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Goodyear and Hertz: Reconciling Two Recent Supreme Court Decisions

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Goodyear and Hertz: Reconciling Two Recent Supreme Court Decisions

Lindsey D. Blanchard*

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I. INTRODUCTION

One rarely thinks of civil procedure issues when contemplating the hot topics in front of the U.S. Supreme Court. However, the Roberts Court put civil procedure back on the map by planting some long-overlooked issues on its docket.¹ In

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particular, the Court granted certiorari to resolve two jurisdiction-related questions over the course of its 2009 and 2010 terms: where is a corporation’s “principal place of business” located for purposes of diversity subject matter jurisdiction, and when may a court exercise general personal jurisdiction over a foreign corporate defendant? After decades of silence on these issues,² the Court resolved each question with a unanimous opinion. During its 2009 term, the Court ruled in *Hertz Corp. v. Friend*³ that a corporation’s principal place of business is its “nerve center”—i.e., “the place where a corporation’s officers direct, control, and coordinate the corporation’s activities.”⁴ At the end of its 2010 term, the Court ruled in *Goodyear Dunlop Tires Operations, S.A. v. Brown*⁵ that a court may assert general jurisdiction over a foreign corporation only when the defendant’s “affiliations with the State are so ‘continuous and systematic’ as to render [the defendant] essentially at home in the forum State.”⁶

While the Court in *Hertz* made it very clear which contacts matter for purposes of determining a corporation’s principal place of business, many scholars and practitioners have suggested that *Goodyear* leaves a bit to be desired in terms of articulating how many or what types of contacts result in a foreign corporation being “essentially at home” in a given forum.⁷ However, while diversity of citizenship *subject matter* jurisdiction and general *personal* jurisdiction are two fundamentally different concepts (the former relates to a court’s ability to adjudicate the particular case before it,⁸ while the latter relates

would like to thank Professor Bradley G. Clary for his advice and feedback on an earlier draft of this Article.

1. See Howard M. Wasserman, *The Roberts Court and the Civil Procedure Revival*, 31 REV. LITIG. 313, 314–15 (2012) (noting that “the Roberts Court is newly engaged in an unexpected area—civil procedure” and “has heard and decided more than twenty cases in core civil procedure areas, including pleading, summary judgment, relation back of amended pleadings, personal jurisdiction, federal question jurisdiction, diversity jurisdiction, jurisdictionality, removal procedure, class actions, civil representation, arbitration of civil and civil rights claims in lieu of litigation, appealability, remedies, and the *Erie-Hanna* doctrine”).

2. See *id.* at 316–17 (noting that the Court’s October 2009 term decision regarding the meaning of “principal place of business” under the diversity jurisdiction statute marked the first time the Court had addressed the issue since the statute was enacted in 1958 and that the Court’s October 2010 term decisions regarding personal jurisdiction were the first on that topic in over two decades).

3. 130 S. Ct. 1181 (2010).

4. *Id.* at 1192.

5. 131 S. Ct. 2846 (2011).

6. *Id.* at 2851 (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)).

7. See, e.g., Allan R. Stein, *The Meaning of “Essentially at Home” in Goodyear Dunlop*, 63 S.C. L. REV. 527, 533 (2012) [hereinafter Stein, *Meaning*] (“Assuming that the Court intends to permit the exercise of general jurisdiction over out-of-state corporations *only* when they are ‘essentially at home’ in the forum, courts must flesh out what that means. What are the attributes of being ‘at home’ that justify jurisdiction? And what is the meaning of ‘essentially’? Presumably, that is something short of ‘actually’ being at home, but how short?”); Collyn A. Peddie, *Mi Casa Es Su Casa: Enterprise Theory and General Jurisdiction over Foreign Corporations After Goodyear Dunlop Tires Operations, S.A. v. Brown*, 63 S.C. L. REV. 697, 698 (2012) (quoting *Goodyear*, 131 S. Ct. at 2851) (“[T]he Court . . . failed to define, for future cases, what it meant by ‘essentially at home,’ a phrase it has used in no other context.”).

8. See *infra* note 90 and accompanying text.

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to a court's ability to bind a particular defendant by its ruling⁹), they are linked in that the goal of both inquiries is to find the geographic location where the defendant's contacts are the most significant. Moreover, the analyses raise similar concerns of fairness, efficiency, and predictability. Thus, although *Goodyear*—standing alone—may be somewhat vague, it gains meaning when read in conjunction with *Hertz*.

Part II of this Article summarizes the history of general jurisdiction, the Court's decision in *Goodyear*, and the proposed interpretations of the new "essentially at home" test.¹⁰ Part III provides a general overview of the history of diversity jurisdiction, the Court's decision in *Hertz*, and the current "principal place of business" test.¹¹ Lastly, Part IV argues that the "essentially at home" test in *Goodyear* should be given meaning by strictly adhering to the Court's language and precedent, including its earlier opinion in *Hertz*.¹² In doing so, Part IV demonstrates how the two opinions can—and should—be reconciled: Courts should find a corporation to be "at home" only in the state where it is incorporated and in the state where its "nerve center" is located. If the corporation's headquarters is located outside of the United States, the court should determine whether the corporation has comparable administrative and executive contacts in any one location within the United States such that it is "essentially at home" in that location.

II. GOODYEAR AND THE "ESSENTIALLY AT HOME" TEST: WHAT DOES IT MEAN?

"Personal jurisdiction" is a fundamental concept for every litigator. Essentially, it provides a court with the power to subject a defendant to the court's adjudicative process and to render a binding judgment.¹³ A court may exercise two types of personal jurisdiction over a given defendant: specific or general. Specific jurisdiction provides the ability to hale the defendant into court in a particular forum because the cause of action arose from the defendant's

9. See *infra* note 13 and accompanying text.

10. See *infra* Part II.

11. See *infra* Part III.

12. See *infra* Part IV.

13. See, e.g., Charles W. "Rocky" Rhodes, *The Predictability Principle in Personal Jurisdiction Doctrine: A Case Study on the Effects of a "Generally" Too Broad, but "Specifically" Too Narrow Approach to Minimum Contacts*, 57 BAYLOR L. REV. 135, 136–37 (2005) [hereinafter Rhodes, *Predictability Principle*]; S. Wilson Quick, Comment, *Staying Afloat in the Stream of Commerce: Goodyear, McIntyre, and the Ship of Personal Jurisdiction*, 37 N.C. J. INT'L L. & COM. REG. 547, 552 (2011) (citing FLEMING JAMES, JR. ET AL., CIVIL PROCEDURE § 2.3, at 60 (5th ed. 2001)) ("The basic premise of the personal jurisdiction doctrine requires that a court have the necessary authority to engage in binding adjudication over a person."); *Kulko v. Superior Court*, 436 U.S. 84, 91 (1978) ("It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant."); BLACK'S LAW DICTIONARY 870 (8th ed. 2004) (defining "personal jurisdiction" as "[a] court's power to bring a person [including a corporation] into its adjudicative process").

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minimum contacts with that forum.¹⁴ General jurisdiction provides the ability to hale the defendant into court in a particular forum based on the defendant's substantial contacts with that forum, even though the claim at issue is unrelated to the forum or those contacts.¹⁵

The rules for determining whether a court's exercise of specific or general jurisdiction is appropriate remained virtually unchanged for decades.¹⁶ Then, on June 27, 2011, the U.S. Supreme Court handed down two significant opinions: *J. McIntyre Machinery, Ltd. v. Nicastro*¹⁷ and *Goodyear Dunlop Tires Operations, S.A. v. Brown*. In *McIntyre*, a fractured Court discussed the limits on the exercise of specific jurisdiction over a foreign corporate defendant whose products have reached the forum—and caused injury therein—through the stream of commerce.¹⁸ In *Goodyear*, a unanimous Court expounded upon the test for determining when a court may assert general jurisdiction over a foreign corporate

14. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984) (“It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant’s contacts with the forum, the State is exercising ‘specific jurisdiction’ over the defendant.”) (citations omitted); Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966) (“[A]ffiliations between the forum and the underlying controversy normally support only the power to adjudicate with respect to issues deriving from, or connected with, the very controversy that establishes jurisdiction to adjudicate. This we call specific jurisdiction.”); Megan M. La Belle, *The Future of Internet-Related Personal Jurisdiction After Goodyear Dunlap Tires v. Brown and J. McIntyre v. Nicastro*, 15 J. INTERNET L. 3, 4 (2012) (“Specific jurisdiction . . . requires less pervasive contacts between the defendant and the forum state. Under this doctrine, . . . courts are only permitted to exercise jurisdiction over a defendant if the lawsuit arises out of—or is related to—the defendant’s contacts with the forum.”); BLACK’S LAW DICTIONARY 870 (8th ed. 2004) (defining “specific jurisdiction” as “[j]urisdiction that stems from the defendant’s having certain minimum contacts with the forum state so that the court may hear a case whose issues arise from those minimum contacts”).

15. *Helicopteros*, 466 U.S. at 415 n.9 (“When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant’s contacts with the forum, the State has been said to be exercising ‘general jurisdiction’ over the defendant.”) (citations omitted); von Mehren & Trautman, *supra* note 14, at 1136 (stating that “general jurisdiction” is the “power to adjudicate any kind of controversy when jurisdiction is based on relationships, direct or indirect, between the forum and the person or persons whose legal rights are to be affected”); Meir Feder, *Goodyear, “Home,” and the Uncertain Future of Doing Business Jurisdiction*, 63 S.C. L. REV. 671, 672 (2012) (quoting *Goodyear*, 131 S. Ct. at 2851) (“General jurisdiction is the branch of personal jurisdiction that allows a forum state to assert judicial authority over ‘any and all claims’ against a defendant that has a sufficiently close connection to the state—even claims arising from conduct elsewhere that is completely unrelated to the state.”); BLACK’S LAW DICTIONARY 869 (8th ed. 2004) (defining “general jurisdiction” as “[a] court’s authority to hear all claims against a defendant . . . without any showing that a connection exists between the claims and the forum state”).

16. See Howard B. Stravitz, *Introduction to Personal Jurisdiction for the Twenty-First Century: The Implications of McIntyre and Goodyear Dunlop Tires*, 63 S.C. L. REV. 463, 463 (2012) [hereinafter Stravitz, *Introduction*] (noting that the personal jurisdiction opinions issued by the U.S. Supreme Court in 2011 “were the first cases on personal jurisdiction in twenty-two years”); Richard D. Freer, *Personal Jurisdiction in the Twenty-First Century: The Ironic Legacy of Justice Brennan*, 63 S.C. L. REV. 551, 551 (2012) (noting that the personal jurisdiction decisions issued by the U.S. Supreme Court in 2011 were “the Supreme Court’s first efforts at applying *International Shoe Co. v. Washington* since . . . 1990”).

17. 131 S. Ct. 2780 (2011).

18. See *id.* at 2785, 2787–91.

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defendant.¹⁹ While *McIntyre* caused an immediate outcry among academics and practitioners,²⁰ *Goodyear* generally is thought to have been rightly decided and is considered a positive development in the law.²¹ That being said, several commentators have noted that the “essentially at home” test, as articulated by the Court, is not a lesson in clarity.²²

A. *General Personal Jurisdiction Pre-Goodyear*

The Court’s most notable personal jurisdiction jurisprudence began well over a century ago, with its seminal decision in *Pennoyer v. Neff*.²³ In that case, the

19. 131 S. Ct. at 2850–51.

