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I. INTRODUCTION

Morass, labyrinth, muddied, and a “riddle wrapped in a mystery inside an enigma.” Courts and commentators have long employed such colorful language to describe the confusing and complex arena of personal-jurisdiction jurisprudence. Its persistently jumbled state prompted the Supreme Court of the United States to consider and hand down two decisions on personal jurisdiction in June 2011. As its first pronouncement on personal jurisdiction in more than two decades, the Court disappointed many who have awaited a workable standard to assess the proper limits of procedural due process in the modern commercial world. In Goodyear Dunlop Tires Operations, S.A. v. Brown, a unanimous Court reversed a North Carolina appellate court’s finding of general jurisdiction over foreign subsidiaries of a multi-national American tire manufacturer, deciding that the subsidiaries’ contacts in no way rendered them “at home” in North Carolina. In the companion case, J. McIntyre Machinery, Ltd. v. Nicastro, a fractured Court failed to produce a majority opinion but overturned a New Jersey court’s exercise of personal jurisdiction over a British company whose metal-shearing machine injured a worker in the forum state.

In the wake of Goodyear and Nicastro, Arkansas courts and practitioners have begun to grapple with their proper interpretation, as well as their

1. Hutchinson v. Chase & Gilbert, Inc., 45 F.2d 139, 142 (2d Cir. 1930) (“It is quite impossible to establish any rule from the decided cases [on personal jurisdiction]; we must step from tuft to tuft across the morass.”).
7. Id. at 2857.
9. Id., 131 S. Ct. at 2788–91 (plurality opinion). Justice Breyer, joined by Justice Alito, concurred in the judgment only. Id. at 2791–94 (Breyer, J., concurring in the judgment). Justice Ginsburg, joined by Justices Kagan and Sotomayor, dissented. Id. at 2794–95 (Ginsburg, J., dissenting).
precedential value, especially within the context of personal jurisdiction over a foreign manufacturer. In a case of first impression, the Supreme Court of Arkansas provided an overview of Goodyear, but the “at-home” test factored little into its decision. Similarly, the United States Court of Appeals for the Eighth Circuit relied primarily on existing precedent instead of Goodyear to decide its only post-Goodyear case to date. Neither the Arkansas courts nor the Eighth Circuit have yet had the occasion to consider the implications of Nicastro on existing specific-jurisdiction jurisprudence. But when confronted with the case, the Eighth Circuit will have to reconcile its precedent with the Nicastro plurality, as they stand in direct conflict with each other.

While it is clear that the personal-jurisdiction landscape is evolving in Arkansas and the Eighth Circuit, the question remains as to the extent of that evolution following Goodyear and Nicastro. This note will provide insight into that answer, assessing the current applications of Goodyear and the potential impact— if any—Nicastro may have.

Part I of this note will provide an overview of the modern-day minimum-contacts test, focusing on the Supreme Court’s general-jurisdiction jurisprudence leading up to and including Goodyear, as well as its specific-jurisdiction jurisprudence within the context of the stream-of-commerce analysis following Asahi Metal Industry, Co. v. Superior Court of California, Solano County and Nicastro. Part II will examine both the Supreme Court of Arkansas’s and the Eighth Circuit’s denial of general jurisdiction over foreign manufacturers and the impact of Goodyear, arguing that its effect is minimal and serves primarily to reaffirm the courts’ narrow construction of general jurisdiction. This part will conclude by examining the Eighth Circuit’s pre-Nicastro stream-of-commerce precedent and other ju-

10. This note uses the word “foreign” to mean a country other than the United States, although it can also mean a non-resident of a particular state.
13. The issue of piercing the corporate veil of a foreign-parent company based on its subsidiaries’ activities in the forum state for the purposes of conferring general jurisdiction is beyond the scope of this note. The Supreme Court did not reach the issue in Goodyear because it had not been argued in the prior proceedings and had not been raised in the parents’ brief in opposition to the petition for certiorari. 131 S. Ct. 2846, 2857 (2011). As such, the Eighth Circuit’s precedent remains unaffected. See Viasystems, 646 F.3d at 596–97 (8th Cir. 2011) (reiterating the circuit court’s alter-ego test for personal jurisdiction based on the activities of a nonresident corporation’s in-state subsidiary without reference to Goodyear). The Supreme Court of Arkansas similarly relied on the Eighth Circuit’s existing test in its most recent consideration of the issue. See Yanmar, 2012 Ark. at 11–13, 386 S.W.3d at 447–48.
15. See infra Part II.A–C.
16. See infra Part III.A–B.
risdiction’s treatment of *Nicastro*, noting that lower courts have significantly tempered the impact of the plurality opinion.17 Finally, this note closes by arguing that the Eighth Circuit should follow the trend among other jurisdictions and continue to adhere to its pre-*Nicastro*, pure stream-of-commerce precedent, as it best comports with the realities of global commerce while remaining faithful to the fairness principles at the core of personal jurisdiction doctrine.18

II. BACKGROUND

Personal jurisdiction is the court’s power to enter judgment against a particular defendant.19 Historically, this power derived from territorial boundaries, meaning a court’s jurisdictional authority extended only to persons and property within the state in which the court sat.20 The increasing mobility of American society, however, necessitated an expansion of the limited jurisdictional bases. Today, personal jurisdiction is limited only by the Due Process Clause of the United States Constitution and state long-arm statutes, which authorize jurisdiction in a particular forum.21

Modern constitutional limitations on personal jurisdiction originate from *International Shoe v. Washington*.22 In *International Shoe*, the Supreme Court established that a state court could assert personal jurisdiction over a foreign defendant based upon its having minimum contacts with the forum state.23 In other words, although a defendant does not reside in the forum state, it may conduct activities there, and those activities, in turn, may create a substantial relationship with the state such that it subjects itself to the court’s jurisdiction. So long as those minimum contacts exist, halting a defendant into court does not offend “traditional notions of fair play and substantial justice.”24

While *International Shoe*’s minimum-contacts test provides the basic framework for analyzing personal jurisdiction, the Court has since developed other factors germane to its proper application; chief among them is the purposeful-availment requirement. Thus, the nonresident defendant must commit “some act by which [it] purposefully avails itself of the privilege of

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17. See infra Part III.C–D.
18. See infra Part III.E.
20. Pennoyer v. Neff, 95 U.S. 714, 722–24 (1877). *Pennoyer* also established that consent and personal service within the forum are appropriate bases for exercising personal jurisdiction. *Id.* at 720.
22. 326 U.S. 310 (1945).
23. *Id.* at 319–20.
24. *Id.* at 316.
conducting activities within the forum [s]tate, thus invoking the benefits and protections of its laws.” The purposeful-availment requirement focuses on the defendant’s deliberate activities within the forum state, ensuring that it will not be haled into court as a result of “random,” “fortuitous,” or “attenuated” contacts.” Thus, when the defendant’s deliberate actions give rise to its connection with the forum state, jurisdiction over the defendant is generally proper.

Even if the defendant has the requisite minimum contacts, “fair play and substantial justice” contemplate that exerting personal jurisdiction may still be improper if it would be unfair or unreasonable to the defendant. The Court has recognized a number of considerations pertinent to that inquiry, including the state’s interest in adjudicating the case, the parties’ interests in proceeding with the case in a particular forum and obtaining relief, the state’s interest in providing a forum for redress for its citizens and providing efficient resolution of controversies, the burden upon the defendant in maintaining the suit in the forum, and the states’ interest in furthering essential social policies. Balancing these fairness factors against the defendant’s minimum contacts protects the defendant from litigating in a distant or inconvenient forum in violation of due process.

International Shoe also laid the groundwork for the splintering of personal jurisdiction into two branches: specific and general jurisdiction. General jurisdiction is based on the “continuous and systematic” contacts of the defendant apart from the subject of the litigation, whereas specific jurisdiction requires the subject of the litigation to arise out of the defendant’s contacts with the forum state. Complicating matters further, specific jurisdiction has spawned a unique subset of cases. In World-Wide Volkswagen v. Woodson, the Court recognized that a forum “does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expec-
tation that they will be purchased by consumers in the forum state.\textsuperscript{33} This stream-of-commerce branch of specific jurisdiction is particularly applicable to products-liability cases, in which it is used to assess the indirect, but actual, contacts of a foreign manufacturer that uses a distribution chain to disseminate its goods in the United States.

