. § 5322(b) (2021); S.D. CODIFIED LAWS § 15-7-2(14) (2021); TENN. CODE ANN. § 20-2-201(a) (2021); VT. STAT. ANN. tit. 12, § 913 (b); WYO. STAT. ANN. § 5-1-107(a) (2021).
[526] VT. STAT. ANN. tit. 12, § 913(b) (2021).
[527] *See* Havill v. Woodstock Soapstone Co., 783 A.2d 423, 427 (Vt. 2001).
[528] CAL CIV. PROC. § 410.10 (West 2021) (stating "[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States").

The Illinois longarm statute contains a long list of specific actions that may subject out-of-state persons to jurisdiction,[529] but it permits jurisdiction "on any basis now or hereafter permitted by the Illinois Constitution or the Constitution of the United States."[530] If the Illinois courts would uphold jurisdiction on the basis of any affiliating circumstance that the Supreme Court might approve, one might question whether the necessity of enumerating specific bases of jurisdiction.[531] It does have the useful function of providing notice to out of state persons or entities who might somehow engage citizens of the forum.[532]

The distinctive feature of the Maryland longarm statute is in (b)(4) in that it permits jurisdiction concerning out-of-state conduct as to harm suffered both in and out of Maryland.[533] This is the feature, however, that makes such statutes unconstitutional if applied as enacted.

Fourteen states have longarm statutes that permit jurisdiction over an out-of-state defendant who has caused harm in the forum by out-of-state

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[529] 735 ILL. COMP. STAT. ANN. 5/2-209(a) (permitting jurisdiction as to causes of action for a number of circumstances such as transacting business in the state or commission of a tortious act within the state).

[530] *Id.* at 5/2-209(c).

[531] FED. R. CIV. P. 4(k)(1)(A) (stating "[a] state is not required to expand the jurisdiction of its courts to the limits of due process); *see also* Arrowsmith v. United Press Int'l, 320 F.2d 219 (2d Cir. 1963); *see also* Pulson v. American Rolling Mill Co., 170 F.2d 193 (1st Cir. 1948).

[532] Some states, e.g., Florida, prohibit retroactive application of their longarm statutes retroactively, though this view is not unanimous. *See* Gordon v. John Deere Co., 264 So. 2d 419, 420 (Fla. 1972); *see also* Dane Reed Ullian, Note, *Retroactivity of State Long-Arm Statutes*, 65 FLA. L. REV. 1653, 1681-85 (2013).

[533] *Compare* MD. CODE ANN., CTS. & JUD. PROC. § 6-103(b)(4) (West 2021); *with* DEL. CODE ANN., tit. 10, § 3104(c)(1) (2021), *construed in* Genuine Parts Co. v. Cepec, 137 A.3d 123, 140-41, 148 (Del. 2016) (not to permit personal jurisdiction when an out-of-state defendant has simply complied with Delaware's business registration requirement rather than incorporating or having a principal place of business in Delaware); *and* D.C. CODE ANN. § 13-423(a)(4) (West 2021); *and* FLA. STAT. § 48.193(2) (2021); *and* MICH. COMP. LAWS § 600.711 (2021) (noting they all have similar provisions).

conduct.[534] Ten states have statutes that require conduct creating jurisdiction to occur within the forum.[535]

Maryland probably should amend its longarm statute because its general jurisdiction provision that permits jurisdiction with respect to out-of-state harm caused by out-of-state conduct of defendants not incorporated or that have their principal place of business in Maryland cannot constitutionally be applied as enacted. Its choices would appear to be following the largest group of states that simply permit whatever the Supreme Court will permit. Any state is limited by that anyway, of course, but many states, including Maryland, have until now prescribed legislatively circumstances that may subject out-of-state defendants to jurisdiction. If Maryland continued to embrace that approach, a new longarm statute would require only a small modification of its language—excision of the portion that permits jurisdiction with respect to out-of-state harm caused by out-of-state conduct by defendants not incorporated in or that do not have their principal place of business in Maryland. But the California approach would eliminate the seemingly endless process of statutory construction in favor of a factual analysis of whether defendant has reached out to a forum, the quantum of its connection with the forum, the inconveniences entailed litigating in the forum and the forum's interests in the matter at hand vis-à-vis those of other interested jurisdictions—in short, those factors set out in *Asahi Metal Industry Co., Ltd. v. Super. Ct.*.[536]

Whether or not Maryland chooses one or the other of the prevailing approaches, or something completely different, it is urged strongly herein that Maryland's appellate courts not continue to apply the comparative contacts, zero-sum approach that the Supreme Court has made the law of the land in general jurisdiction cases to specific jurisdiction. The recent analysis of the Court in *Ford Motor Co. v. Montana Eighth Judic. Dist. Ct.* appears to provide a basis for significant development of jurisdiction concerning

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[534] CONN. GEN STAT. § 52-59b(a) (2021); KY. REV. STAT. ANN. § 454.210(2)(a)(1) (West 2021); LA. STAT. ANN. § 13:3201(A)(1) (2021); MASS. GEN. LAWS ch. 223A, § 3(a), (d) (2021); MINN. STAT. § 543.19(1)(2) (2021); N.Y. C.P.L.R. 302(a)(1) (McKinney 2021); N.C. GEN. STAT. § 1-75.4(1)(d) (2021); N.D. R. CIV. P. 4(b)(2)(A); OHIO REV. CODE ANN. § 2307.382(A)(1) (West 2021); OR. R. CIV. P. 4(A) (2021); S.C. CODE ANN. § 36-2-803(A)(1) (2021); W. VA. CODE § 56-3-33(a)(1) (2021); WIS. STAT. § 801.05(1) (2021); TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (West 2021), *construed in* Moki Mac River Expeditions v. Drugg, 221 S.W.3d 569, 572-73 (Tex. 2007) (requiring some consequence of the defendant's conduct in the state).

[535] COLO. REV. STAT. § 13-1-124(1) (2021); HAW. REV. STAT. § 634-35(a) (2021); IDAHO CODE § 5-514(a) (2021); IOWA CODE § 617.3.2 (2021); MISS. CODE ANN. § 13-3-57 (2021); MO. REV. STAT. § 506.500(1) (2021); N.H. REV. STAT. ANN. § 510:4(1) (2021); N.M. STAT. ANN. § 38-1-16(A) (2021); UTAH CODE ANN. § 78B-3-205 (West 2021); WASH. REV. CODE § 4.28.185(1) (2021).

[536] Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102, 112-13 (1987).

consequences in a state emanating from out-of-state activity directed at the forum.[537] That jurisdiction in such instances may be more convenient or otherwise appropriate in the forum from which such activity emanated should not negate jurisdiction in a forum in which significant consequences have occurred.

[537] Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1030-32 (2021).