20. For example, the *South Carolina Law Review* hosted a Symposium entitled “Personal Jurisdiction for the Twenty-First Century: The Implications of *McIntyre* and *Goodyear Dunlop Tires*” on October 13 and 14, 2011. Stravitz, *Introduction*, *supra* note 16, at 463. The journal’s Symposium issue alone includes ten articles analyzing and critiquing *McIntyre*. *See generally id.* The consensus seems to be that the U.S. Supreme Court got it wrong, or at the very least, greatly muddied the waters of personal jurisdiction jurisprudence. *See, e.g.,* Adam N. Steinman, *The Lay of the Land: Examining the Three Opinions in J. McIntyre Machinery, Ltd. v. Nicastro*, 63 S.C. L. REV. 481, 491 (2012) (“The lack of any majority opinion in *McIntyre* largely thwarts the possibility of ‘greater clarity,’ at least in the short term.”); John Vail, *Six Questions in Light of J. McIntyre Machinery, Ltd. v. Nicastro*, 63 S.C. L. REV. 517, 517 (2012) (“[T]he result in *J. McIntyre Machinery, Ltd. v. Nicastro* is viscerally upsetting, and the plurality opinion is intellectually perplexing. . . . I make no secret that I think the case was wrongly decided.”); Michael H. Hoffheimer, *General Personal Jurisdiction After Goodyear Dunlop Tires Operations, S.A. v. Brown*, 60 U. KAN. L. REV. 549, 550–51 (2012) (“[*McIntyre*] provoked a spirited dissent and was greeted with much criticism and alarm.”) (citations omitted); Paul D. Carrington, *Business Interests and the Long Arm in 2011*, 63 S.C. L. REV. 637, 641 (2012) (“The *McIntyre* case was . . . wrongly decided.”).

21. *See* Stein, *Meaning*, *supra* note 7, at 528 (“I believe that [*Goodyear*] will prove to be one of the wisest and most consequential jurisdictional decisions in recent years. . . . [I]ts apparent constriction of general jurisdiction . . . represents a positive development.”); Feder, *supra* note 15, at 673 (“*Goodyear* . . . goes a long way toward putting general jurisdiction, for the first time, on a solid theoretical footing.”); Peddie, *supra* note 7, at 726 (stating that “the Supreme Court’s decision in *Goodyear* represents a predictable, necessary, and incremental step in the Court’s continuing efforts to keep jurisdictional rules in line with the realities of modern transnational commerce”). *But see* Hoffheimer, *supra* note 20, at 609 (“Justice Ginsberg’s opinion conflates a variety of approaches but fails to communicate a coherent, shared vision of the underlying principles of personal jurisdiction. . . . This Article argues that even the most generous reading of the opinion leaves important practical questions unanswered.”).

22. *See supra* note 7 and accompanying text; Quick, *supra* note 13, at 586 (“While *Goodyear* does clarify that the stream of commerce doctrine is not applicable to general jurisdiction analysis, neither [*Goodyear* nor *McIntyre*] provides the degree of clarity going forward that practitioners had hoped for when the Court agreed to hear the cases in tandem at the beginning of the term.”).

23. 95 U.S. 714 (1877). Since the Court rendered its decision in *Goodyear*, numerous commentators have discussed the history of general personal jurisdiction in great detail. *See, e.g.,* Hoffheimer, *supra* note 20, at 553–69; Quick, *supra* note 13, at 553–62; Peddie, *supra* note 7, at 713–15; Charles W. “Rocky” Rhodes, *Nineteenth Century Personal Jurisdiction Doctrine in a Twenty-First Century World*, 64 FLA. L. REV. 387, 390–412, 422–24 (2012) [hereinafter Rhodes, *Nineteenth Century*]. And, of course, the topic was discussed in the literature at great length prior to the 2011 decision. *See, e.g.,* Robert J. Condlin, “*Defendant Veto*” or “*Totality of the Circumstances*”? *It’s Time for the Supreme Court to Straighten Out the Personal Jurisdiction Standard Once Again*, 54 CATH. U. L. REV. 53, 56–60, 66–72, 96–100 (2004); Charles W. “Rocky” Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 812–18, 829–55 (2004) [hereinafter Rhodes, *Clarifying General Jurisdiction*]; Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 727–72 (1988); Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 614–30 (1988)

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Court found that the defendant's presence within a court's geographic territory was a necessary prerequisite for the exercise of personal jurisdiction over the defendant.²⁴ More importantly, however, the Court tied personal jurisdiction directly to the Due Process Clause of the Fourteenth Amendment by stating that the legitimacy of void judgments—i.e., judgments not entitled to full faith and credit by other states—could be questioned ““on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.””²⁵ While the Court did not state that the Due Process Clause provides the substantive criteria for determining whether a court's exercise of personal jurisdiction is appropriate, later iterations of the Court seem to interpret the opinion that way.²⁶

For example, in its next pivotal case on personal jurisdiction, *International Shoe Co. v. Washington*,²⁷ the Court focused on the “requirements” imposed by the Due Process Clause: “[D]ue process requires only that in order to subject a defendant to a judgment in personam, . . . he have certain minimum contacts with

[hereinafter Twitchell, *Myth*]; von Mehren & Trautman, *supra* note 14, at 1135–44; Kristopher B. Knox, Note, *Davis v. St. John's Health System, Inc.: General Jurisdiction, the Door is Ajar, But How Far Will It Open?*, 56 ARK. L. REV. 647, 650–60 (2003); Kristina L. Angus, Note, *The Demise of General Jurisdiction: Why the Supreme Court Must Define the Parameters of General Jurisdiction*, 36 SUFFOLK U. L. REV. 63, 66–72 (2002); *see also* Quick, *supra* note 13, at 551 (citing Andrew L. Strauss, *Beyond National Law: The Neglected Role of the International Law of Personal Jurisdiction in Domestic Courts*, 36 HARV. INT'L L.J. 373, 381 (1995)) (“It is possible that personal jurisdiction has been the subject of more academic commentary than any other area of American law.”). Therefore, Part II.A. of this Article is not meant to provide a comprehensive history of general personal jurisdiction but rather to offer only a very brief summary in an attempt to give context to the rest of the piece.

24. Wendy Collins Perdue, *What's “Sovereignty” Got to Do with It? Due Process, Personal Jurisdiction, and the Supreme Court*, 63 S.C. L. REV. 729, 733–34 (2012); *see Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citing *Pennoyer*, 95 U.S. at 733) (“Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of court was prerequisite to its rendition of a judgment personally binding him.”); Quick, *supra* note 13, at 556 (citing *Pennoyer*, 95 U.S. at 722) (“The jurisdictional standard at the [turn of the twentieth century], as established in *Pennoyer*, restricted jurisdictional authority to persons or corporate entities ‘present’ within the state's territorial boundaries.”).

25. Perdue, *supra* note 24, at 731 (quoting *Pennoyer*, 95 U.S. at 733); *see also id.* at 730 (“It is [in *Pennoyer*] that the Court . . . , for the first time, introduced the Due Process Clause into personal jurisdiction doctrine.”); Stein, *Meaning*, *supra* note 7, at 534 (“*Pennoyer v. Neff* constitutionalized the law of personal jurisdiction. It held that assertions of jurisdiction by courts that lacked legitimate authority over the defendant violated the Due Process Clause.”) (citations omitted).

26. Perdue, *supra* note 24, at 732–34, 738–39; *see also* Patrick J. Borchers, J. McIntyre Machinery, Goodyear, and the Incoherence of the Minimum Contacts Test, 44 CREIGHTON L. REV. 1245, 1246 (2011) (“It is debatable . . . whether *Pennoyer* actually invoked the Due Process Clause to set substantive limitations on state-court jurisdiction. It is at least as likely that the *Pennoyer* Court simply meant that due process principles give the defendant the right to attack an assertion of jurisdiction under whatever rules the forum state sets, but set no geographical boundaries on the state's assertions of jurisdiction over non-residents.”).

27. 326 U.S. at 310.

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it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”²⁸ The Court explained that:

[w]hether due process is satisfied must depend . . . upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.²⁹

In regard to corporations, the Court stated that “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 arising from dealings entirely distinct from those activities.”³⁰ Thus, the opinion was significant not only for replacing personal jurisdiction’s “presence” requirement with a “contacts” or “conduct” requirement,³¹ but also for introducing—albeit without naming—the concept of general jurisdiction.³²

The Court went on to discuss this new notion of general personal jurisdiction in only two cases prior to rendering its opinion in *Goodyear*³³: *Perkins v. Benguet Consolidated Mining Co.*³⁴ and *Helicopteros Nacionales de Colombia, S.A. v. Hall*.³⁵ In *Perkins*, the Court stated that “[t]he essence of the issue . . . at the constitutional level, is . . . one of general fairness to the corporation.”³⁶ The Court found that the Due Process Clause did not preclude an Ohio state court from exercising jurisdiction over a foreign-country corporation to adjudicate a cause of action that did not arise out of or relate to the corporation’s activity in Ohio, because the company’s president “carried on in Ohio a continuous and systematic supervision” of the company’s activities.³⁷ This “continuous and systematic

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

29. *Id.* at 319 (citations omitted).

30. *Id.* at 318 (citing *Missouri, K. & T.R. Co. v. Reynolds*, 255 U.S. 565 (1921)); *Tauza v. Susquehanna Coal Co.*, 115 N.E. 915 (N.Y. 1917)).

31. Stein, *Meaning*, *supra* note 7, at 533; Peddie, *supra* note 7, at 713–14; Howard B. Stravitz, *Sayonara to Fair Play and Substantial Justice?*, 63 S.C. L. REV. 745, 747–48 (2012) [hereinafter Stravitz, *Sayonara*]; Hoffheimer, *supra* note 20, at 561; Rhodes, *Clarifying General Jurisdiction*, *supra* note 23, at 812–13; Quick, *supra* note 13, at 556–58.

32. See, e.g., Stein, *Meaning*, *supra* note 7, at 535 (quoting *Int’l Shoe*, 326 U.S. at 318) (noting that the *International Shoe* Court’s statement “that 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 [unrelated] causes of action’” is “what we now deem general jurisdiction”); B. Glenn George, *In Search of General Jurisdiction*, 64 TUL. L. REV. 1097, 1103 (1990) (“In modern terminology, the [*International Shoe*] Court acknowledged the use of general jurisdiction in appropriate cases.”).

33. E.g., Stein, *Meaning*, *supra* note 7, at 533; Feder, *supra* note 15, at 674.

34. 342 U.S. 437 (1952).

35. 466 U.S. 408 (1984).

36. *Perkins*, 342 U.S. at 445.

37. *Id.* at 448.

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supervision” consisted of maintaining a temporary company headquarters from which the president drafted business correspondence, distributed paychecks, maintained active company bank accounts, held directors’ meetings, and developed policies.³⁸

In contrast, the *Helicopteros* Court found a Texas state court’s exercise of general jurisdiction over a foreign-country corporation to be inappropriate where the company’s chief executive officer made only one trip to Texas, accepted checks drawn on a Texas bank, made purchases from a Texas company, and sent personnel to Texas for training.³⁹ The Court held that such contacts did not “constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*”⁴⁰ and were, therefore, “insufficient to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment.”⁴¹ While these opinions provide concrete examples of when a corporation is or is not subject to general jurisdiction, they do little to guide the lower courts in terms of the specific nature, number, and frequency of contacts necessary to establish general jurisdiction on any other sets of facts.⁴² Accordingly, even though *Perkins* was the only Supreme Court case to uphold a state court’s exercise of general jurisdiction over a foreign corporation, lower courts greatly expanded the doctrine’s reach beyond the location of a pseudo-headquarters as approved in that case.⁴³ In particular, courts regularly exercise general jurisdiction over corporations that do “continuous and systematic business” or have “regular and consistent commercial activities” in the forum state.⁴⁴ Thus, the general jurisdiction standard was begging for clarification when *Goodyear* reached the Supreme Court.

38. *Id.* at 447–48.

39. *Helicopteros*, 466 U.S. at 415–16.

40. *Id.* at 416.

41. *Id.* at 418–19.

42. *See, e.g.,* Feder, *supra* note 15, at 674–75 (“The standard that most lower courts extracted from [*Perkins* and *Helicopteros*—a requirement of ‘continuous and systematic’ contacts—provided little meaningful guidance. Among other things, it failed to address what types of contacts are necessary, how extensive those contacts should be, and how continuous they must be.”) (citations omitted); Knox, *supra* note 23, at 667 (“[O]nly two Supreme Court cases have been decided on general personal jurisdiction grounds, neither of which adequately defined what constituted a sufficient level of contact to support general jurisdiction. . . . Instead, the Court’s general jurisdiction opinions have done no more than simply list the contacts present and then render an assessment of whether those contacts were ‘systematic and continuous.’”); Angus, *supra* note 23, at 79 (“In making their decisions, neither the *Perkins* Court nor the *Helicopteros* Court established any guidelines as to the parameters of general jurisdiction.”).