Against this backdrop, the Supreme Court, as well as lower courts, has struggled to define the constitutional contours of general and specific jurisdiction, especially with regard to stream-of-commerce theory. This section traces the ongoing evolution of both general jurisdiction\textsuperscript{34} and the stream-of-commerce branch of specific jurisdiction,\textsuperscript{35} culminating with the Court’s latest attempts to clarify their proper constitutional scope in \textit{Goodyear}\textsuperscript{36} and \textit{Nicastro}.\textsuperscript{37}

A. The Supreme Court’s General Jurisdiction Jurisprudence Before \textit{Goodyear}

As noted previously, the exercise of general jurisdiction is “dispute-blind,” meaning that it is premised on the nature and quality of the defendant’s relationship with the forum state without regard to the underlying claim.\textsuperscript{38} In \textit{International Shoe}, Justice Brennan posited what subsequently became the amorphous test for general jurisdiction, namely whether the defendant’s contacts with the forum are “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.”\textsuperscript{39} Since \textit{International Shoe}, the Court has had only two occasions to apply and interpret the “continuous and systematic contacts” test for general jurisdiction.\textsuperscript{40} In \textit{Perkins v. Benguet Consolidated Mining Company},\textsuperscript{41} it considered whether an Ohio court could properly exercise general jurisdiction over a company based in the Philippines, and in \textit{Helicopteros Nacionales de Colombia, S.A. v. Hall},\textsuperscript{42} it considered whether

\begin{itemize}
  \item \textsuperscript{33} Id. at 297–98.
  \item \textsuperscript{34} See infra Part II.A.
  \item \textsuperscript{35} See infra Part II.C.
  \item \textsuperscript{36} See infra Part II.B.
  \item \textsuperscript{37} See infra Part II.D.
  \item \textsuperscript{38} Mary Twitchell, \textit{The Myth of General Jurisdiction}, 101 HARV. L. REV. 610, 610 (1988).
  \item \textsuperscript{40} \textit{Goodyear Dunlop Tires Operations, S.A. v. Brown}, 131 S. Ct. 2846, 2854 (2011) (acknowledging that since \textit{International Shoe}, the Court has considered twice whether an out-of-state corporate defendant’s in-state contacts were sufficiently continuous and systematic to justify the exercise of general jurisdiction over claims unrelated to those contacts).
  \item \textsuperscript{41} 342 U.S. 437 (1952).
  \item \textsuperscript{42} 466 U.S. 408 (1984).
\end{itemize}
a Texas court could maintain general jurisdiction over a Columbian company. The two cases would come to represent extreme opposite ends of the general jurisdiction spectrum, leaving lower courts to consider cases in the middle with little guidance as to what contacts warrant exerting general jurisdiction.


In Perkins v. Benguet Consolidated Mining Co., the Court relied on the defendant's activities in the forum state of Ohio to uphold the exercise of general jurisdiction.\(^\text{43}\) Mrs. Perkins, a stockholder in the defendant mining company, sued in Ohio to recover dividends owed to her and damages for the company's failure to issue her stock certificates.\(^\text{44}\) Benguet Mining maintained its facilities in the Philippines but had ceased its operations due to the Japanese occupation of the islands during World War II.\(^\text{45}\) During the occupation, however, the company's president returned home to Ohio and continued to conduct business there on the company's behalf.\(^\text{46}\) From the Ohio office, the company president corresponded with employees and others regarding company business, issued paychecks, setup and used two bank accounts in Ohio for the company, worked with an Ohio-based transfer agent for company stock, held directors' meetings, and supervised and paid for the rehabilitation of the company's properties in the Philippines.\(^\text{47}\)

Based on these facts, the Court concluded that the company president "carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company."\(^\text{48}\) Despite the lack of company property in the state, the Court reasoned "many of its wartime activities were directed from Ohio and were being given the personal attention of its president in that [s]tate at the time he was served with summons."\(^\text{49}\) Thus, while incorporated abroad, the company's location and activities in Ohio during the war persuaded the Court that personal jurisdiction comported with due process.\(^\text{50}\)

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44. Id. at 439.
45. Id. at 447.
46. Id. at 448.
47. Id.
48. Id.
49. Perkins, 342 U.S. at 448.
50. Id.

More than three decades later, the Supreme Court expressly labeled the theoretical underpinnings of Perkins as “general jurisdiction.” In Helicopteros Nacionales de Colombia, S.A. v. Hall, the Court assessed the contacts of a Columbia-based helicopter transportation corporation (“Helicol”) with the forum state of Texas, where survivors and decedents of a Peruvian helicopter crash brought a wrongful-death action seeking to recover from the corporation as the owner of the helicopter involved in the accident. Using Perkins as a yardstick, the Court concluded that Helicol’s contacts with Texas did not constitute the type of “systematic and continuous contacts” necessary to exercise general jurisdiction.

The Court enumerated Helicol’s contacts as the following: dispatching its CEO to Houston for a single contract-negotiation meeting; purchasing substantial amounts of equipment, helicopters, and training services from a Fort Worth-based company; depositing checks drawn on a Houston bank; and sending personnel to Fort Worth for training purposes. The Court dismissed the CEO’s lone trip to Texas as insufficiently continuous or systematic in nature. Similarly, the Court considered the checks drawn on the Houston bank of “negligible significance,” finding that the location of the bank is a matter left to the discretion of the payee, and Helicol had no control over the matter. The Court reasoned “such unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum [s]tate to justify an assertion of jurisdiction.” The Court also dismissed Helicol’s purchases within Texas despite the fact that it spent more than $4 million over a seven-year period, buying approximately eighty percent of its fleet within the forum. Although the purchases were substantial and regular, the Court relied on a previous case to conclude that “purchases and related trips, standing alone, are not a sufficient basis for a [s]tate’s assertion of jurisdiction.” Similarly, the Court decided that the brief presence of Helicol’s employees in Texas for training purposes did not sufficiently enhance the na-
ture of its contacts so that the Texas courts could exercise general jurisdiction.\(^{60}\)

Taken together, *Perkins* and *Helicopteros* represent opposite points at the ends of the general jurisdiction spectrum. In *Perkins*, general jurisdiction comported with due-process principles because the Philippines-based company essentially had its principal place of business in Ohio during World War II.\(^{61}\) In contrast, *Helicopteros* established that mere sales within the forum state, although regular and substantial, are not enough to warrant general jurisdiction.\(^{62}\) Between these two points, however, lower courts had little guidance in assessing the nature and quality of contacts that meet the “continuous and systematic” threshold for general jurisdiction.


In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Court attempted to close the general-jurisdiction gap posed by *Perkins* and *Helicopteros*. The case arose from a bus accident in France in which two thirteen-year-old boys from North Carolina were killed.\(^{63}\) The boys’ parents brought an action for damages in a North Carolina state court against Goodyear USA and three of its subsidiaries, operating in Turkey, France, and Luxembourg, alleging that a defective tire manufactured in Turkey caused the deadly accident.\(^{64}\) Goodyear USA did not contest jurisdiction, as it conceded that it maintained plants in the state and regularly conducted business there.\(^{65}\) The foreign subsidiaries, however, challenged the exercise of personal jurisdiction by the trial court.\(^{66}\)

The trial court, and then the North Carolina Court of Appeals, held that the contacts between the foreign subsidiaries and the forum state were sufficiently “continuous and systematic” for the state’s courts to assert jurisdiction.\(^{67}\) The foreign subsidiaries’ contacts consisted of distributing tens of thousands (out of tens of millions) of tires in North Carolina through other Goodyear USA affiliates.\(^{68}\) The North Carolina Court of Appeals reasoned that the foreign subsidiaries, through Goodyear’s “highly-organized distribution process,” submitted to the court’s jurisdiction by putting their tires

\(^{60}\) Id. at 418.
\(^{62}\) *Helicopteros*, 466 U.S. at 418.
\(^{64}\) Id.
\(^{65}\) Id.
\(^{66}\) Id. at 2851–52.
\(^{67}\) Id. at 2852.
\(^{68}\) Id.
into the stream of commerce without attempting to limit or confine sales within North Carolina.\textsuperscript{69} Furthermore, the court asserted that the state had a legitimate interest in providing a forum for the plaintiffs because traveling to France to litigate the action constituted a considerable hardship.\textsuperscript{70} The North Carolina Supreme Court declined discretionary review.\textsuperscript{71}

In reversing, a unanimous Supreme Court offered a broad opinion in an attempt to reiterate the proper demarcation between specific and general jurisdiction, as well as to clarify the scope of general jurisdiction. Justice Ginsburg, writing for the Court, began by distinguishing between the two theories of personal jurisdiction, as articulated in International Shoe and then later refined by Helicopteros.\textsuperscript{72} She noted that the North Carolina courts had blurred the line between “all purpose” general jurisdiction and “case-linked” specific jurisdiction.\textsuperscript{73} She then emphasized that stream-of-commerce theory, or the flow of a manufacturer’s products into a forum state, is confined to specific jurisdiction and that “ties serving to bolster the exercise of specific jurisdiction do not warrant a determination that, based on those ties, the forum has general jurisdiction over a defendant.”\textsuperscript{74} North Carolina lacked specific jurisdiction to adjudicate the claim because the accident occurred outside the forum and the allegedly defective tires had been manufactured and sold abroad.\textsuperscript{75}

Likewise, the Court concluded that the state courts lacked authority to exercise general jurisdiction based on the sales of the foreign subsidiaries’ tires “sporadically made in North Carolina through intermediaries.”\textsuperscript{76} The Court likened the subsidiaries’ contacts to those it dismissed in Helicopteros and relied on the case further for the proposition that sales, even those occurring at regular intervals, are not enough to support the exercise of general jurisdiction.\textsuperscript{77} As such, it concluded that the attenuated contacts between the foreign subsidiaries and the forum state “[fell] far short of the ‘the continuous and systematic general business contacts’ necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the [s]tate.”\textsuperscript{78} Furthermore, in a footnote, the Court rebutted the fairness reasoning asserted by the North Carolina Court of Appeals, noting that general jurisdiction is not premised on the plaintiff’s interests but

\begin{thebibliography}{99}
\item Goodyear, 131 S. Ct. at 2852–53 (citing Brown v. Meter, 681 S.E.2d 382, 394 (N.C. Ct. App. 2009)).
\item Id. at 2853 (citing Brown, 681 S.E.2d at 394).
\item Id.
\item Id. at 2853–54.
\item Id. at 2849.
\item Id.
\item Id. at 2856.
\item Id.
\item Id. at 2851.
\item Id. at 2857.
\end{thebibliography}
rather the plaintiff’s residence in the forum state is germane only to specific jurisdiction.\(^{79}\)