43. *See* Feder, *supra* note 15, at 675 (“[L]ower courts have expanded general jurisdiction well beyond [*Perkins*], applying it even to corporations with conspicuously insubstantial connections to the forum.”).

44. Mary Twitchell, *Why We Keep Doing Business With Doing-Business Jurisdiction*, 2001 U. CHI. LEGAL F. 171, 173 [hereinafter Twitchell, *Doing Business*].

B. Goodyear and the “Essentially at Home” Test

On September 28, 2010, the U.S. Supreme Court granted certiorari in *Goodyear Dunlop Tires Operations, S.A. v. Brown* to determine “[w]hether a foreign corporation is subject to general personal jurisdiction, on causes of action not arising out of or related to any contacts between it and the forum state, merely because other entities distribute in the forum state products placed in the stream of commerce by the defendant.”⁴⁵ In that case, North Carolina residents sued the Goodyear Tire and Rubber Company (incorporated in Ohio), as well as three of its foreign subsidiaries (incorporated in Luxembourg, Turkey, and France), in North Carolina state court on a products liability claim resulting from an accident that occurred abroad.⁴⁶ The foreign corporations moved to dismiss the case for lack of personal jurisdiction.⁴⁷ In affirming the trial court’s denial of the motion, the court of appeals held that North Carolina had general jurisdiction over the defendants because the defendants had placed their products (though products different than those at issue in the lawsuit) into the stream of commerce, the defendants had done nothing to prevent the products from reaching North Carolina, and the products had in fact eventually reached North Carolina.⁴⁸ In addition, the court of appeals found that North Carolina had an interest in providing a forum for its aggrieved citizens and that the plaintiffs would be burdened by having to travel abroad to litigate their claims.⁴⁹

After the North Carolina Supreme Court denied review, the foreign defendants petitioned the U.S. Supreme Court for a writ of certiorari, arguing that the North Carolina courts had “vastly exceed[ed] the scope of general jurisdiction permitted by [the U.S. Supreme] Court’s decisions.”⁵⁰ On June 27, 2011, the U.S. Supreme Court issued its first decision regarding general personal jurisdiction since *Helicopteros* was decided twenty-seven years prior.⁵¹ The Court held that even though some of the foreign defendants’ products “had reached North Carolina through the ‘stream of commerce,’” such a connection was “so limited” that it “[did] not establish the ‘continuous and systematic’ affiliation necessary” to allow North Carolina courts to exercise general personal jurisdiction.⁵² Thus, the Court noted, the “petitioners [were] in no sense at home in North Carolina.”⁵³

45. Petition for Writ of Certiorari at i, *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011) (No. 10-76), 2010 WL 2786988, at *i; see Mem. Granting Petition for Cert., 131 S. Ct. 63, 63 (2010).

46. *Goodyear*, 131 S. Ct. at 2850–52.

47. *Id.* at 2852.

48. *Id.*

49. *Id.* at 2853.

50. Petition for Writ of Certiorari, *supra* note 45, at 12.

51. See *Goodyear*, 131 S. Ct. at 2846.

52. *Id.* at 2851.

53. *Id.* at 2857.

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In reaching its decision, the Court determined that the North Carolina courts had conflated the standards for specific and general personal jurisdiction.⁵⁴ Therefore, the Court summarized the differences between the two, as well as the development of general personal jurisdiction doctrine.⁵⁵ In doing so, the Court noted that *International Shoe* remains the “canonical opinion in this area.”⁵⁶ The Court also provided numerous interesting jurisdiction-related tidbits. Perhaps the most tantalizing language offered by the Court is its articulation and explanation of the general jurisdiction test:

A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so “continuous and systematic” as to render them *essentially at home* in the forum State.⁵⁷

...

For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is *fairly regarded as at home*.⁵⁸

Thus, the “essentially at home” standard was born. And, the only explicit help the Court provided for interpreting that standard was its assertion that “[a] corporation’s ‘continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity,’”⁵⁹ and its comment that “*Perkins* . . . remains ‘[t]he textbook case of general jurisdiction appropriately exercised over a foreign corporation.’”⁶⁰

In addition, while the Due Process Clause certainly was not the focus of the Court’s opinion, the Court did frame the question before it as whether the North Carolina state court’s exercise of general jurisdiction was “consistent with the Due Process Clause of the Fourteenth Amendment.”⁶¹ The Court also reiterated its post-*Pennoyer* version of the link between personal jurisdiction and due process—i.e., that the Due Process Clause provides the substantive criteria for determining whether the exercise of personal jurisdiction over a particular

54. *Id.* at 2851; *see id.* at 2855 (“The North Carolina court’s stream-of-commerce analysis elided the essential difference between case-specific and all-purpose (general) jurisdiction.”).

55. *See id.* at 2851, 2853–56.

56. *Id.* at 2853.

57. *Id.* at 2851 (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)) (emphasis added).

58. *Id.* at 2853–54 (citing *Brilmayer et al.*, *supra* note 23, at 728) (emphasis added).

59. *Id.* at 2856 (quoting *Int’l Shoe*, 326 U.S. at 318).

60. *Id.* (quoting *Donahue v. Far E. Air Transp. Corp.*, 652 F.2d 1032, 1037 (D.C. Cir. 1981)).

61. *Id.* at 2853.

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defendant is appropriate.⁶² Thus, the Court rejected the North Carolina Court of Appeals' attempt to justify its decision based on the state's interest in providing a convenient forum for the plaintiffs and retained the focus on the *defendants'* connection to the forum.⁶³

C. Goodyear Aftermath

Although the reaction to the outcome in *Goodyear* has been positive, academics and practitioners alike have lamented the “essentially at home” language the Court used in reaching that outcome.⁶⁴ According to one professor, the opinion “raises as many questions as it answers,”⁶⁵ particularly in regard to the meaning of “essentially” and “at home”⁶⁶ and the number of forums in which a corporation can be considered essentially at home.⁶⁷ While at least one academic believes the language should be disregarded,⁶⁸ most critics tend to agree that *Goodyear* stands for something going forward—the question is what, exactly.

In light of this confusion, several commentators have proposed interpretations of *Goodyear's* language in an attempt to provide guidance to the lower courts.⁶⁹ Some have taken a broad view of the Court's vague language. For

62. *Id.* (“The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant.”).

63. *See id.* at 2857 (“[P]etitioners are in no sense at home in North Carolina. Their attenuated connections to the State fall far short of the [sic] ‘the continuous and systematic general business contacts’ necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State.”) (citations omitted); *see id.* at 2857 n.5 (“As earlier noted, the North Carolina Court of Appeals invoked the State's ‘well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained.’ But ‘[g]eneral jurisdiction to adjudicate has in [United States] practice never been based on the plaintiff's relationship to the forum.’”) (citations omitted).

64. *See infra* text accompanying notes 66–89.

65. Stein, *Meaning*, *supra* note 7, at 528.

66. *Id.* at 533; *see Feder*, *supra* note 15, at 677.

67. Stein, *Meaning*, *supra* note 7, at 533; Feder, *supra* note 15, at 677.

68. *See* Todd David Peterson, *The Timing of Minimum Contacts After Goodyear and McIntyre*, 80 GEO. WASH. L. REV. 202, 217 (2011) (“A better reading of the case would be to focus on the particular facts of *Goodyear* and limit its meaning to the conclusion that the stream-of-commerce theory may not be utilized to establish general jurisdiction.”).

69. This Article discusses the proposed interpretations that are the most thoroughly developed in the literature. However, commentators have cursorily mentioned other potential explanations of *Goodyear*, as well. *See, e.g.*, Linda J. Silberman, *Goodyear and Nicasastro: Observations from a Transnational and Comparative Perspective*, 63 S.C. L. REV. 591, 612 (2012) (predicting that “*Goodyear* will be read to identify a place where the corporation can said to be ‘present’ in the same way that the physical presence of the individual defendant is manifest”); Peterson, *supra* note 68, at 216–17 (stating that, despite language in the opinion that could be interpreted to limit the exercise of personal jurisdiction over a corporation to states in which it is incorporated or has its principal place of business, “a more appropriate interpretation of *Goodyear* would be that some substantial volume of sales made directly into the forum state will continue to be sufficient”); Quick, *supra* note 13 at 593 (“[T]he Court seemed to imply that, depending on a corporation's business structure and operations, there may be an infinite number of places where a business could be found at home” but, “[a]t the very least, it would seem that a company must have formally registered to do business in a state, established a physical

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example, Professor Allan Stein believes that, while the Court has significantly limited the availability of general jurisdiction,⁷⁰ a corporation can be essentially at home in multiple places and that the default location should not be to a corporation's principal place of business (or, "the locus of corporate decision-making").⁷¹ Rather, he thinks the "essentially at home" standard should be a measure of "whether the defendant would consider itself at home in the forum."⁷² Thus, Professor Stein proposes that in order to be subject to general jurisdiction in a particular forum, the corporation must be physically present in the forum, litigation must be as convenient for the corporation there as elsewhere, and the corporation's activities there must be similar to its activities elsewhere.⁷³ In addition to those criteria, Professor Stein advocates for consideration of the presence of employees, manufacturing facilities, and corporate offices in making the determination.⁷⁴

Collyn Peddie, counsel for the respondents in *Goodyear*, similarly rejects the notion that the place in which a corporation is essentially at home is limited to its state of incorporation or principal place of business.⁷⁵ Rather, she believes "the Court imposed a broader, more ambiguous standard"⁷⁶ to allow for flexible application "as corporate structures and means of commerce evolve."⁷⁷ Thus, Ms. Peddie proposes that the Court's ruling allows for the use of an ever-changing test that "take[s] into account a host of plus factors, far too lengthy to list," that should be "give[n] . . . different weight in different circumstances."⁷⁸

Other commentators view the *Goodyear* opinion as much more limiting.⁷⁹ For example, Meir Feder, the attorney who represented Goodyear in the litigation, thinks the Court may have intended for the "essentially at home" language to

presence in the state, appointed agents in the state, and so on before general jurisdiction might attach.").

70. See Stein, *Meaning*, *supra* note 7, at 531–32 (discussing the "essentially at home" standard as a "constraint" that "aligns the Court with many academic commentators . . . who have advocated limiting significantly the operation of general jurisdiction").

71. *Id.* at 546.

72. *Id.* at 538. According to Professor Stein, "[t]his approach is based on the premise that defendants have a unique relationship with their home; the relative singularity of that relationship is at the core of its justification." *Id.* Another "touchstone" in the inquiry is "whether the judge or jury would view imposition of liability on the defendant to be an externality." *Id.* at 543.

73. *Id.* at 545–47. Professor Stein thinks a corporation also should be subject to general jurisdiction in its state or states of incorporation based on the corporation's voluntary consent to the state's governance. *Id.* at 547.

74. *Id.*

75. See Peddie, *supra* note 7, at 713, 717.

76. *Id.* at 713.

77. *Id.* at 717. Ms. Peddie also states that in treating the "essentially at home" language as the "traditional standard . . . , the Court . . . focused on the supervisory aspect of *Perkins*, which, in modern parlance, would have allowed a court to exercise general jurisdiction where the corporate 'brain' resides." *Id.* That, she contends, was the Court's "effort to reconcile *Goodyear* and the *Hertz* line of decisions." *Id.*

78. *Id.* at 726.

79. See *infra* text accompanying notes 81–86.

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refer only to a corporation's state of incorporation and principal place of business.⁸⁰ Likewise, Professor Michael Hoffheimer has suggested that the opinion can be read to restrict general jurisdiction over corporations to those limited locations.⁸¹ However, Professor Hoffheimer ultimately believes that such a restriction "would effect a radical shift" that is not supported by personal jurisdiction precedent.⁸² Thus, he proposes that a "fair reading of the opinion" suggests that, while it will be "unusual," there can be other states in which "extraordinarily high levels of activity may support . . . general jurisdiction."⁸³ He states that determining whether the "essentially at home" standard is satisfied will "require an inquiry into 'activity' and 'contacts,'" such as where the corporation conducts "most" of its business or has "permanent offices, warehouses, or substantial assets."⁸⁵

Somewhere in between Professor Stein's and Ms. Peddie's expansive interpretations and Professor Hoffheimer's and Mr. Feder's narrow interpretations lies Professor Charles Rhodes' theory. He believes that a corporation may be subject to general jurisdiction in places other than the

80. Feder, *supra* note 15, at 677. In drawing this conclusion, Mr. Feder focused on the Court's comparison of "the 'paradigm' forum for general jurisdiction over a corporation with an individual's home state," *id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853–54 (2011)), the Court's reliance on a secondary source in which the author "'identif[ied] domicile, place of incorporation, and principal place of business as paradig[m] bases for the exercise of general jurisdiction,'" *id.* (quoting *Goodyear*, 131 S. Ct. at 2854), and the Court's reference to *Perkins* as "the 'textbook case of general jurisdiction,'" *id.* (quoting *Goodyear*, 131 S. Ct. at 2856). Other commentators have expressed this narrow view of *Goodyear*, as well. See Stephen B. Burbank, *International Civil Litigation in U.S. Courts: Becoming a Paper Tiger?*, 33 U. PA. J. INT'L L. 663, 670 (2012) (stating that *Goodyear* "may require that a corporation either be incorporated or have its principal place of business in the forum"); James R. Pielemeier, *Goodyear Dunlop: A Welcome Refinement of the Language of General Personal Jurisdiction*, 16 LEWIS & CLARK L. REV. 969, 990 (2012) (noting that the *Goodyear* Court "arguably suggested" that a corporate defendant will be "'at home'" only in its state of incorporation and principal place of business) (citation omitted).

81. See Hoffheimer, *supra* note 20, at 581–82 ("Under [a] broader reading, the Court disfavors general jurisdiction over corporations and restricts such jurisdiction to those states in which corporations were traditionally subject to general jurisdiction—the state of incorporation and the principal place of business."). In identifying this possible interpretation, Professor Hoffheimer focuses on the Court's references to *International Shoe* and *Perkins*. See *id.* at 584–85.

82. *Id.* at 587.

83. *Id.* at 592; see also Lem E. Montgomery III & Fred E. (Trey) Bourn III, *Why Expansion of Commerce and Trade Does Not Expand the Reach of the Courts*, 52 FOR THE DEF., NOV. 2011, at 42, 87 ("While the [*Goodyear*] decision did not define 'at home,' a defendant's state of incorporation and principal place of business may be the only states where general jurisdiction can be guaranteed. At a minimum, general jurisdiction will now require a significant business presence in the forum state.").

84. Hoffheimer, *supra* note 20, at 595.

85. *Id.* at 602–03. In an article released just prior to this Article going to press, Professor Carol Andrews argues for an interpretation of *Goodyear* that is similar to Professor Hoffheimer's interpretation. See Carol Andrews, *Another Look at General Personal Jurisdiction*, 47 WAKE FOREST L. REV. 999, 1059, 1061–62 (2012). Professor Andrews believes that only "incorporation and principal place of business are proper bases for general jurisdiction" under *Goodyear*, *id.* at 1059, but that, "in rare cases," a corporation might have more than one principal place of business based on business activities, *id.* at 1062.

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location of its principal place of business and state of incorporation,⁸⁶ but that general jurisdiction “necessitates, at the very minimum, that the nonresident corporation act similarly to a local domiciliary by directing, controlling, and coordinating its operations on a continuous basis from the forum state.”⁸⁷

As is evident from this brief overview of the literature, the *Goodyear* Court spurred a burst of activity from the legal community. Academics and practitioners have attempted to interpret the Court’s “essentially at home” language, producing a wide range of tests in the process.⁸⁸ However, the problem with each of the above interpretations and proposed tests is that they either fail to strictly comply with all of the Court’s language in light of existing precedent, or they run contrary to the interests and goals inherent in due process considerations (i.e., fairness, reasonableness, and predictability for the defendant) and jurisdictional analyses (simplicity and administrative efficiency).

III. EXAMINING THE “PRECEDENT”: *HERTZ* AND THE “PRINCIPAL PLACE OF BUSINESS” TEST

The questions left open in *Goodyear* are significant. And, looking at the Supreme Court’s track record in addressing general personal jurisdiction, chances are that it will not speak to this issue again for some time. However, the Court did tackle a relatively similar issue in the not-so-distant past: the location of a corporation’s principal place of business for purposes of diversity subject matter jurisdiction.⁸⁹

“Subject matter jurisdiction” concerns a court’s ability to adjudicate a case based on the nature of the controversy.⁹⁰ Thus, in addition to the requirement that a court have personal jurisdiction over a defendant, as discussed above, a party’s

86. Rhodes, *Nineteenth Century*, *supra* note 23, at 426.

87. *Id.* at 433. Professor Rhodes bases the requirement for maintaining some sort of locus of control in the forum state on the Court’s opinion in *Hertz Corp. v. Friend*, in which it defined a corporation’s “principal place of business” for purposes of diversity subject matter jurisdiction. *See id.* at 429 n.258; *infra* Part III. He notes that “the key attribute of a corporation’s ‘home’ in other legal contexts [including subject matter jurisdiction] is whether it directs and manages *the majority* of its business operations from [a particular] state.” Rhodes, *Nineteenth Century supra* note 23 at 428 (emphasis added). Therefore, Professor Rhodes contends, because the *Goodyear* Court softened the “home” language with modifiers like “essentially” and “fairly regarded as,” it is possible that multiple states may exercise general jurisdiction over a given corporation. *See id.* at 428–29.

88. *See supra* Part II.C.

89. *See Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).

90. *See, e.g.*, Frederic M. Bloom, *Jurisdiction’s Noble Lie*, 61 STAN. L. REV. 971, 987 (2009) (“[Subject matter jurisdiction] asks whether a particular court has the authority to resolve a particular type of suit. . . . It depends . . . on substantive law, party citizenship, and the basis of the litigants’ claims.”) (citation omitted); BLACK’S LAW DICTIONARY 870 (8th ed. 2004) (defining “subject-matter jurisdiction” as “[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things”); 13 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3522 (3d ed. 2009) (discussing over which types of cases state and federal courts have subject matter jurisdiction)[hereinafter WRIGHT & MILLER].

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ability to hale a defendant into court requires that the court have subject matter jurisdiction over the case.⁹¹ Federal courts have limited subject matter jurisdiction⁹² and, generally speaking, can hear cases involving a question of federal law and cases between citizens of different states (even if those cases involve only questions of state law)⁹³. The latter type of subject matter jurisdiction is called “diversity jurisdiction.”⁹⁴ While an individual’s citizenship is relatively easy to ascertain, the question of how to determine a corporation’s citizenship for purposes of diversity jurisdiction was debated from the outset and continued until 2010 when the Court issued its unanimous opinion in *Hertz Corp. v. Friend*.⁹⁵

A. *Corporate Citizenship and the Pre-Hertz “Principal Place of Business” Tests*

The Supreme Court began dealing with questions of corporate citizenship as early as 1809.⁹⁶ Because corporations were considered “intangible” and

91. See WRIGHT & MILLER, *supra* note 90, § 3522.

It is a principle of first importance that the federal courts are tribunals of limited subject matter jurisdiction. . . . They are empowered to hear only those cases that (1) are within the judicial power of the United States, as defined in the Constitution, and (2) that have been entrusted to them by a jurisdictional grant by Congress. A federal court’s entertaining a case that is not within its subject matter jurisdiction is no mere technical violation; it is nothing less than an unconstitutional usurpation of state judicial power.

Id. (citations omitted).

92. *Id.*

93. See U.S. CONST. art. III, § 2, cl. 1.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the citizens thereof, and foreign States, Citizens or Subjects.

Id.

94. See WRIGHT & MILLER, *supra* note 90, § 3602. Congress currently limits diversity jurisdiction to cases in which the amount in controversy exceeds \$75,000, exclusive of interest and costs. See 28 U.S.C. § 1332(a) (2012). The diversity of citizenship statute more fully outlines the parameters:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state . . . ;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state . . . as plaintiff and citizens of a State or of different States.

Id.

95. *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010).

96. See *id.* at 1188 (discussing *Bank of United States v. Deveaux*, 5 Cranch 61 (1809)).

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“artificial,”⁹⁷ the Court found that a corporation should be deemed a citizen of the states of which its shareholders were citizens.⁹⁸ In 1844, the Court simplified the test and held that a corporation was a citizen of its state of incorporation.⁹⁹ However, the rationale for allowing diversity jurisdiction in the first place was to provide a forum where out-of-state parties would not suffer from local prejudice,¹⁰⁰ and it became clear that corporations were abusing the system.¹⁰¹ A corporation with substantial business activities in a given state (and which was, therefore, not likely to suffer prejudice in that state) was able to remove cases to federal court when sued by citizens of that state simply because it had been incorporated elsewhere.¹⁰² Thus, in order to reduce the burden on the federal courts and to better effectuate the intent behind diversity jurisdiction, Congress decided in 1958 that corporations should have dual citizenship¹⁰³—i.e., corporations were deemed to be citizens of their state or states of incorporation and of the state in which their “principal place of business” was located.¹⁰⁴

97. *Id.* (quoting *Deveaux*, 5 Cranch at 86).

98. *See id.* (citing *Deveaux*, 5 Cranch at 91–92) (“[In *Deveaux*,] the Court held that a corporation could invoke the federal courts’ diversity jurisdiction based on a pleading that the corporation’s shareholders were all citizens of a different State from the defendants, as ‘the term citizen ought to be understood as it is used in the constitution, and as it is used in other laws. That is, to describe the real persons who come into court, in this case, under their corporate name.’”).

99. *See id.* (citing *Louisville, C. & C.R. Co. v. Letson*, 2 How. 497 (1844)) (“[In *Letson*, the Court] held that a corporation was to be deemed an artificial person of the State by which it had been created, and its citizenship for jurisdictional purposes determined accordingly.”).

100. *See id.* (citing S. REP. NO. 72-530, at 2, 4–7 (1932)) (stating that “diversity jurisdiction’s basic rationale [was] opening the federal courts’ doors to those who might otherwise suffer from local prejudice against out-of-state parties”); S. REP. NO. 85-1830, at 4 (1958) (noting that diversity jurisdiction is meant to protect foreign parties “against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the Federal courts”); GENE R. SHREVE & PETER RAVEN-HANSEN, UNDERSTANDING CIVIL PROCEDURE § 5.04, at 131 (4th ed. 2009) (“The traditional justification for diversity jurisdiction is that it protects out-of-state litigants from local bias.”).

101. *See Hertz*, 130 S. Ct. at 1188 (citing S. REP. NO. 72-530, at 4) (“Through its choice of the State of incorporation, a corporation could manipulate federal-court jurisdiction, for example, opening the federal courts’ doors in a State where it conducted nearly all its business by filing incorporation papers elsewhere.”); S. REP. NO. 72-530, at 4 (“Since the Supreme Court has decided that a corporation is a citizen . . . it has become a common practice for corporations to be incorporated in one State while they do business in another. And there is no doubt but that it often occurs simply for the purpose of being able to have the advantage of choosing between two tribunals in case of litigation.”).

102. *Hertz*, 130 S. Ct. at 1188; S. REP. NO. 72-530, at 4; S. REP. NO. 85-1830, at 4, *as reprinted in* 1958 U.S.C.C.A.N. 3099, 3101–02.

103. S. REP. NO. 85-1830, at 3, *as reprinted in* 1958 U.S.C.C.A.N. 3099, 3101 (discussing the corporate dual citizenship requirement and stating that “it will ease the workload of our Federal courts by reducing the number of cases involving corporations which come into Federal district courts on the fictional premise that a diversity of citizenship exists”); *see Hertz*, 130 S. Ct. at 1188–90 (discussing the genesis of the corporate dual citizenship definition as including a belief by many members of Congress that corporations were manipulating federal diversity jurisdiction and a belief by federal judges that their dockets contained too many diversity cases).