In reversing, the Court articulated the proper test for analyzing when general jurisdiction may be warranted—when the contacts of a foreign corporation are “so ‘continuous and systematic’ as to render them essentially at home in the forum state.”\(^{80}\) Justice Ginsburg did not expressly define when a corporation is properly considered “at home” for the purposes of subjecting it to adjudicatory authority. She did, however, note that Perkins “remains [t]he textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum.”\(^{81}\) In comparison, she asserted that “unlike the defendant in Perkins, whose sole wartime business activity was conducted in Ohio, petitioners are in no sense at home in North Carolina.”\(^{82}\)

C. Specific Jurisdiction Prior to Nicastro

As noted in Goodyear, specific jurisdiction encompasses the bulk of the Court’s personal jurisdiction jurisprudence.\(^{83}\) In contrast to general jurisdiction, specific jurisdiction is predicated on the underlying claim; it is “dispute-specific, based only on affiliations between the forum and the controversy.”\(^{84}\) Although the Court has attempted to refine the contours of specific jurisdiction numerous times, the application of the minimum-contacts test has caused significant confusion among lower courts, leading to varied results across jurisdictions, especially in the context of the stream-of-commerce theory.\(^{85}\) Much of the confusion in this area stems from the divided opinion of the Court in Asahi Metal Industry Co. v. Superior Court of California, Solano County.\(^{86}\)

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79. Id. at 2857 n.5.
80. Id. at 2851 (emphasis added) (citing Int’l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945)).
82. Id. at 2857.
83. Id. at 2854 (citing Asahi Metal Indus. Co. v. Cal. Super. Ct., 480 U.S. 102 (1987); Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)).
84. See Twitchell, supra note 38.
85. See Angela M. Laughlin, This Ain’t the Texas Two Step Folks: Disharmony, Confusion, and the Unfair Nature of Personal Jurisdiction Analysis in the Fifth Circuit, 37 CAFER 681, 703–04 (2009) (collecting cases demonstrating the split among circuit courts on the appropriate stream-of-commerce test).
In *Asahi Metal Industry Co. v. Superior Court of California, Solano County*, the Court sought to clarify whether stream-of-commerce theory could support the exercise of personal jurisdiction when a product is sold indirectly in the forum state. The case arose out of a motorcycle accident, which caused significant injury to the driver and killed his wife, a passenger on the bike.\(^87\) The driver, Gary Zurcher, filed suit in California, alleging defects in the motorcycle’s tire, tube, and sealant caused him to lose control of the vehicle.\(^88\) Among the defendants were Zurcher, the Taiwanese manufacturer of the tube, and Cheng Shin Rubber Industrial Company (“Cheng Shin”).\(^89\) In turn, Cheng Shin cross-complained seeking indemnification from its co-defendants, including Asahi Metal, the manufacturer of the tube’s valve.\(^90\) Although Zurcher settled with the various defendants, the indemnity action against Asahi proceeded through the California courts.\(^91\)

Asahi’s sales to Cheng Shin occurred abroad and consisted of at least 100,000 units annually over a five-year period.\(^92\) Cheng Shin acknowledged that California constituted approximately twenty percent of its sales in the United States.\(^93\) Because Asahi knew that the valves it placed into the stream of commerce through Cheng Shin would eventually find their way to California, the California courts found that the exercise of personal jurisdiction comported with due process.\(^94\)

In reversing, the Supreme Court unanimously agreed that the California courts lacked personal jurisdiction but disagreed on the proper stream-of-commerce test.\(^95\) Justice O’Connor, joined by three other justices, reasoned that the Due Process Clause demands “something more” than mere awareness that a product may reach the forum state through the stream of commerce.\(^96\) She reasoned that the minimum contacts needed to support the assertion of jurisdiction must arise from the defendant’s acts that purposefully target the forum state.\(^97\) The “something more” needed to evince purposeful

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87. *Id.* at 105.
88. *Id.* at 105–06.
89. *Id.*
90. *Id.*
91. *Id.*
92. *Asahi*, 480 U.S. at 106.
93. *Id.*
94. *Id.* at 110–11.
95. Compare *id.* at 108–13 (O’Connor, J., focusing on the “substantial connection” of minimum contacts”) with *id.* at 116–21 (Brennan, J., determining that defendant’s actions, not its expectations, empower a state’s courts to exercise jurisdiction.).
96. *Id.* at 111.
97. *Id.* at 112.
availability may include “designing the product for the market in the forum state, advertising in the forum state, establishing channels for providing regular advice to customers in the forum state, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum state.”

Justice Brennan, joined by three other justices, strenuously disagreed with this “stream-of-commerce-plus test." He argued that the Due Process Clause is satisfied when a manufacturer makes predictable sales through a distribution chain that sweeps its products into the forum state. He asserted that “[a]s long as a participant in this process is aware that the final product is being marketed in the forum state, the possibility of a lawsuit there cannot come as a surprise.” Thus, Justice Brennan concluded that Asahi’s systematic and substantial sales of the valve component to Cheng Shin, coupled with its knowledge that Cheng Shin made regular sales of the final product in California, constituted sufficient minimum contacts to support the exercise of specific jurisdiction.

While the justices disagreed as to the appropriate stream-of-commerce test, they unanimously agreed that exercising personal jurisdiction over Asahi did not comport with “traditional notions of fair play and substantial justice.” Assessing the reasonableness of exercising personal jurisdiction required evaluating the burden on the defendant, the interests of the forum state, the plaintiff’s interest in obtaining relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the collective states’ interests in furthering substantive social policies. Applying these factors, the Court found that the burden on Asahi of defending in a foreign legal system far outweighed the interests of the forum state and the interests of the plaintiff, who had already obtained relief, leaving just the indemnity action, which stemmed from a transaction abroad. Moreover, the Court cautioned that the potential international ramifications of asserting personal jurisdiction militated against its exercise. Aside from the minimum-contacts question then, all nine justices agreed that it would be unreasonable and unfair for California to assert personal jurisdiction over Asahi.

98. Asahi, 480 U.S. at 112.
99. Id. at 117 (Brennan, J., concurring).
100. Id.
101. Id.
102. Id. at 121.
103. Id. at 113 (citing Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).
104. Asahi, 480 U.S. at 113.
105. Id. at 114.
106. Id.
107. Id. at 114–16.
In the wake of Asahi, lower courts struggled with the appropriate stream-of-commerce test to adopt and apply.\(^{108}\) Some committed to Justice O’Connor’s stream-of-commerce-plus test, while others adhered to the pure stream-of-commerce test as articulated by Justice Brennan.\(^{109}\) Adding to the jumble, at least one court utilized the factors in Justice Steven’s opinion to analyze the minimum-contacts question.\(^{110}\) Undoubtedly, this state of perpetual confusion and inconsistency prompted the United States Supreme Court to reconsider and resolve the issue of when stream-of-commerce theory supports the exercise of personal jurisdiction.


J. McIntyre Machinery, Ltd. v. Nicastro\(^{111}\) presented the Court with the opportunity for resolution. The case involved a workplace accident in which Robert Nicastro lost four of his fingers when his hand became entangled in a metal-shearing machine.\(^{112}\) Although the accident occurred in New Jersey, Nicastro brought a products-liability action against the machine’s manufacturer, J. McIntyre Machinery, which was incorporated in England.\(^{113}\) The New Jersey Supreme Court held that the state could exercise personal jurisdiction over J. McIntyre, relying in part on Justice Brennan’s pure stream-of-commerce theory in Asahi.\(^{114}\) The court surmised that the company used an independent distributor in the United States to sell its machinery; its leadership attended annual scrap metal conventions to promote its product, although not in New Jersey; four machines ended up in New Jersey; it held patents on its recycling technology in the United States; and the distributor conducted its advertising and sales in accord with J. McIntyre’s direction when possible.\(^{115}\) Because of these contacts, the New Jersey Supreme Court concluded that the manufacturer knew or should have reasonably known that its products, sold through a highly organized distribution system, would reach the forum state, and, therefore, the exercise of personal jurisdiction did not offend due process.\(^{116}\)

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109. Id.
110. Id.
111. 131 S. Ct. 2780 (2011).
112. Id. at 2786 (plurality opinion).
113. Id.
114. Id. at 2785 (citing Nicastro v. McIntyre Mach. Am., Ltd., 987 A.2d 575, 591–92 (N.J. 2010)).
115. Id. at 2786.
116. Id.
A majority of the United States Supreme Court disagreed but also disagreed as to why.\textsuperscript{117} Ironically, Justice Kennedy, writing for a plurality, began by acknowledging that “[the] Court’s \textit{Asahi} decision may be responsible in part for [the New Jersey Supreme Court’s] error regarding the stream of commerce,” and that \textit{Nicastro} presented “an opportunity to provide greater clarity.”\textsuperscript{118} He then proceeded to outright reject Justice Brennan’s concurrence in \textit{Asahi}, as it made foreseeability, without more, the touchstone of personal jurisdiction.\textsuperscript{119} Justice Kennedy reasoned “that it is the defendant’s actions, not his expectations, that empower a [s]tate’s courts to subject him to judgment.”\textsuperscript{120} For the plurality, purposeful availment most closely resembled Justice O’Connor’s stream-of-commerce-plus test in \textit{Asahi}.\textsuperscript{121} Justice Kennedy concluded that courts may properly assert personal jurisdiction based on a corporation’s sale of goods “only where the defendant can be said to have targeted the forum.”\textsuperscript{122} Pursuant to this reasoning, Justice Kennedy had little difficulty holding that J. McIntyre had not purposefully targeted New Jersey.\textsuperscript{123} Instead, he asserted that the facts demonstrated a general intent to serve the U.S. market but not the New Jersey market in particular.\textsuperscript{124} Absent activities specifically targeting the forum state, Justice Kennedy concluded that the exercise of personal jurisdiction over J. McIntyre violated due process.\textsuperscript{125}