104. Pub. L. No. 85-554, 72 Stat. 415, 415 (1958) (codified at 28 U.S.C. § 1332). In December 2011, after both *Hertz* and *Goodyear* were decided, Congress amended the definition of corporate citizenship in § 1332 to provide that “a corporation shall be deemed to be a citizen of every State and foreign state by which it

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Congress borrowed the “principal place of business” language from the Bankruptcy Act and anticipated that the lower courts would be guided by precedent interpreting that statute.¹⁰⁵ At the time, however, courts had been applying two different tests in that context.¹⁰⁶ As a result, the courts were left on their own to determine how to interpret “principal place of business” for purposes of diversity jurisdiction, and several tests surfaced.¹⁰⁷ The Seventh Circuit Court of Appeals applied a “nerve center” test, which focused on the corporation’s managerial activities and under which a “corporation’s brain”—or the source of its decision-making, control, and direction—was considered to be its principal place of business.¹⁰⁸ The Third Circuit applied the “corporate activities” test, which focused on the corporation’s production- and service-related activities and provided that a corporation’s principal place of business was where the majority of the corporation’s manufacturing facilities, sales centers, employees, and property were located.¹⁰⁹ In addition, some courts utilized both the “nerve center” and “corporate activities” tests. For example, the Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits applied the “total activity” test, which combined the “nerve center” and “corporate activities” tests by considering the location of both the managerial and production- and service-related activities.¹¹⁰ The First, Second, Fourth, and Ninth Circuits kept both tests in their arsenal, applying one or the other based on certain presumptions.¹¹¹ “Not surprisingly, different circuits (and

has been incorporated and of the State *or foreign state* where it has its principal place of business” 28 U.S.C. § 1332(c)(1) (emphasis added); see Pub. L. No. 112-63, 125 Stat. 758, 758–59 (2011) (codified at 28 U.S.C. § 1332).

105. *Hertz*, 130 S. Ct. at 1189–90 (citations omitted); S. REP. NO. 72-530, at 5.

106. Lindsey D. Saunders, Note, *Determining a Corporation’s Principal Place of Business: A Uniform Approach to Diversity Jurisdiction*, 90 MINN. L. REV. 1475, 1478 (2006) (“Around the time of the 1958 amendment, courts used two tests to determine a corporation’s principal place of business under the Bankruptcy Act: the ‘home office’ test and the ‘actual place of operations’ test.”) (citing Note, *A Corporation’s Principal Place of Business for Purposes of Diversity Jurisdiction*, 44 MINN. L. REV. 308, 316 (1959)).

107. See *Hertz*, 130 S. Ct. at 1190–92; Saunders, *supra* note 106, at 1478–79. This Section provides a very brief overview of the various “principal place of business” tests in use prior to the Court’s decision in *Hertz*. For a more thorough discussion of the tests, see Saunders, *supra* note 106, at 1479–86 and 13F CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3625 (3d ed. 2009).

108. *Wis. Knife Words v. Nat’l Metal Crafters*, 781 F.2d 1280, 1282 (7th Cir. 1986); see Saunders, *supra* note 106, at 1479 (citations omitted) (“The nerve center test considers a corporation’s principal place of business to be the place from which corporate decision making, policy making, control, and direction emanate. . . . Under this test, the corporation’s principal place of business will usually, if not always, be the state in which its executive headquarters are located.”).

109. See *Kelly v. U.S. Steel Corp.*, 284 F.2d 850, 854 (3d Cir. 1960); Saunders, *supra* note 106, at 1480–81 (citations omitted) (“Under the corporate activities test, a corporation is a citizen of the state where the majority of the corporation’s production and service activities are located.”).

110. Saunders, *supra* note 106, at 1481–82 (citing *Teal Energy USA, Inc. v. GT, Inc.*, 369 F.3d 873, 877 (5th Cir. 2004); *Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 163 (6th Cir. 1993); *Capitol Indem. Corp. v. Russellville Steel Co.*, 367 F.3d 831, 836 (8th Cir. 2004); *Gadlin v. Sybron Int’l Corp.*, 222 F.3d 797, 799 (10th Cir. 2000); *MacGinnitie v. Hobbs Group, LLC*, 420 F.3d 1234, 1239 (11th Cir. 2005)).

111. *Id.* at 1484–86 (citing *Diaz-Rodriguez v. Pep Boys Corp.*, 410 F.3d 56, 61 (1st Cir. 2005); *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979); *Peterson v. Cooley*, 142 F.3d 181,

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sometimes different courts within a single circuit) . . . applied these highly general multifactor tests in different ways.”¹¹² This lack of uniformity prompted the Supreme Court to take action.

B. Hertz and the “Nerve Center” Test

On June 8, 2009, the Supreme Court granted certiorari in *Hertz Corp. v. Friend* to resolve the Circuit split regarding application of the diversity jurisdiction statute’s “principal place of business” language.¹¹³ In that case, two individual California citizens sued Hertz Corporation in California state court for violations of California state laws.¹¹⁴ Hertz sought to remove the case to federal court on the basis of diversity jurisdiction.¹¹⁵ The federal district court applied the Ninth Circuit’s “principal place of business” test, which, in the case of a corporation with far-flung operations, considered the principal place of business to be the state in which the corporation had the greatest amount of business activities.¹¹⁶ Only if no state contained a “substantial predominance” of business activities would the court consider the corporation’s principal place of business to be the nerve center.¹¹⁷ Because Hertz admittedly had significantly more of each relevant business activity in California than in any other state, the district court found that Hertz was a citizen of California even though its corporate headquarters was located in New Jersey.¹¹⁸ Accordingly, the court remanded the

184 (4th Cir. 1998); *Tosco Corp. v. Cmtys. for a Better Env’t*, 236 F.3d 495, 500 (9th Cir. 2001)).

112. *Hertz*, 130 S. Ct. at 1191 (citation omitted).

113. *See id.* at 1187; Mem. Granting Petition for Writ of Certiorari, *Hertz*, 130 S. Ct. 1181 (No. 08-1107); Petition for Writ of Certiorari at i, 8–9, *Hertz*, 130 S. Ct. 1181 (No. 08-1107) [hereinafter Petition for Writ of Certiorari, *Hertz*].

114. *Hertz*, 130 S. Ct. at 1186. The two individuals also sought relief on behalf of a class of California citizens. *Id.*

115. *Id.*

116. Order Granting Plaintiffs’ Motion to Remand, *Friend v. Hertz Corp.*, No. C-07-5222 MMC, 2008 WL 7071465, at *1 (N.D. Cal. Jan. 15, 2008).

117. *Id.* The U.S. District Court for the Northern District of California’s full articulation of the Ninth Circuit’s test was as follows:

Where the majority of a corporation’s business activity does not take place in one state, the state in which the corporation’s business activity is “significantly larger than any other state in which the corporation conducts business” is the corporation’s principal place of business. In determining whether a corporation’s business activity “substantially predominates in a given state,” a district court must make a “comparison of that corporation’s business activity in the state at issue to its business activity in other individual states.” In making such comparison, the court “employs a number of factors,” including “the location of employees, tangible property, production activities, sources of income, and where sales take place.” If, however, “no state contains a substantial predominance of a corporation’s business activities,” the corporation’s principal place of business is its “nerve center,” which is “the state where the majority of its executive and administrative functions are performed.”

Id. (citations omitted).

118. *Id.* at *2.

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case to state court because there was no diversity of citizenship among the parties.¹¹⁹

Hertz appealed the decision up to the U.S. Supreme Court, arguing that a court cannot disregard the location of a corporation's headquarters in determining its principal place of business for purposes of diversity jurisdiction.¹²⁰ On February 23, 2010, the Court issued its seminal decision in *Hertz*, finally providing a uniform test for determining a corporation's principal place of business.¹²¹ The Court held that "the phrase 'principal place of business' refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities."¹²² The Court used the lower federal courts' terminology and referred to this location as a corporation's "nerve center," stating that "the 'nerve center' will typically be found at a corporation's headquarters."¹²³ Therefore, Hertz's principal place of business was located in New Jersey.¹²⁴

In rendering its decision, the Court "place[d] primary weight upon the need for judicial administration of a jurisdictional statute to remain as simple as possible."¹²⁵ Thus, in addition to the statutory language- and intent-based rationales the Court used to explain its decision,¹²⁶ the Court emphasized the importance of administrative simplicity:

[A]dministrative simplicity is a major virtue in a jurisdictional statute. Complex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims. . . . Judicial resources too are at stake. Courts have an independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it. So courts benefit from straightforward rules under which they can readily assure themselves of their power to hear a case.¹²⁷

The Court also highlighted the importance of predictability to corporations and plaintiffs alike—the former when making business decisions and the latter when

119. *Id.* at *3.

120. Petition for Writ of Certiorari, *Hertz*, *supra* note 113, at *i.

121. *See* *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1185–86 (2010).

122. *Id.* at 1186.

123. *Id.*

124. *Id.* at 1195.

125. *Id.* at 1186.

126. *Id.* at 1192 (quoting 12 OXFORD ENGLISH DICTIONARY 495 (2d ed. 1989)) (reasoning that Congress' use of the singular "place" in conjunction with the word "principal" "require[d] [the Court] to pick out [one] 'main, prominent' or 'leading' place"); *id.* at 1194 (stating that the gross income test discussed in the statute's legislative history "offers a simplicity-related interpretative benchmark...").

127. *Id.* at 1193 (citations omitted).

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deciding whether to bring a lawsuit in state court versus federal court.¹²⁸ According to the Court, the “nerve center” test provides administrative simplicity and predictability because it “suggests a single location” rather than considering business activities that often “lack a single principal place where they take place.”¹²⁹

Another important consideration acknowledged throughout the Court’s opinion is “the general purpose of diversity jurisdiction, i.e., an effort to find the State where a corporation is least likely to suffer out-of-state prejudice when it is sued in a local court.”¹³⁰ The Court discussed this underlying goal as the genesis of the “principal place of business” language.¹³¹ After positing that the plethora of “principal place of business” tests reflected the difficulty the lower courts had in effectuating that objective,¹³² the Court indicated that the “nerve center” test should in most cases identify the state where the corporation will suffer the least prejudice.¹³³ Thus, the Court ended a decades-long debate regarding an important jurisdictional question by focusing on efficiency, predictability, and fairness.

IV. APPLYING THE “PRECEDENT”: USING *HERTZ* TO EXPLAIN *GOODYEAR*

Until the confusion surrounding the Court’s new “essentially at home” standard is resolved, the lower courts will apply their own interpretations, leaving general jurisdiction in much the same condition as diversity jurisdiction was in pre-*Hertz*. Therefore, a more specific definition is needed, and, fortunately, *Hertz* can help. While *Hertz* certainly is not binding precedent on the issue of general personal jurisdiction, it should be used as persuasive evidence in deciphering the Court’s language in *Goodyear*.¹³⁴ In both cases, the Court was presented with the same question: where are a corporation’s contacts so significant that it will not suffer from local prejudice if forced to defend against litigation in state court? In *Hertz*, the Court determined that location to be the corporation’s “nerve center.”

128. *Id.*

129. *Id.* at 1193–94.

130. *Id.* at 1192.

131. *Id.* at 1188.

132. *Id.* at 1192.

133. *See id.* at 1194 (“We . . . recognize that the use of a ‘nerve center’ test may in *some* cases produce results that seem to cut against the basic rationale for 28 U.S.C. § 1332”) (emphasis added).

134. A quick Westlaw search reveals that, as of the end of April 2013, only three courts had discussed these two decisions in the same opinion. *See* Bauman v. DaimlerChrysler Corp., 676 F.3d 774, 775, 778 n.4 (9th Cir. 2011) (O’Scannlain, J., dissenting); Global Tech. Int’l, Ltd. v. Cont’l Auto. Sys., Inc., C/A No. 0:12-3041-CMC, 2013 WL 1809773, at *1–2, *4 (D.S.C. Apr. 29, 2013); Hallal v. Vicis Capital Master Fund Ltd., Civ. Action No. 12-10166-NMG, 2013 WL 1192384, at *5 n.8, *8 (D. Mass. Feb. 25, 2013). In only one of those opinions did the court appear to link *Hertz*’s “principal place of business” test with *Goodyear*’s “general personal jurisdiction” test. *See Global Tech. Int’l, Ltd.*, 2013 WL 1809773, at *4 (stating that a corporation’s filing of a form listing its executive offices in a given location was not sufficient to establish that location as the corporation’s principal place of business under *Hertz*, and so the exercise of general jurisdiction in that location was not appropriate under *Goodyear*) (citations omitted).

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In *Goodyear*, the Court declared that location to be wherever the corporation is “essentially at home.” Because the reasoning behind the outcomes was so similar, the opinions should be reconciled. Doing so adds meaning to the Court’s express language and use of precedent in *Goodyear* and explains why the Court opted to announce such a seemingly vague test. Moreover, incorporating *Hertz* creates a general jurisdiction test that addresses both due process and judicial administration goals by producing fair, predictable, and reasonable results in a simple and administratively-efficient manner—something the Court surely intended.

A. *Interpreting “Essentially at Home” to Make the Most Sense of the Particular Language Used by the Court in Light of Existing Precedent*

Many commentators have already thoroughly analyzed the Court’s language in *Goodyear*. As discussed above, some believe the Court meant to limit general jurisdiction to only a corporation’s state of incorporation and principal place of business.¹³⁵ In addition to those locales, others believe the Court signaled permission for a corporate defendant to be haled into court in any state in which the corporation conducts substantial business activities¹³⁶ or from which corporate officers issue some level of control over the enterprise.¹³⁷ Those interpretations, however, do not fully comport with the Court’s express language, its references to secondary materials, its reliance on precedent, or its continual rejection of general jurisdiction (except in *Perkins*). Moreover, they do not align with the Court’s recent opinion in *Hertz*. Rather, the interpretation that best explains the Court’s “essentially at home” language, and makes the most sensible use of precedent, is that a corporation is subject to general jurisdiction in its state of incorporation and in the one state where its principal place of business, or nerve center, is located. In the event the corporation does not have a nerve center located within the United States, it is subject to general jurisdiction in the one state, if any, in which it has a pseudo-nerve center (à la *Perkins*).¹³⁸ If there is no such state, the plaintiff must look to specific jurisdiction for recourse.

135. See *supra* note 80 and accompanying text.

136. See *supra* notes 70–79 and 86–87 and accompanying text.

137. See *supra* notes 86–87 and accompanying text.

138. *Contra* Taylor Simpson-Wood, *In the Aftermath of Goodyear Dunlop: Oyez! Oyez! Oyez! A Call for a Hybrid Approach to Personal Jurisdiction in International Products Liability Controversies*, 64 BAYLOR L. REV. 113, 154 (2012) (“[T]he Court’s . . . confinement of general personal jurisdiction to *Perkinsesque* scenarios . . . w[as] not pre-ordained by precedent.”) (citations omitted).

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1. A Corporation is “at Home” in Its State of Incorporation and in the State Where Its Nerve Center is Located

The Court’s express language in *Goodyear* demonstrates its intent to allow for the operation of general jurisdiction over a corporation in a maximum of two states: its state of incorporation¹³⁹ and the state in which it has its principal place of business.¹⁴⁰ This intent is evident in the Court’s repeated use of the phrase “at home” to indicate the locations in which a corporation can properly be subject to general jurisdiction.¹⁴¹ For example, the Court equated the place in which a corporation can be “fairly regarded as at home” with an “individual’s domicile,” noting that those locations are the “paradigm forum[s] for the exercise of general jurisdiction.”¹⁴² Because it has long been recognized that a corporation is “domiciled” in its state of incorporation¹⁴³ and in the state in which it has its principal place of business,¹⁴⁴ the Court’s express “at home” language should be interpreted to refer only to those locations.¹⁴⁵

139. Corporations typically are incorporated in only one state. Brilmayer et al., *supra* note 23, at 735. However, there may be special instances in which a corporation will have more than one state of incorporation. See Hoffheimer, *supra* note 20, at 596. In those instances, the corporation is subject to general jurisdiction in each of those states.

140. See, e.g., Feder, *supra* note 15, at 677 (noting that the Court hinted at limiting the exercise of general jurisdiction over a corporation to only its state of incorporation and the state housing its principal place of business). But see Peddie, *supra* note 7, at 713 (noting that “[the Court] could easily have restricted the place in which a court could exercise general jurisdiction over a foreign corporation to the state of the corporation’s principal place of business or incorporation,” but that it did not); *id.* at 720.

141. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851, 2854, 2857 (2011). Professor Todd Peterson believes that Justice Ginsburg’s use of the “at home” phrase to describe general jurisdiction in *McIntyre* (the companion case to *Goodyear*) is also “strong[] evidence” of the Court’s “intent[] to restrict the applicability of general jurisdiction to a defendant’s state of incorporation or principal place of business.” Peterson, *supra* note 68, at 216 (citing *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2797 (2011) (Ginsburg, J., dissenting)). However, Professor Peterson ultimately does not believe that is how the opinion should be interpreted. See *id.* at 216–17.

142. *Goodyear*, 131 S. Ct. at 2853–54.

143. Hoffheimer, *supra* note 20, at 595.

144. See Brilmayer et al., *supra* note 23, at 733 (“The law treats corporations like legal persons, and the place of incorporation and the principal place of business are both analogous to domicile.”); Twitchell, *Myth*, *supra* note 23, at 633 (“[G]eneral jurisdiction is almost always available at a defendant’s ‘home base.’ Courts routinely exercise jurisdiction over individual defendants who are forum domiciliaries or habitual residents, and over corporations where they are incorporated or where they have their principal place of business, without regard to the nature of the cause of action.”). The Court itself said as much in *McIntyre*, the companion case to *Goodyear*: “Citizenship or domicile—or, by analogy, incorporation or principal place of business for corporations—also indicates general submission to a State’s powers.” *McIntyre*, 131 S. Ct. at 2787 (citing *Goodyear*, 131 S. Ct. at 2854) (emphasis added). Over forty years ago, Professors von Mehren and Trautman actually defined a corporation’s domicile as its state of incorporation and *nerve center*:

From the beginning in American practice, general adjudicatory jurisdiction over corporations and other legal persons could be exercised by the community with which the legal person had its closest and most continuing legal and factual connections. The community that chartered the corporation and in which it has its head office occupies a position somewhat analogous to that of the community of a natural person’s domicile and habitual residence. If a corporation’s managerial and administrative center is in a state other than its state of incorporation, presumably general

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The Court's references to scholarly works also speak volumes about the Court's intent.¹⁴⁶ For example, the Court relied on a seminal general jurisdiction article authored by Professor Lea Brilmayer for the proposition that a corporation is located "at home" in its "place of incorporation" and "principal place of business."¹⁴⁷ In doing so, the Court described Professor Brilmayer's article as "identifying domicile, place of incorporation, and principal place of business as 'paradig[m]' bases for the exercise of general jurisdiction."¹⁴⁸ This is, presumably, where the Court obtained the "paradigm" language it used in describing the "at home" test.¹⁴⁹ Because the U.S. Supreme Court cites to journal articles in less than one-third of its opinions¹⁵⁰ (and is even less likely to do so when the issue is not one of first impression¹⁵¹), the inclusion of this definition is particularly meaningful.

The Court's intended interpretation of the phrase "principal place of business" is equally apparent in the Court's express language and choice of source materials. It is—or should be—safe to assume that by using a legal term of art the Court meant for it to be given its legal definition. Therefore, because the Court recently decided in *Hertz* that a corporation's principal place of business is not to be determined by the location of its corporate activities or physical property, but rather that the principal place of business is the *one* place from which "the corporation's high level officers direct, control, and coordinate the corporation's activities,"¹⁵² the phrase should be interpreted the same in this context.¹⁵³ Although further explanation of this clear term of art was unnecessary,

jurisdiction should exist in either community.

von Mehren & Trautman, *supra* note 14, at 1141–42; *see also* Twitchell, *Myth*, *supra* note 23, at 669 ("Because a corporation's headquarters is the functional equivalent of an individual defendant's domicile, home base jurisdiction should be available wherever the corporation is headquartered.").

145. *Cf.* Hoffheimer, *supra* note 20, at 585 ("The Court's opinion identifies two places where a corporation will be 'at home' and, thus, subject to general jurisdiction: the place of incorporation and the principal place of business.").

146. *Goodyear*, 131 S. Ct. at 2853–56.

147. *Id.* at 2854 (citing Brilmayer et al., *supra* note 23, at 728).

148. *Id.* (quoting Brilmayer et al., *supra* note 23, at 728).

149. *See id.* at 2853–54.

150. Whit D. Pierce & Anne E. Reuben, *The Law Review is Dead; Long Live the Law Review: A Closer Look at the Declining Judicial Citation of Legal Scholarship*, 45 WAKE FOREST L. REV. 1185, 1203 tbl.6, 1206 (2010) (showing that the U.S. Supreme Court cited to a "law review" article, a "law journal" article, or both in 31.4% of its opinions between 2005 and 2009).

151. *See id.* at 1206 ("[T]he Court is generally more likely to cite a legal journal in a case in which it mentions the words 'first impression.'").

152. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186 (2010).

153. *Cf.* *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005) ("[T]he normal rule of statutory construction [is] that identical words used in different parts of the same statute are generally presumed to have the same meaning."). Professor Andrews also recently suggested that the *Hertz* "nerve center" test can be used to identify a corporation's principal place of business for purposes of general jurisdiction. *See* Andrews, *supra* note 85, at 1060 ("The state of a corporation's principal place of business—at least as currently defined by the Court for purposes of subject matter jurisdiction—also passes the *Goodyear* at-home test."). She contends that, "in every

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the Court did reiterate that “‘continuous activity of some sorts’” is insufficient to confer general jurisdiction.¹⁵⁴ And, notably, Professor Brilmayer—in the very article relied upon by the *Goodyear* Court when defining the “paradigm bases” of general jurisdiction—explicitly *rejected* “activities” as a “paradigm bas[i]s of general jurisdiction.”¹⁵⁵ Thus, gone are the days when a corporation could be haled into court based on “doing-business” factors such as the amount of sales, warehouses, factories, or employees it has in a given state.¹⁵⁶

The Court’s repeated reliance on yet another pivotal personal jurisdiction article¹⁵⁷ (this one authored by Professors Arthur T. von Mehren and Donald T. Trautman), coupled with its reference to *International Shoe* as the “canonical opinion” in personal jurisdiction jurisprudence,¹⁵⁸ provides further support for both of the above propositions (i.e., that “at home” for a corporation means its state of incorporation and principal place of business, and that “principal place of business” means nerve center). In laying the groundwork for its decision in *Goodyear*, the Court used Professor von Mehren’s and Professor Trautman’s article to help define the contours of specific and general jurisdiction.¹⁵⁹ The Court then referenced the article for further reading.¹⁶⁰ Within the pages cited by the Court is this statement:

Th[e] approach [in *International Shoe*] suggests that, absent the kind of total, close, and continuing relations to a community implied in incorporation or in the location of a head office within a state, jurisdiction over legal persons—aside perhaps from the possibility of

case, the state of a corporation’s nerve center under *Hertz* also should qualify as the corporation’s home” under *Goodyear*. *Id.* at 1060–61. However, according to Professor Andrews, the nerve center is not the only permissible location of a corporation’s principal place of business under the *Goodyear* test: “In cases where the vast bulk of operations are in a single state other than the nerve center, the corporation might be at home in two states—the nerve center and the operations state.” *Id.* at 1061.

154. *Goodyear*, 131 S. Ct. at 2856 (quoting *Int’l Shoe Corp. v. Washington*, 326 U.S. 310, 318 (1945)).

155. Brilmayer et al., *supra* note 23, at 735. Professor Brilmayer did, however, still believe that general jurisdiction could be asserted based on a corporation having a significant amount of activities in the forum state. *See id.* at 735–36 (“A defendant’s activities in the forum can be the basis for either general or specific jurisdiction The type of jurisdiction being asserted sets the quantum of contacts required; . . . general jurisdiction requires proof of continuous and systematic activities.”).