Justice Breyer, joined by Justice Alito, concurred in the judgment but rejected the plurality’s “strict no-jurisdiction rule.”\textsuperscript{126} He reasoned that the case did not necessitate fashioning a new approach and expressed concern that the plurality’s rule may ultimately prove unworkable in the context of modern, Internet-based commerce.\textsuperscript{127} Instead, Justice Breyer would have reversed the New Jersey Supreme Court’s decision based on existing precedent exclusively.\textsuperscript{128} He reasoned that the facts did not establish a regular flow of sales or goods into the forum state, a necessary finding under a pure stream-of-commerce analysis.\textsuperscript{129} Similarly, the record revealed no additional activity, such as advertising, special design features, or advice to consumers.

\begin{footnotesize}
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\item \textsuperscript{117} \textit{Nicastro}, 131 S. Ct. at 2785–91 (plurality opinion); \textit{Id.} at 2791–94 (Breyer, J., concurring in the judgment).
\item \textsuperscript{118} \textit{Id.} at 2786 (plurality opinion).
\item \textsuperscript{119} \textit{Id.} at 2788–89.
\item \textsuperscript{120} \textit{Id.} at 2789.
\item \textsuperscript{121} \textit{Id.} at 2788.
\item \textsuperscript{122} \textit{Id.}
\item \textsuperscript{123} \textit{Nicastro}, 131 S. Ct. at 2790.
\item \textsuperscript{124} \textit{Id.}
\item \textsuperscript{125} \textit{Id.} at 2791.
\item \textsuperscript{126} \textit{Id.} at 2793 (Breyer, J., concurring in the judgment).
\item \textsuperscript{127} \textit{Id.} at 2792–93.
\item \textsuperscript{128} \textit{Id.}
\item \textsuperscript{129} \textit{Nicastro}, 131 S. Ct. at 2792–93.
\end{itemize}
\end{footnotesize}
Within New Jersey; thus, he deemed absent the “something more” needed under the stream-of-commerce-plus test. Because **Nicastro** failed to show that J. McIntyre made a specific effort to sell in New Jersey, or that it put its goods into the stream of commerce expecting them to be purchased by New Jersey consumers, Justice Breyer found the exercise of jurisdiction improper.

Justice Ginsburg, writing for the dissent, strongly disagreed with the six justices who concluded that New Jersey improperly exercised personal jurisdiction. She admonished them for “turn[ing] the clock back to the days before modern long-arm statutes when a manufacturer, to avoid being haled into court where a user is injured, need only Pilate-like wash its hands of a product by having independent distributors market it.” According to her assessment of J. McIntyre UK’s activities in the United States, including its purposeful engagement of the American distributor, Justice Ginsburg would have upheld the New Jersey Supreme Court’s assertion of jurisdiction based on the corporation’s targeted efforts at the United States market as a whole. She reasoned that “the machine arrived in Nicastro’s New Jersey workplace not randomly or fortuitously, but as a result of the U.S. connections and distribution system that [J.] McIntyre UK deliberately arranged.”

Furthermore, Justice Ginsburg’s dissent emphasized the fairness principles inherent to the due process analysis. She noted that the distribution scheme and practices employed by J. McIntyre are typical of modern commerce, in which a foreign manufacturer solicits a U.S.-based entity to advertise and sell its products anywhere customers can be found, rather than in a specific state. When that product is subsequently sold and delivered into the forum state where it injures an individual, she posited that, based on the mode of trade employed, it would be both fair and reasonable to require the foreign manufacturer to defend its product where the injury occurred. Although adamantly opposed to a jurisdictional rule whereby an international seller could avoid jurisdiction simply by engaging an independent American distributor, Justice Ginsburg seemingly found solace in the fractured reasoning of her fellow justices: “While I dissent from the Court’s judgment, I take

130. **Id.** at 2792.
131. **Id.**
132. **Id.** at 2794–95 (Ginsburg, J., dissenting).
133. **Id.** at 2795 (citing Russell Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. Davis L. Rev. 531 (1995)).
134. **Id.**
136. **Id.** at 2800.
137. **Id.** at 2799.
138. **Id.** at 2800.
heart that the plurality opinion does not speak for the Court, for that opinion would take a giant step away from the ‘notions of fair play and substantial justice’ underlying International Shoe.”

III. ARGUMENT

Against this backdrop, courts and practitioners in Arkansas and the Eighth Circuit alike are attempting to discern the impact, if any, Goodyear and Nicastro have on existing precedent. To date, the Supreme Court of Arkansas and the Eighth Circuit have had a single opportunity in which to assess the meaning and impact of Goodyear on their respective general-jurisdiction jurisprudence. This section notes that the “at-home” test has thus far factored little into the courts’ analyses; instead, general jurisdiction in Arkansas and the Eighth Circuit remains a fact-intensive inquiry, with courts weighing the number and nature of a defendant’s contacts to determine whether they are sufficiently “continuous and systematic.” Two cases recently considered by the Supreme Court of Arkansas and the Eighth Circuit have honed in on the overall import of Goodyear—that courts should reserve general jurisdiction for exceptional circumstances—without attributing much significance to whether a foreign defendant is “at home.” Goodyear, therefore, has done little to affect the way in which practitioners should approach general jurisdiction or the way courts analyze it.

On the other hand, Nicastro has the potential to completely overhaul existing precedent in the Eighth Circuit. While Arkansas is devoid of stream-of-commerce case law, Eighth Circuit precedent stands in direct contrast to the Nicastro plurality: the Eighth Circuit subjects foreign manufacturers at the head of domestic distribution systems to personal jurisdiction when they target markets as a whole, as opposed to a specific state. Despite this conflict, however, this note concludes that the Eighth Circuit need not—and should not—depart from precedent. First, the Nicastro plurality’s opinion is not binding precedent. Indeed, in those jurisdictions that have considered Nicastro, an emerging majority has limited the case’s precedential value and continues to adhere to their pre-Nicastro approaches. Second, and more significantly, the Eighth Circuit’s current precedent better reflects the

139. Id. at 2804.
141. See infra Part III.A–B.
142. This note focuses on end-product manufacturers, as opposed to component-part manufacturers. See generally Henry S. Noyes, The Persistent Problem of Purposeful Availment, 45 CONN. L. REV. 41 (2012) (describing the difference between end-product manufacturers and component-part manufacturers).
143. See infra Part III.D.
realities of modern global commerce, in which foreign manufacturers rely on domestic distributors to sell their merchandise to as many consumers as possible without regard to state borders. Thus, a framework that relies on specific state targeting, such as the *Nicastro* plurality’s, is outmoded in today’s commercial world. Finally, this note concludes that the Eighth Circuit’s current approach is the better approach based on the policy considerations underlying personal jurisdiction jurisprudence—purposeful availment, fairness, and reciprocity.

A. The Supreme Court of Arkansas’s General-Jurisdiction Analysis Before and After *Goodyear*

The power of the Arkansas courts to exert personal jurisdiction over non-resident defendants expanded significantly with the passage of Act 486 of 1995. Act 486 overhauled the state’s long-arm statute, which previously confined personal jurisdiction to specific cases, such as those in which the cause of action arose from the defendant’s contacts with the state, those where the defendant contracted for goods or services in the state, and those in which the defendant committed a tort in the state. Act 486 removed these categorical limits on the exercise of personal jurisdiction, effectively “convert[ing] Arkansas into a general-jurisdiction state for purposes of personal jurisdiction.” Now, the long arm statute broadly provides that Arkansas courts have personal jurisdiction over parties “to the maximum extent permitted by the due process of law clause of the Fourteenth Amendment of the United States Constitution.” Thus, by removing the requirement that the defendant’s cause of action arise from its contacts with the state, Arkansas now exercises general jurisdiction to the extent authorized by the Due Process Clause.

Since the passage of Act 486, the Supreme Court of Arkansas has sparingly considered the due process limits of general jurisdiction. In those cases, it has employed a fact-intensive inquiry, weighing the quantity and quality of the defendant’s contacts against the “precious little authority” permitted by the Due Process Clause.

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146. *Id.* at 25, 71 S.W.3d at 59.
150. *Davis*, 348 Ark. at 25, 71 S.W.3d at 59.
provided by the Supreme Court of the United States. As a result, the court has regularly declined to confer general jurisdiction based on insufficient contacts.\(^{151}\) Where it has found general jurisdiction proper, the defendant had a substantial presence in the state, including having an agent for service of process, employees, and property in Arkansas, as well as being qualified to do business in the state and conducting business in the state through wholly-owned subsidiaries.\(^{152}\)

The Supreme Court of Arkansas has decided one case based on general jurisdiction post-\textit{Goodyear}. In \textit{Yanmar Company v. Slater},\(^{153}\) the plaintiff asserted various tort claims against the Japanese manufacturer of a tractor that killed her husband, Rudy Slater.\(^{154}\) In a matter of first impression, the court held that Arkansas’s exercise of general jurisdiction violated due process, applying \textit{Goodyear} but relying primarily on the fact-intensive contacts inquiry to reach its result.\(^{155}\)

Yanmar manufactured the tractor at issue in 1977 and sold it to an authorized Yanmar distributor in Japan.\(^{156}\) In 2003, without Yanmar’s knowledge, a Vietnamese company acquired the tractor, and it subsequently found its way into the United States through the “gray market”\(^{157}\) in 2004.\(^{158}\) First acquired by a Texas company, the tractor was then auctioned in Oklahoma to the dealer that ultimately sold it to Rudy Slater, more than twenty-six years after its manufacture date.\(^{159}\) Just days after the purchase, the tractor rolled over on Mr. Slater as he mowed the grass and killed him.\(^{160}\)

Mr. Slater’s widow, Wanda Slater, along with the couple’s son, filed a wrongful-death action premised on various claims against Yanmar Japan, and the companies in the long acquisition chain, as well as Yanmar America, a subsidiary of Yanmar Japan that sells parts for authorized Yanmar tractors in the United States.\(^{161}\) After a trial on the negligence claims, a jury sitting in the Circuit Court of Jefferson County returned a verdict of $2.5 mil-

\(^{151}\) See, e.g., \textit{Ganey}, 366 Ark. at 247–48, 234 S.W.3d at 844–45; \textit{John Norell Arms}, 332 Ark. at 29, 962 S.W.2d at 804.

\(^{152}\) \textit{Davis}, 348 Ark. at 26–27, 71 S.W.3d at 60–61.

\(^{153}\) 2012 Ark. 36, 386 S.W.3d 439.

\(^{154}\) \textit{Id.} at 3, 386 S.W.3d at 442.

\(^{155}\) \textit{Id.} at 4–12, 386 S.W.3d at 443–47.

\(^{156}\) \textit{Id.} at 2, 386 S.W.3d at 442.

\(^{157}\) The gray market is defined as “a market in which the seller uses legal but sometimes unethical methods to avoid a manufacturer’s distribution chain and thereby sell goods (especially imported goods) at prices lower than those envisioned by the manufacturer.” \textit{BLACK’S LAW DICTIONARY} 1220 (9th ed. 2009).

\(^{158}\) \textit{Yanmar}, 2012 Ark. at 2, 386 S.W.3d at 442.

\(^{159}\) \textit{Id.}

\(^{160}\) \textit{Id.} at 3, 386 S.W.3d at 442.

\(^{161}\) \textit{Id.} at 3–7, 386 S.W.3d at 444–45.
lion against the defendants.\textsuperscript{162} The appeal, premised largely on Yanmar Japan’s argument that the circuit court lacked jurisdiction, reached the Supreme Court of Arkansas on certification.\textsuperscript{163}

The Supreme Court of Arkansas began its analysis by reciting the applicable rule from \textit{Helicopteros}: “a defendant may be subject to the forum state’s exercise of personal jurisdiction if generally its contacts with the state are continuous, systematic, and substantial.”\textsuperscript{164} Against this high bar, the court determined that Yanmar Japan’s contacts with Arkansas fell short. It noted that Yanmar Japan lacked authorization to conduct business in the state and did not maintain an agent for service of process in the state.\textsuperscript{165} Further, it did not have property, offices, employees, assets, or accounts in Arkansas.\textsuperscript{166} And, while Yanmar Japan previously sold its tractors in the United States, such sales ceased in 1991.\textsuperscript{167} It did, however, continue to sell parts in Arkansas, accumulating average annual sales of $10,000, and retained authorized dealers in the state in addition to its Illinois-based subsidiary, Yanmar America.\textsuperscript{168}

Mrs. Slater relied on Yanmar Japan’s past sales and its current relationship with the subsidiary as sufficient to warrant the exercise of personal jurisdiction.\textsuperscript{169} For support, she pointed to a Supreme Court of Alabama decision reversing summary judgment for Yanmar in a similar suit over a gray-market tractor.\textsuperscript{170} In \textit{Smith v. Yanmar Diesel Engine Co.},\textsuperscript{171} the court noted that Yanmar’s stipulation that it sells parts through its distributor in Alabama made summary judgment inappropriate, as the pervasiveness of those sales may have been enough to confer general jurisdiction.\textsuperscript{172} The Supreme Court of Arkansas refused to follow this line of reasoning based on the unique procedural posture of the Alabama case.\textsuperscript{173} Moreover, the court believed that \textit{Smith} conflicted with the reasoning of \textit{Goodyear}.\textsuperscript{174} After summarizing the case but without recitation or citation to the “at home” standard, the Supreme Court of Arkansas concluded that “[i]t is simply not
enough that Yanmar Japan used to sell tractors in Arkansas or that it has a subsidiary that distributes parts in this state.”

The court further admonished the circuit court for engaging in the “sprawling view of general jurisdiction” rejected by the nine justices in *Goodyear*.

From the foregoing, it is clear that the “at-home” standard enunciated in *Goodyear* has had limited impact on general jurisdiction in Arkansas. In *Yanmar*, the court employed a factual inquiry consistent with its previous general jurisdiction cases and determined that Yanmar Japan had insufficient contacts with Arkansas. Taking *Goodyear* out of the equation, the court’s assessment of Yanmar Japan’s contacts is consistent with its precedent, in which it has only conferred general jurisdiction based on a substantial number of significant contacts with the state. Further, when compared to the contacts considered in *Helicopteros*—more than $4 million in sales over a seven-year period, training, and visits to the forum state—the quality and quantity of Yanmar’s contacts fell short of those rejected by the Court.

The *Yanmar* analysis is indicative of the “at-home” test’s limited utility—namely, what does it mean to be “at home?” The differing interpretations offered by commentators are evidence of the standard’s amorphous nature. One interpretation is that the standard negates numerous lower courts’ findings that a corporation is subject to general jurisdiction wherever it is “doing business.” Another plausible reading is that a substantial volume of sales into the forum state survives *Goodyear* as a basis for general jurisdiction but that a stream-of-commerce theory does not, as sporadic and

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175. Id. at 11, 386 S.W.3d at 446.
176. Id. at 10, 386 S.W.3d at 446–47 (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2856 (2011)).
178. See supra Part II.A.2.
180. See Feder, supra note 179.
indirect sales cannot render a corporation “at home.”[181] And, yet another interpretation may be that “at home” necessitates an inquiry into whether the non-resident defendant views itself, and is viewed by others, as a member of the community, giving significant weight to a physical presence in the forum state.[182]

Most commentators agree that at the very least, the Goodyear opinion served to narrow the scope of general jurisdiction. In that vein, perhaps the most practical interpretation of “at home” is that it is merely a restrictive clause employed to aid lower courts in their analysis and to encourage them to limit general jurisdiction to exceptional cases.[183] This interpretation comports with Justice Ginsburg’s reference to Perkins as the “textbook case” of general jurisdiction.[184] Short of facts that evidence an entity principally operates in or is incorporated within the forum state, the “at home” standard necessitates sufficiently numerous, substantial, and regular contacts by a corporation in order to appropriately find a basis for general jurisdiction. In this regard, the test may simply be an affirmation of the “continuous and systematic contacts” analysis already employed by lower courts.[185]

While “at home” is open to interpretation, the Yanmar decision demonstrates that deciphering its precise meaning is unnecessary. Instead, the Supreme Court of Arkansas can and did rely on Goodyear for its overall import—that the scope of general jurisdiction is narrow. This is evident by the court’s reliance on the language of Goodyear cautioning against a “sprawling view of general jurisdiction”[186] but not otherwise analyzing whether Yanmar Japan could be considered at home in Arkansas. While the “at home” test may come to have more significance in a closer case based on different facts,[187] for now, the Arkansas high court seems to have confined Goodyear to the broad proposition that general jurisdiction is to be narrowly construed. As such, the court is likely to continue its fact-intensive analysis of a defendant’s contacts consistent with its existing precedent.