156. *See, e.g.,* Feder, *supra* note 15, at 680 (quoting Twitchell, *Doing Business, supra* note 44, at 173) (stating that *Goodyear* significantly narrows the scope of general jurisdiction and should be interpreted to end the notion of “doing business” jurisdiction, which made “general jurisdiction . . . available in any state in which the defendant ha[d] ‘regular and consistent commercial activities’”); Rhodes, *Nineteenth Century, supra* note 23, at 430 (“[T]he [*Goodyear*] Court undoubtedly rejected the reasoning of many lower court decisions that doing some quantum of business with forum residents alone sufficed for the defendant’s amenability to any cause of action.”); Pielemeier, *supra* note 80, at 989 (“One fairly clear consequence of [*Goodyear*] is that general jurisdiction based on regular sales in the forum is clearly dead.”).

157. *See* von Mehren & Trautman, *supra* note 14.

158. *Goodyear*, 131 S. Ct. at 2853.

159. *See id.* at 2851 (citing von Mehren & Trautman, *supra* note 14, at 1136).

160. *See id.* at 2853 (citing von Mehren & Trautman, *supra* note 14, at 1144–63).

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limited general jurisdiction based on the location of assets—should take the form of specific jurisdiction.¹⁶¹

In other words, scholars so respected by the Court as to earn multiple citations in a mere nine-page opinion interpreted the decision the Court deemed “canonical” to mean that general jurisdiction is usually only appropriate in a corporation’s state of incorporation and where its headquarters is located. Based on this myriad of evidence, it is apparent the *Goodyear* Court also was referring to those two locations when it used the phrase “at home.”

2. *“Essentially” Creates a Cushion for Exercising General Jurisdiction over Foreign-Country Corporations*

Thus far in the analysis, it is evident that the Court, through the “at home” language, has retained the longstanding notion that a corporation is subject to general jurisdiction in the states in which it is incorporated and has its principal place of business.¹⁶² Based on the Court’s earlier opinion in *Hertz*, it is also clear that a corporation’s sole principal place of business is its nerve center, or locus of decision-making. What is less clear is what the *Goodyear* Court meant by “essentially.”¹⁶³ Certainly, a purely “state of incorporation and principal place of business” test would have been clear and easy to articulate. For example, “[a] corporation is subject to general jurisdiction in the state in which it is incorporated and in the state in which it has its principal place of business.” Or, “a corporation is subject to general jurisdiction in the states in which it is at home.” Instead, however, the Court coined a new phrase (“essentially at home”),¹⁶⁴ signaling its adoption of something more.

The something more implied by the Court’s use of “essentially” is the Court’s allowance for a cushion in order to permit a court’s exercise of general jurisdiction over foreign-country corporations that do not have a principal place of business located within the United States. Again, this interpretation is fully explained by the Court’s language and references to precedent. The Court mandates consideration of the foreign corporation’s “affiliations with the State” in order to determine whether the corporation is “essentially at home in the forum State.”¹⁶⁵ Using “State,” with a capital “S,” shows that the Court is referring only to affiliations with the fifty states within the United States and the United States’

161. von Mehren & Trautman, *supra* note 14, at 1144.

162. The Court did not explicitly state this rule, perhaps taking it as a given, or perhaps because the determination of when it is appropriate to exercise general jurisdiction over a domestic corporation with a principal place of business located within the United States was not before the Court.

163. *Goodyear*, 131 S. Ct. at 2851.

164. *Id.*

165. *Id.* (citing *Int’l Shoe Corp. v. Washington*, 326 U.S. 310, 317 (1945)) (emphasis added).

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Territories, not to affiliations with foreign-country states.¹⁶⁶ However, the test addresses both “sister-state” (or domestic) foreign corporations and “foreign-country” foreign corporations, and foreign-country corporations almost always will have their headquarters located outside of the United States. Therefore, foreign-country corporations rarely will be “at home” within the United States.¹⁶⁷ Enter *Perkins* and the term “essentially.” By referring to *Perkins* as “[t]he textbook case” of the appropriate exercise of general jurisdiction over a foreign corporation,¹⁶⁸ the *Goodyear* Court acknowledged that there may be instances in which a corporation whose principal place of business is abroad nevertheless has contacts with a forum within the United States that are comparable to having a principal place of business in the United States—i.e., a temporary or pseudo-headquarters. In those—and only those—instances, the foreign corporation might not be “at home” in the forum state, but it is “essentially at home.”¹⁶⁹

This is not to say that foreign-country corporations will always have a location within the United States in which they are essentially at home.¹⁷⁰ Nor

166. See *Torres v. S. Peru Copper Corp.*, 113 F.3d 540, 543 (11th Cir. 1997) (“The term ‘State’ with a capital ‘S’ refers only to the fifty states, Territories, District of Columbia, and Puerto Rico, but not to foreign states, which are referred to with a lowercase ‘s.’”).

167. See Burbank, *supra* note 80, at 671 (“[A] domestic corporation . . . will always have at least one ‘home’ in the United States, [but] a foreign corporation . . . usually will not.”) (citation omitted). Even domestic corporations sometimes have their principal place of business located outside of the United States. See, e.g., *Torres*, 113 F.3d at 543 (stating that the defendant corporation was incorporated in Delaware but had its principal place of business in Peru). However, domestic corporations will be, at the very least, incorporated within the United States and, therefore, subject to general jurisdiction in at least one place under the proposed interpretation of “essentially at home.”

168. *Goodyear*, 131 S. Ct. at 2856 (quoting *Donahue v. Far E. Air Transp. Corp.*, 652 F.2d 1032, 1037 (D.C. Cir. 1981)).

169. See Stein, *Meaning*, *supra* note 7, at 531–32 (“[Justice Ginsburg] doesn’t say that [being “at home”] is the only circumstance in which general jurisdiction is permitted, but that is the clear implication. In other words, that level of activity is not simply sufficient, it is necessary.”); Rhodes, *Predictability Principle*, *supra* note 13, at 227 (“[T]he nature of the defendant’s forum operations should indicate activities at least analogous to the types of in-state activities that define a corporation’s principal place of business.”); Feder, *supra* note 15, at 694 (“While the Court’s use of ‘at home’ rather than merely ‘home’—and its softening of the phrase to ‘essentially at home’ on one occasion—may suggest a degree of wiggle room, the Court’s definition of the ‘paradigm’ as state of incorporation and principal place of business makes it hard to imagine that the standard can be stretched to include states where the corporation has only a relatively small presence.”) (citations omitted); *id.* at 694 n.117 (“The ‘essentially at home’ phrasing might . . . have been intended to accommodate the facts of *Perkins*, in which the forum state was only temporarily the defendant’s principal place of business.”) (citation omitted); see also Pielemeier, *supra* note 80, at 991 (“Perhaps for [companies based in foreign countries], the test should be refined to finding a place where they are ‘at home’ in the United States.”). One indicator that the Court would have described the defendant in *Perkins* as “essentially at home” in Ohio rather than “at home,” is the language it used in applying *Perkins* to the facts in *Goodyear*: “Unlike the defendant in *Perkins*, whose sole wartime business activity was conducted in Ohio, petitioners are *in no sense at home* in North Carolina.” *Goodyear*, 131 S. Ct. at 2857 (emphasis added). Had the Court stated that, unlike the defendant in *Perkins*, the *Goodyear* petitioners were “not at home,” the Court would have implied that the facts in *Perkins* were sufficient to render a corporation “at home.” Instead, the Court chose to say that, unlike the defendant in *Perkins*, the *Goodyear* petitioners were “in no sense at home,” thereby implying that the defendant in *Perkins* was only in a sense—or “essentially”—at home in Ohio.

170. Cf. Conklin, *supra* note 23, at 97 (“[T]o support general jurisdiction [in *Helicopteros*] they would

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should that be the case. As noted by Professor Rhodes, “[a]ll-purpose adjudicative authority over a foreign[-country] corporation by American courts should be reserved for rare cases, thereby preventing adjudicative regulation of controversies that have little or no relationship to American interests.”¹⁷¹ The Court’s reliance on *Helicopteros* and, indeed, the result it reached in *Goodyear*, support this position. In both cases, the Court denied the exercise of general jurisdiction over a foreign-country corporation in the only forum within the United States in which it could plausibly be sued.¹⁷² Thus, “[a] plaintiff can always pursue a defendant in the defendant’s home forum and, in most cases, can proceed where the claim arose”;¹⁷³ the fact that those locations might be located outside of the United States may just be tough luck for the plaintiff.¹⁷⁴

Based on this analysis of the Court’s opinion and application of precedent, it is evident that the proposed tests discussed in Part II.C. are unsuitable. In direct contradiction to the Court’s precedent in *Hertz*, Professor Stein’s, Professor Hoffheimer’s, and Ms. Peddie’s proposed tests all require consideration of numerous business activity-related factors, such as sales, employees, and facilities. And, Professor Rhodes’ interpretation allows for the assertion of general jurisdiction at multiple administrative offices rather than one principal “place” of business. Finally, Mr. Feder’s reading overlooks the Court’s express broadening of the “at home” phrase by use of the word “essentially.” Therefore,

have to show that Helicol had substantial contacts with Texas, and this was nearly impossible to do for a company that was incorporated, and had its principal place of business, in Colombia, South America.”); Angus, *supra* note 23, at 65 (noting that narrowing the exercise of general jurisdiction to the state of incorporation and principal place of business could result in “foreign defendant[s] . . . escap[ing] liability within the United States entirely”).

171. Rhodes, *Nineteenth Century*, *supra* note 23, at 430. If the claim arose in the United States, then presumably there would be a relationship between the controversy and the forum state such that an exercise of specific jurisdiction would be appropriate. Although, whether a plaintiff will be able to pursue a cause of action against a foreign-country defendant in the state where the claim arose certainly has been called into question by the Supreme Court’s strict interpretation of specific jurisdiction in *McIntyre*.

172. See Louise Weinberg, *The Helicopter Case and the Jurisprudence of Jurisdiction*, 58 S. CAL. L. REV. 913, 916 (1985) (citing Brief for Respondents at 9, 18, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)) (“Helicol was amenable to suit in no state if not in Texas; the alternative would have been a foreign country.”); Angus, *supra* note 23, at 79–80 (“[I]n deciding that the defendant in *Helicopteros* was not subject to general jurisdiction in Texas, the Supreme Court essentially ruled that the defendant was not subject to any liability in Texas or anywhere else in the United States because Texas was the only possible forum in which the plaintiffs could bring suit.”); Stein, *Meaning*, *supra* note 7, at 542 (“[T]he plaintiffs in *Goodyear Dunlop* were forced to pursue their remedies for the injuries suffered in France in a French Court.”).

173. Stein, *Meaning*, *supra* note 7, at 528.

174. Because of this perceived unfairness to American plaintiffs, some commentators have advocated for a more lenient standard when it comes to forum residents suing foreign-country defendants. See *id.* at 541 (citing Linda J. Silberman, *Comparative Jurisdiction in the International Context: Will the Proposed Hague Judgment Convention Be Stalled?*, 52 DEPAUL L. REV. 319, 340–41 (2003); Twitchell, *Doing Business*, *supra* note 44, at 209–10)) (“Some scholars, notably Linda Silberman and Mary Twitchell, have suggested that providing general jurisdiction to *resident* plaintiffs based on a pervasive contacts approach would provide plaintiffs with an assured domestic remedy . . .”).

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the lower courts should apply the reasoning proposed in this Article and interpret “essentially at home” to mean a corporation’s state of incorporation and the one state in which the corporation’s nerve center (or, pseudo-nerve center in the case of a foreign-country corporation) is located.