182. See Stein, supra note 179, at 543.
183. See Michael H. Hoffheimer, General Personal Jurisdiction After Goodyear Dunlop Tires Operations, S.A. v. Brown, 60 U. KAN. L. REV. 549, 595 (2012) (asserting that the “at home” metaphor is meant to supplement, rather than replace, the old metaphors “of substantial activity or continuous and systematic contacts”).
187. See Hoffheimer, supra note 183, at 604 (noting that a hard case may be found where the defendant has a physical office in the forum state but does not do most of its business within that jurisdiction).
B. The Eighth Circuit’s General Jurisdiction Analysis Before and After

Goodyear

Like the Supreme Court of Arkansas, the Eighth Circuit employs a fact-intensive inquiry to determine whether the defendant’s contacts with the forum state are “so continuous and systemic” so as to confer general jurisdiction.\(^{188}\) In the majority of cases in which the court has expressly analyzed general jurisdiction, it has found the defendant’s contacts insufficient.\(^{189}\) In the few instances in which general jurisdiction has been found, the defendant had a physical location, employees, and had designated an agent for service of process in the forum.\(^{190}\)

Given that the Eighth Circuit already narrowly construes the scope of general jurisdiction, Goodyear did little to change its analysis to date. Since Goodyear, the court has had one opportunity in which to apply and interpret Goodyear. In Viasystems v. EBM-Papst St. Georgen GmbH & Company,\(^{191}\) Missouri-based Viasystems sued a German manufacturer of cooling fans, St. Georgen, alleging several tort and contract claims based on apparent defects in the fans.\(^{192}\) The district court dismissed the suit, finding that it lacked specific and general jurisdiction over St. Georgen, and Viasystems appealed.\(^{193}\)

The Eighth Circuit affirmed, concluding that neither specific nor general jurisdiction supported an assertion of adjudicatory authority over St. Georgen.\(^{194}\) The court rejected Viasystems’s argument that the activities of St. Georgen’s distributor, ebm-papst (“EPI”), within the forum state of Missouri, subjected it to general jurisdiction.\(^{195}\) The court recited the test for general jurisdiction directly from Goodyear, noting that the defendant must have such continuous and systematic contacts with the forum state so as to

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\(^{188}\) See, e.g., Johnson v. Arden, 614 F.3d 785, 795 (8th Cir. 2010).
\(^{189}\) See Wells Dairy, Inc. v. Food Movers Int’l, Inc., 607 F.3d 515, 519 (8th Cir. 2010); Arden, 614 F.3d at 795; Johnson v. Woodcock, 444 F.3d 953, 956–57 (8th Cir. 2006); Epps v. Stewart Info. Servs. Corp., 327 F.3d 642, 650 (8th Cir. 2003); Guinness Imp. Co. v. Mark VII Dists., Inc., 153 F.3d 607, 614–15 (8th Cir. 1998); Burlington Indus., Inc. v. Maples Indus., Inc., 97 F.3d 1100, 1103 (8th Cir. 1996); H & W Wire Corp. v. Lone Star Wire, Inc., 34 F.3d 1070, at *2 (8th Cir. 1994); Bell Paper Box, Inc. v. U.S. Kids, Inc., 22 F.3d 816, 819 (8th Cir. 1994).
\(^{190}\) Dever v. Hentzen Coatings, Inc., 380 F.3d 1070, 1075 (8th Cir. 2004) (finding that the Arkansas courts have general jurisdiction over Ohio-based Sherwin Williams because it “conducts continuous business in Arkansas; it employs workers, owns and leases property, and has designated an agent for service of process in the state.”).
\(^{191}\) 646 F.3d 589 (8th Cir. 2011).
\(^{192}\) Id. at 591–92.
\(^{193}\) Id. at 591–92.
\(^{194}\) Id. at 595, 598.
\(^{195}\) Id. at 595–98.
make it “at home” there. The court pointed to both Goodyear and Perkins for the proposition that “the paradigm forum for the exercise of general jurisdiction [over an individual] is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.”

The court reasoned that St. Georgen’s position as head of a distribution network that benefitted from the sales of its distributor in the forum state could not confer general jurisdiction. While the court had recognized a variant of stream-of-commerce theory, supporting jurisdiction over a foreign manufacturer that pushes its products into a multi-state area through a distributor, it noted that precedent within the circuit limited such stream-of-commerce inquiries to specific jurisdiction. As further support, the court cited Goodyear, noting that the Supreme Court had similarly dismissed stream of commerce as “[a] connection so limited between the forum and the foreign corporation [that it] is an inadequate basis for the exercise of general jurisdiction.” Finally, the court noted that the nine justices in Goodyear had expressly disavowed a “sprawling view of general jurisdiction” that would make any manufacturer amenable to suit wherever its products are distributed.

196. Id. at 595 (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2851 (2011)).
198. Id. at 597–98. Viasystems also argued that St. Georgen and EPI maintained either an express or implied agency relationship, such that the in-state distributor EPI’s actions could be imputed to the principal St. Georgen, thereby conferring personal jurisdiction. Id. at 595–96. The court rejected this argument on the facts, noting that EPI’s scattered marketing statements on its website could not establish an express agency relationship simply because St. Georgen owned and operated the website. Id. at 596. In addition, Viasystems also failed to meet the standard for an implied agency relationship—namely that St. Georgen “so controlled and dominated the affairs of the subsidiary that the latter’s corporate existence was disregarded so as to cause the residential corporation to act as the nonresidential corporate defendant’s alter ego.” Id. (quoting Epps v. Stewart Info. Servs. Corp., 327 F.3d 642, 649 (8th Cir. 2003) and citing Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Mgmt., Inc., 519 F.2d 634, 637 (8th Cir. 1975)). Essentially, Viasystems argued for general jurisdiction based on piercing the corporate veil of St. Georgen but failed to do so because it could not establish the high degree of control and domination of the parent over its subsidiary. Id. at 596–97. “St. Georgen did not create EPI, has no control or authority over EPI, and has no directors or officers in common with EPI. The relationship between these two companies is too attenuated to support the assertion of personal jurisdiction over St. Georgen based on the activities of EPI.” Id. at 597.
199. Id. (citing Vandelune v. 4B Elevator Components Unlimited, 148 F.3d 943, 948 (8th Cir. 1998)).
200. Id. (citing Goodyear, 131 S. Ct. at 2851).
201. Id. (citing Goodyear, 131 S. Ct. at 2856).
202. Id.
From the foregoing, *Goodyear* merely serves as an affirmation of the court’s general-jurisdiction jurisprudence—namely, that it is reserved for exceptional cases. While the Eighth Circuit dutifully cited the “at home” test from *Goodyear*, it did not prominently factor in the court’s analysis of general jurisdiction, as it never discussed the test’s meaning nor did it analyze the circumstances under which St. George might be considered “at home” in Missouri. In addition, the court dismissed Viasystems’ principal argument—that St. George’s relationship with EPI subjected it to general jurisdiction—largely based on existing circuit precedent confining stream-of-commerce theories to specific jurisdiction, which it deemed lacking in the case. The court pointed to *Goodyear* merely as an affirmation of those prior holdings in which it correctly distinguished between the two doctrines.

Similar to *Yanmar*, the circuit court’s failure to meaningfully interpret and apply “at home” is in part attributable to the test’s ambiguity but also a reflection that the court’s existing precedent narrowly construes general jurisdiction. Viasystems presented scant evidence, never mind “substantial and continuous” evidence, of St. George’s ties to the forum state, aside from the presence of its subsidiary. Even then, Viasystems only owned an attenuated share of EPI—a “two-steps-removed 28–percent interest.”203 On these facts, probing the meaning of “at home” was simply unnecessary. Instead, the court only pointed to *Goodyear* as standing for the broad proposition that general jurisdiction is reserved for rare cases—a proposition consistent with existing case law. Thus, whatever the precise meaning of “at home,” the Eighth Circuit (and the Supreme Court of Arkansas) have applied *Goodyear* to reaffirm that general jurisdiction is a high threshold to overcome, and the case does not portend a significant shift in general-jurisdiction analysis. The court and practitioners will continue to use *Perkins* and *Helicopteros* as general-jurisdiction guideposts.

C. Stream-of-Commerce in the Eighth Circuit Before and After *Nicastro*

While the impact of *Goodyear* and its “at-home” test on practitioners and courts within Arkansas and the Eighth Circuit is minimal, general jurisdiction still remains a high threshold to overcome. As general jurisdiction may properly be reserved for exceptional cases, Arkansas practitioners may necessarily come to rely more heavily on pleading specific jurisdiction and stream-of-commerce in particular with regard to products liability. In so doing, they will have to confront *Nicastro* and courts will have to assess its precedential value.

Arkansas case law analyzing stream-of-commerce post-*Asahi* is scarce, and Arkansas courts will presumably look to the Eighth Circuit for guid-

203. *Viasystems*, 646 F.3d at 597.
ance. The Eighth Circuit has adopted an approach that holds foreign end-product manufacturers subject to personal jurisdiction based on their use of expansive distribution schemes that target the American market as a whole but no one state in particular.\footnote{204} Such an approach is in direct conflict with the plurality opinion in \textit{Nicastro}.

Despite the conflict, this section concludes that the Eighth Circuit need not and should not change course. After briefly discussing the Eighth Circuit’s current stream-of-commerce approach,\footnote{205} this section analyzes other jurisdictions’ interpretations of \textit{Nicastro} to date, noting that an emerging majority has tempered its precedential value and continue to apply pre-\textit{Nicastro} stream-of-commerce approaches.\footnote{206} By following the reasoning of these courts, the Eighth Circuit can continue to exert personal jurisdiction over foreign manufacturers at the head of distribution networks. Moreover, as this section concludes, the court should continue to adhere to its existing approach, as it best comports with realities of modern commerce while remaining faithful to principles underlying specific-jurisdiction doctrine.

1. \textit{The Eighth Circuit’s Current Stream-of-Commerce Approach}

In the wake of \textit{Asahi}, the Eighth Circuit adopted and adhered to Justice O’Connor’s stream-of-commerce-plus test, requiring some additional showing that the non-resident defendant purposely targeted the forum state in order to support personal jurisdiction.\footnote{207} In \textit{Barone v. Rich Brothers Interstate Display Fireworks Company},\footnote{208} however, the Eighth Circuit departed from precedent and adopted a more relaxed, stream-of-commerce approach.

In \textit{Barone}, the Nebraska-based plaintiff, Bernard Barone, sued both Hosoya Fireworks Company, a Japanese manufacturer of fireworks, and its South Dakota-based distributor, Rich Brothers Interstate Display Fireworks Company, for injuries he suffered when a Fourth of July fireworks display he had arranged went awry.\footnote{209} The Nebraska District Court dismissed the suit for lack of personal jurisdiction, but the Eighth Circuit reversed, holding that Hosoya could properly be haled into court in Nebraska consistent with due process.\footnote{210} At the outset, the court noted that Hosoya had no physical

\begin{footnotes}
\footnote{204. See infra Part III.C.1.}
\footnote{205. See infra Part III.C.1.}
\footnote{206. See infra Part III.D.}
\footnote{209. Id. at 610–11.}
\footnote{210. Id. at 615.}
\end{footnotes}
presence in Nebraska, no registered agent, no subsidiary, and it neither advertised nor sold its products directly in the forum state.211 Nonetheless, the process by which Hosoya’s fireworks came into Nebraska sufficed to confer personal jurisdiction. 212

In the years preceding the accident that injured Mr. Barone, Hosoya engaged nine different distributors in six states to sell its products within the United States.213 Combined, the nine American distributors comprised an average of seventy percent of Hosoya’s fireworks business and did so effectively throughout the country.214 The South Dakota-based distributor, Rich Bros., purchased an average of $100,000 annually from Hosoya and approximately sixteen percent of those fireworks made their way to Nebraska every year.215 Based on these facts, the court concluded that Hosoya employed a select number of strategically located distributors to reach as much of the country as possible. As such, the court determined that “Hosoya . . . reaped the benefits of its network of distributors, and it is only reasonable and just that it should now be held accountable in the forum of the plaintiff’s choice.”216

The Eighth Circuit reached a similar conclusion in Clune v. Alimak AB.217 In Clune, the court reversed a lower court’s finding that Alimak AB, a Swedish corporation that designed and manufactured construction hoists, lacked sufficient minimum contacts necessary to confer specific jurisdiction.218 Alimak maintained exclusive distribution agreements with American distributors; in fact, an American consumer could only purchase a construction hoist through the American distributors.219 Between 20 and 40 of the 700 hoists sold in the United States ended up in the forum state of Missouri.220 Based on the facts, the court deemed Alimak’s contacts sufficiently purposeful even though it did not target Missouri particularly.221 The fact that it used two distributors to sell its products to every state sufficed for the court to confer jurisdiction.222

211. Id. at 611.
212. Id. at 613–14.
213. Id. at 611.
214. Barone, 25 F.3d at 611.
215. Id.
216. Id. at 615.
218. Id. at 540.
219. Id. at 543–44.
220. Id.
221. Id. at 544.
222. Id.
D. Other Jurisdictions Have Limited the Precedential Impact of *Nicastro*

As both *Clune* and *Barone* demonstrate, the Eighth Circuit’s application of stream-of-commerce theory is at odds with the plurality in *Nicastro*. While the Eighth Circuit has not confronted the impact of *Nicastro* yet, other jurisdictions have and have concluded that it has done little to change existing precedent.

At least one jurisdiction has summarily asserted that *Nicastro* is limited to its facts. Others have similarly limited its impact by distinguishing the facts necessary to support a finding of sufficient contacts. These jurisdictions have noted that J. McIntyre only had three contacts with New Jersey: the relationship with the independent U.S. distributor to market its products; the regular attendance of company executives at conventions held in America but none in New Jersey; and the four machines that found their way into the forum state. Thus, courts have upheld the assertion of specific jurisdiction where the facts evinced more substantial sales made within the forum

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223. *See Ainsworth v. Cargotec USA, Inc.*, No. 2:10-CV-236-KS-MTP, 2011 WL 6291812, at *2, *4 (S.D. Miss. Dec. 15, 2011), *aff’d sub. nom.* Ainsworth v. Moffett Eng’g, Ltd., 716 F.3d 174 (5th Cir. 2013) (concluding that “Justice Breyer’s . . . [Nicastro] opinion was only applicable to cases presenting the same factual scenario as that case,” and asserting that . . . “[Nicastro] has little to no precedential value.”).


state and where the defendant used a distribution chain that directly targeted a forum state for sales of its products.

A majority of courts, however, have resolved *Nicastro* based on a procedural rule—the *Marks* rule. According to the *Marks* rule, “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, ‘the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.’” Applying this rule, a growing number of jurisdictions have deemed Justice Breyer’s concurrence as representative of the narrowest grounds supporting the holding. As the United States Court of Appeals for the Federal Circuit explained:

[T]he crux of Justice Breyer’s concurrence was that the Supreme Court’s framework applying the stream-of-commerce theory—including the conflicting articulations of that theory in *Asahi*—had not changed, and that the defendant’s activities in *McIntyre* failed to establish personal jurisdiction under any articulation of that theory. Because *McIntyre* did not produce a majority opinion, we must [apply the *Marks* rule and] follow

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226. *See, e.g.*, King v. Gen. Motors Corp., No. 5:11-CV-2269-AKK, 2012 WL 1340066, at *7 (N.D. Ala. Apr. 18, 2012) (asserting specific jurisdiction because “[u]nlike the manufacturer in . . . *Nicastro* who utilized an independent U.S. distributor that merely distributed four machines to the state of New Jersey, GM Canada utilized its parent corporation to distribute hundreds, if not thousands, of vehicles to the state of Alabama, including the vehicle at issue.”); Russell v. SNFA, No. 1-09-3012, 2011 WL 6965795, at *8 (Ill. App. Dec. 16, 2011) (noting that “approximately 2,198” of the defendant’s parts had been sold in Illinois between 2000 and 2007 and “[t]hus, insufficient sales is not an issue in the case before us, as it was in . . . *Nicastro*.”); Graham v. Hamilton, No. 3:11-609, 2012 WL 893748, at *4 (W.D. La. Mar. 15, 2012) (distinguishing the one machine that ended up in New Jersey in *Nicastro* with “… evidence demonstrating that GM Canada places over 800,000 vehicles into the U.S. market each year, indicating that many of GM Canada’s vehicles would likely be sold in Louisiana.”); Dierig v. Lees Leisure Indus., Ltd., No. 11-125-DLB-JGW, 2012 WL 669968, at *11 (E.D. Ky. Feb. 28, 2012) (upholding specific jurisdiction, noting that “in contrast . . . [to *Nicastro*], the facts here demonstrate that Defendant Lees Leisure has advertised in, sent goods to, and targeted the Commonwealth of Kentucky in efforts to market and sell its products.”); Merced v. Gemstar Grp., Inc., No. 10-3054, 2011 WL 5865964, at *5 n.1 (E.D. Pa. Nov. 22, 2011) (finding *Nicastro* factually dissimilar because there “the defendant never made a single shipment to the forum state,” but “[i]n the present case, the Margraf defendants have made at least three— including the one giving rise to this litigation.”).

227. *See, e.g.*, Original Creations, Inc. v. Ready Am., Inc., 836 F. Supp. 2d 711, 717 (N.D. Ill. 2011) (“In contrast to . . . *Nicastro*, Life+Gear has sold its products to two distributors that market to Illinois residents . . . The distribution network Life+Gear has utilized within Illinois is far afield from Justice Kennedy’s example of the owner of the small farm who has no control over distribution channels for her crops.”).


the narrowest holding among the plurality opinions in that case. The narrowest holding is that which can be distilled from Justice Breyer’s concurrence—that the law remains the same after *McIntyre*.230

Following this trend, a growing number of other jurisdictions have employed similar reasoning, concluding that their pre-*Nicastro* stream-of-commerce jurisprudence remains binding.231 Indeed, at least one district court within the circuit has already determined that “[Nicastro] did not change the Supreme Court’s jurisdictional framework,” necessitating application of “Eighth Circuit case law interpreting the Supreme Court’s existing stream of commerce precedent.”232

E. The Eighth Circuit Should Adhere to Its Pre-*Nicastro* Stream-of-Commerce Jurisprudence

The Eighth Circuit should follow the trend among other jurisdictions that continue to apply their pre-*Nicastro* approach to stream-of-commerce theory for two primary reasons. First, it better reflects the realities of modern global commerce. As Justice Ginsburg noted in her *Nicastro* dissent, the “case is illustrative of marketing arrangements for sales in the United States

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230. *AFTG-TG*, 689 F.3d at 1363 (citations omitted).
231. See, e.g., id. (“Because [Nicastro] did not produce a majority opinion, we must follow the narrowest holding among the plurality opinions in that case. The narrowest holding is that which can be distilled from Justice Breyer’s concurrence—that the law remains the same after . . . [Nicastro].” (citations omitted)); *In re Chinese Manufactured Drywall Prods. Liab. Litig.*, 894 F. Supp. 2d 819, 849 (E.D. La. 2012) (“Justice Breyer’s concurrence, the governing decision, expressly requires the application of existing Supreme Court precedent on specific personal jurisdiction, leaving unaltered the . . . [pre-Nicastro] jurisprudence relied upon by the Fifth Circuit. Thus, the Court applies the Fifth Circuit’s law as informed by Supreme Court precedent on specific personal jurisdiction and the stream-of-commerce doctrine.”); *Windsor v. Spinner Indus. Co.*, 825 F. Supp. 2d 632, 638 (D. Md.), as amended (Dec. 15, 2011) (“This Court therefore construes [Nicastro] as rejecting the foreseeability standard of personal jurisdiction, but otherwise leaving the legal landscape untouched. The Court will therefore return to this circuit’s post-*Asahi* precedents to resolve this case.”); *Frito-Lay N. Am., Inc. v. Medallion Foods, Inc.*, 867 F. Supp. 2d 859, 867 (E.D. Tex. 2012) (invoking the *Marks* rule to hold that “Justice Breyer’s concurrence is the controlling opinion of the Supreme Court” and that “Justice Breyer specifically declined to announce a new rule in stream of commerce cases.”); *Eskridge v. Pac. Cycle, Inc.*, No. 2:11-CV-00615, 2012 WL 1036826, at *4 (S.D. W.Va. Mar. 27, 2012) (“Because *Nicastro* did not produce a majority opinion adopting either Justice O’Connor’s or Justice Brennan’s stream of commerce theory, and given Justice Breyer’s reliance on current Supreme Court precedent, post-*Asahi* Fourth Circuit case law remains binding.”) (citing *Windsor v. Spinner Indus. Co.*, 825 F. Supp. 2d 632, 638 (D. Md. 2011)).
common in today’s commercial world.”

Indeed, foreign end-product manufacturers regularly employ American distributors for practical, economic, and cultural reasons. The Nicastro plurality’s suggested framework, however, fails to account for this fact. Worse, it permits a foreign manufacturer to easily escape personal jurisdiction based on it. Indeed, to avoid the jurisdiction of the American courts, an informed lawyer need only provide a few words of advice to its foreign client: first, design and produce the product for no particular state market; second, do not make direct sales; third, hire an independent domestic distributor to sell within the entirety of the United States as opposed to a particular state. If the Nicastro plurality controlled and the client followed this advice, there is a good chance it could avoid jurisdiction. As a result, there is also a built-in disincentive to target a discrete state, as under the Nicastro plurality’s framework, the entity can maximize its market penetration while avoiding the cost of litigation.

The Court has emphasized that its specific jurisprudence must evolve contemporaneously with commercial practices. The Eighth Circuit’s decision in Barone represents such an evolution. The Barone court reasoned that “in this age of NAFTA and GATT, one can expect further globalization of commerce, and it is only reasonable for companies that distribute allegedly defective products through regional distributors in this country to anticipate being haled into court by plaintiffs in their home states.” Because foreign manufacturers can and do maximize their sales by treating the U.S. market as whole, without targeting a particular state, personal jurisdiction cannot be predicated on an outmoded conception of commercial practices.

In addition to the foregoing, the Eighth Circuit’s approach best comports with purposeful availment. As discussed previously, personal jurisdiction requires a finding that the defendant deliberately committed an act to avail itself of the market in the forum state. Thus, the purposeful availment requirement entails more than foreseeability, it necessitates a degree of intent and control. When a foreign manufacturer selects, organizes, and uses a network of American-based distributors to sell its products across the country, to every state but no state in particular, logic dictates that it intends to avail itself of the forums in which its product actually enter.

235. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292–93 (1980); (citing McGee v. Int’l Life Ins. Co., 355 U.S. 220 (1957)); McGee, 355 U.S. at 222 (1957) (“Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years.”).
The Eighth Circuit’s existing precedent reflects this logic. In Barone, the defendant Hosoya argued that it did not intend or know that its products would reach Nebraska, despite the state’s close proximity to the South Dakota distributor. The court dismissed Hosoya’s ignorance defense. It noted that the South Dakota-distributor was “conveniently located” close to three other states, including Nebraska. In addition, the court noted that each of Hosoya’s distributors was strategically located to reach numerous states and their locations were unlikely the result of mere chance. Instead, the court concluded that the distribution scheme constituted “evidence of Hosoya’s efforts to place its products in the stream of commerce throughout the Midwest and other parts of the country as well.” Thus, it was not only foreseeable to Hosoya that its South Dakota distributor would penetrate neighboring Nebraska with its fireworks, it was purposeful and planned.

More pointedly, in Clune, the court concluded the defendant purposefully availed itself of the forum state by virtue of the distribution network it set up to sell construction hoists across the country. Through that distribution network, the court concluded that the manufacturer both knew and intended its product to enter the forum state, despite the defendant’s arguments to the contrary: “If we were to conclude that despite its distribution system, [the defendant] did not intend its products to flow into [the forum state], we would be bound to the conclusion that the company did not intend its products to flow into any of the United States.” Thus, logic dictates that purposeful availment is satisfied when a manufacturer sells its products through a distribution network that targets sales in every state.

In addition, under the Eighth Circuit’s current framework, a foreign manufacturer utilizing a domestic distribution network can easily take steps to avoid availing itself of the forum market, thereby avoiding jurisdiction. In Barone, the court noted that a foreign manufacturer that selects a discrete few distributors for the purpose of selling in specific states but not others may limit its exposure to adjudicatory authority. To do this, a manufacturer need only make it a condition of the distribution agreement that the distributors not market to specific states. Further, it could require indemnification for the distributors. Such evidence that the manufacturer affir-
atively sought to prevent the distribution of its products from entering the forum state would militate against exercising specific jurisdiction based on the absence of purposeful availment. 246 By the same token, evidence that the manufacturer could have but did not restrict its sales should satisfy purposeful availment. 247

Finally, fairness and reciprocity principles require holding foreign manufacturers at the head of domestic distribution chains subject to personal jurisdiction in those states in which its product injures consumers. Emanating from International Shoe, the Court’s specific jurisdiction jurisprudence has long emphasized fundamental fairness:

[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which [sic] requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. 248

The foregoing embodies a quid pro quo: in return for the privilege of conducting activities in the forum state, the entity subjects itself to the state court’s jurisdiction. Thus, personal jurisdiction is proper when the entity benefits from its deliberate contacts with the forum state. Unlike the Nicastro plurality, the Eighth Circuit’s approach remains faithful to this principle. Not only does it recognize that sellers at the top of distribution chains reap the benefit of each state’s laws, it recognizes that they enjoy “the much greater economic benefit of multiple sales in distant forums.” 249 Because distribution chains allow foreign manufacturers to maximize their profits and market penetration, fairness mandates that they submit to personal jurisdiction in the forum where their product causes injury.

IV. CONCLUSION

Justice Breyer left open the possibility that the Court might refashion its personal jurisdiction jurisprudence in light of modern commercial concerns in an appropriate case in the future, 250 and commentators have

246. Clune, 233 F.3d at 544.
249. Clune, 233 F.3d at 543 (citing Barone v. Rich Bros. Interstate Display Fireworks Co., 25 F.3d 610, 613 (8th Cir. 1994)).
250. J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2794 (2011) (Breyer, J., concurring) (“At a minimum, I would not work such a change to the law in the way either the plurality or the New Jersey Supreme Court suggests without a better understanding of the relevant contemporary commercial circumstances. Insofar as such considerations are relevant.
acknowledged the possibility of both state and federal legislation to accomplish this purpose.\footnote{See Hoffheimer, supra note 183, at 605–09 (discussing the possibility of state or federal legislation confronting personal jurisdiction over foreign entities); see also Foreign Manufacturers Legal Accountability Act, S.1606, 111th Cong. (2009), http://www.gpo.gov/fdsys/pkg/BILLS-111s1606is/pdf/BILLS-111s1606is.pdf (Senate bill addressing personal jurisdiction over foreign manufacturers); Foreign Manufacturers Legal Accountability Act, H.R. 3646, 112th Cong. (2011), http://www.gpo.gov/fdsys/pkg/BILLS-112hr3646ih/pdf/BILLS-112hr3646ih.pdf (House bill addressing personal jurisdiction over foreign manufacturers).}

For the time being, however, Arkansas practitioners and courts are left to grapple with the still muddied state of personal jurisdiction landscape. Although the Goodyear Court spoke with a unanimous voice, the case in effect adds little to the dearth of authority. The ambiguous “at-home” standard has limited its utility and neither the Supreme Court of Arkansas nor the Eighth Circuit has shifted its approach regarding general jurisdiction in the wake of Goodyear. Instead, the courts continue to use Perkins and Helicopteros, as well as their own precedent, to assess whether general jurisdiction is appropriate. In this sense, Goodyear is simply an affirmation of the narrow scope of general jurisdiction.

Given the limitations of general jurisdiction, specific jurisdiction, especially stream-of-commerce theory, takes on renewed importance for Arkansas practitioners seeking personal jurisdiction over a foreign defendant. While Nicastro arguably curtailed the contours of specific jurisdiction, a number of lower courts have subsequently disregarded or distinguished its precedential value. As a result, many of those jurisdictions have adhered to their pre-Nicastro stream-of-commerce precedents. Without clear and contrary direction from the Supreme Court, the Eighth Circuit should follow this trend and continue to hold foreign manufacturers at the top of distribution chains subject to personal jurisdiction when their defective products purposefully and regularly flow into a forum state and cause injury to consumers there. To hold otherwise would not only ignore the reality of modern commercial practices, it would unfairly permit foreign defendants to escape the adjudicatory authority of the courts and, in turn, accountability to American consumers.

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