B. Interpreting “Essentially at Home” to Address Important Due Process and Administrative Goals

As noted by Professor Stein, placing a significant limitation on the exercise of general jurisdiction—such as the one proposed in this Article—would not only comport with the views held by many commentators in the legal community,¹⁷⁵ but it would also more closely align the United States with generally accepted international standards.¹⁷⁶ Most importantly, however, use of the *Hertz* “nerve center” test to elucidate the “essentially at home” standard in the proposed manner satisfies the U.S. Constitution’s due process requirements and furthers the judicial system’s goals.¹⁷⁷ First, the proposed explanation promotes fairness

175. Stein, *Meaning*, *supra* note 7, at 532 (stating that constraining general jurisdiction “aligns the Court with many academic commentators . . . who have advocated limiting significantly the operation of general jurisdiction”) (citations omitted). Some of these views have been held for decades. *See, e.g.*, Allan R. Stein, *Styles of Argument and Interstate Federalism in the Law of Personal Jurisdiction*, 65 TEX. L. REV. 689, 758 (1987) (arguing that general jurisdiction may be exercised only over defendants who have “adopted the forum as [their] own”); von Mehren & Trautman, *supra* note 14, at 1178–79 (“[G]eneral jurisdiction based on presence, which often produces unfair results . . . , should disappear. It is, of course, appropriate to preserve some place where the defendant can be sued on any cause of action. But we submit that only the common arena of the defendant’s activities should be such a place. . . . [F]or a corporation, it is the corporate headquarters—presumably both the place of incorporation and the principal place of business, where these differ.”). Others are newly-expressed interpretations of *Goodyear*. *See, e.g.*, Feder, *supra* note 15, at 695 (“*Goodyear*’s addition of a new ‘at home’ requirement to the general jurisdiction inquiry . . . significantly, and rightly, undermines the lower court case law that has accepted (but never justified) doing business in a state as a sufficient basis for general jurisdiction.”); Hoffheimer, *supra* note 20, at 592 (“[A] fair reading of the opinion leaves little doubt that circumstances giving rise to general jurisdiction will be unusual.”).

176. Stein, *Meaning*, *supra* note 7, at 532–33 (stating that significantly limiting general jurisdiction is “consistent with international consensus,” such as Article 2 of the European Regulation on Jurisdiction and the Recognition and Enforcement of Judgments, as well as the draft Hague Convention on International Enforcement of Judgments, which permit general jurisdiction only in the state of domicile and prohibit general jurisdiction based on doing business in the forum, respectively) (citations omitted); *see, e.g.*, Silberman, *supra* note 69, at 607–11, 613–14 (discussing the differences between jurisdictional standards in the United States and abroad); Allan R. Stein, *Frontiers of Jurisdiction: From Isolation to Connectedness*, 2001 U. CHI. LEGAL F. 373, 387 (2001) [hereinafter Stein, *Frontiers*] (“[T]he pervasive contacts approach has been fairly universally condemned outside of the United States”); Rhodes, *Nineteenth Century*, *supra* note 23, at 430 (citing Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. CHI. LEGAL F. 141 (2001), 162) (noting that a “confined scope of general jurisdiction approaches international norms, as many other nations abhor an expansive conception of general jurisdiction”).

177. *But see* Hoffheimer, *supra* note 20, at 598–99 (citing SHREVE & RAVEN-HANSEN, *supra* note 100, at 34) (stating that “it is questionable whether the principal place of business should be defined the same way for both subject matter jurisdiction and personal jurisdiction,” and that, while “[t]he [nerve-center] test may . . . provide one constitutionally appropriate method for determining general jurisdiction[,] . . . courts may have good reasons for rejecting the nerve-center test as a particularly inappropriate guide for identifying a corporation’s principal place of business for purposes of personal jurisdiction”); SHREVE & RAVEN-HANSEN,

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and predictability for the defendant, while incorporating the notion of “fair play and substantial justice” that has long been a part of personal jurisdiction jurisprudence. Second, the proposed explanation promotes simplicity and administrative efficiency, two important attributes of a jurisdictional test.

1. Promoting Fairness, Predictability, and Reasonableness

The ultimate concern in the due process analysis is protection of the defendant’s liberty interests, or, in other words, ensuring “fairness” to the defendant.¹⁷⁸ Whether it is fair to hale a defendant into court in a given state—to defend against a claim completely unrelated to the defendant’s activities there—is primarily determined by examining the defendant’s relationship with that state.¹⁷⁹ The question becomes whether the “defendant [is] sufficiently present

supra note 98, at 34 (citing *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694 (1982)) (“It would be tempting to resolve personal jurisdiction issues by reference to [diversity subject matter jurisdiction] case law, but this is probably unwise. The due process law of personal jurisdiction and the law of federal subject matter jurisdiction are grounded on fundamentally different policies. It may be best to apply the home-state principle of personal jurisdiction to corporations only where the forum is the place of incorporation or where the activities of the corporation are clearly concentrated.”).

178. See *Ins. Corp. of Ireland, Ltd.*, 456 U.S. at 702 (“The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.”) (citations omitted); *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2800 (2011) (Ginsburg, J., dissenting) (“The modern approach to jurisdiction over corporations and other legal entities, ushered in by *International Shoe*, gave prime place to reason and fairness.”); *Brilmayer et al.*, *supra* note 23, at 766 (citing *Int’l Shoe Corp. v. Washington*, 326 U.S. 310, 316 (1945)) (“Fairness, not simply foreseeability of suit or state interest, is the most important consideration for general jurisdiction.”); *Condlin*, *supra* note 23, at 68 (“[P]arties should not be forced to defend in forums where they will not be treated fairly. The Due Process Clause demands as much.”). The due process protections also apply to foreign-country corporate defendants. See *Silberman*, *supra* note 69, at 595 (citing *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 113 & n.*, 114–15 (1987)) (“One fundamental question in the United States is whether a foreign defendant can even invoke the protections of the Due Process Clause. The Supreme Court has answered that question ‘yes,’ at least as regards private defendants.”). *But see* John N. Drobak, *Personal Jurisdiction in a Global World: A Comment on the Supreme Court’s Recent Decisions in Goodyear Dunlop Tires and Nicastro*, 90 WASH. U. L. REV. ___, ___ (forthcoming 2013) (“Although the Court has applied the same jurisdictional rules to non-resident foreign nationals as it does to U.S. citizens, and no parties have argued otherwise, it is time for the Court to apply its due process precedent to issues of personal jurisdiction and rule that non-citizens lack the constitutional protections available to citizens.”); *id.* at ___ (“[T]he due process clause provides absolutely no protection to defendants like the ones in *Goodyear* and *Nicastro*.”).

179. See *supra* notes 27–29 and accompanying text; *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) (“[T]he relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, [are] the central concern of the inquiry into personal jurisdiction.”); *Condlin*, *supra* note 23, at 66 (“[T]he defining feature of the doctrine [of general jurisdiction is] that a party can be sued for anything without the plaintiff having to show a relationship between the claim and the forum. Only the defendant’s relationship with the forum is relevant. This much is uncontroversial.”) (citations omitted); *Silberman*, *supra* note 69, at 607 (“In the United States, it is the affiliation between the *defendant and the forum* that is critical, and this is true for the interstate as well as the transnational case. Whether the values reflected are those about sovereignty and consent to authority or the sense of a fundamental principle of what is fair, remains clouded after the two recent Supreme Court decisions.”).

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that it is reasonable to expect that [the defendant] will be treated fairly by local courts and juries.”¹⁸⁰

The answer to that question is “yes” under the interpretation of “essentially at home” proposed in this Article. Certainly, a defendant’s relationship with its state of incorporation is strong enough to support the exercise of general jurisdiction.¹⁸¹ It is by virtue of that state’s laws that the corporation exists, and the corporation is perpetually present there.¹⁸² Moreover, personal jurisdiction can be waived¹⁸³; therefore, the corporation’s decision to incorporate in a given state should be seen as voluntary consent to general jurisdiction in that forum.¹⁸⁴ Thus, it can hardly be deemed unfair to a corporation to hale it into court in its state of incorporation.

Likewise, it is fair to hale the corporation into court in the state where its headquarters (or something akin to a corporate headquarters) is located. After all, the corporation has chosen to concentrate the direction, control, and coordination of its activities and policies in that state.¹⁸⁵ Unlike a state in which the corporation merely does business, the state housing its corporate headquarters is the location from which the corporation makes all of its major corporate-life decisions.¹⁸⁶

180. Conklin, *supra* note 23, at 68 (“Since general jurisdiction presupposes the lack of a relationship between the forum and the plaintiff’s claim, it follows that it should be available only in states where defendants are sufficiently present that it is reasonable to expect that they will be treated fairly by local courts and juries.”); see Stein, *Meaning*, *supra* note 7, at 543 (discussing the issues as whether “others [would] perceive [the defendant] as a member of their community” such that the defendant “will be treated as fairly [t]here as anywhere else.”).

181. See Brilmayer et al., *supra* note 23, at 733–34 (discussing reasons why it is proper to exercise general jurisdiction over a corporation in its state of incorporation); von Mehren & Trautman, *supra* note 14, at 1141 (“The community that chartered the corporation . . . occupies a position somewhat analogous to that of the community of a natural person’s domicile and habitual residence” and can, therefore, exercise general jurisdiction over the corporation.). *But see* Twitchell, *Myth*, *supra* note 20, at 669–70 (“Although the fact of incorporation under state law gives the forum state a valid interest in applying its own laws to any suit involving the internal affairs of the corporation, a strong argument can be made that the *automatic* exercise of ‘pure’ general jurisdiction over a domestic corporation is inappropriate when so many corporations lack any other significant ties with their state of incorporation.”) (citations omitted).

182. See Brilmayer et al., *supra* note 23, at 733 (noting that a corporation “cannot ever be absent from the state of incorporation”).

183. *Ins. Corp. of Ireland, Ltd.*, 456 U.S. at 703.

184. See Stein, *Meaning*, *supra* note 7, at 547 (“[A] defendant can volitionally submit to the authority of a state . . . [so] it is appropriate to subject a defendant to general jurisdiction in its state (or states) of incorporation . . . [because its] choice of incorporation in a particular state is entirely voluntary and involves continuing responsibility to and regulatory governance by the state.”); Brilmayer et al., *supra* note 23, at 733 (“In some respects, the decision to incorporate in a particular state provides a more powerful basis for adjudicatory jurisdiction than does domicile [for an individual]. . . . [T]he corporation intentionally chooses to create a relationship with the state of incorporation, presumably to obtain the benefits of that state’s substantive and procedural laws. Such a choice creates a unique relationship that justifies general jurisdiction over the corporation.”).

185. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010) (stating that a place will only qualify as a “headquarters” for purposes of the principal place of business analysis if it “is the actual center of direction, control, and coordination . . . and not simply an office where the corporation holds its board meetings.”).

186. See Twitchell, *Myth*, *supra* note 23, at 671–72 (“A defendant engaging in continuous and

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Consequently, the corporation is acting like a local individual resident in every sense and will be treated as fairly in that state as it would be treated in any other state.¹⁸⁷ The Court has already indicated its approval of this approach in *Hertz*. As discussed above, in narrowing the availability of diversity jurisdiction, Congress was similarly trying to determine in which state's courts a corporate defendant would be least likely to suffer from local prejudice.¹⁸⁸ Congress ultimately determined that state is wherever the entity's principal place of business is located.¹⁸⁹ In *Hertz*, the Supreme Court further defined that state as wherever the entity's nerve center is located.¹⁹⁰

Closely related to the due process goal of fairness is predictability. While the primary concern here is that the defendant be able to predict where it can be subject to suit,¹⁹¹ it is also important that a plaintiff be able to accurately predict where a defendant can be forced to litigate.¹⁹² Limiting the “essentially at home”

substantial economic activity within a forum shares some traits with insiders: it pays taxes, is subject to regulation, benefits from participation in the local economy, and has some power to influence local political processes. But unlike citizens or corporations based within the forum, it is often not ‘local’ in its own eyes or in the eyes of the community because its major economic ties are outside the boundaries of the state and it has strong ties to at least one other sovereign. Thus, it is not an ‘insider’—‘one of us’—to the same degree as a purely local corporation or business.” (citations omitted); Stein, *Frontiers*, *supra* note 176, at 382–83 (“While we have some sense that our ‘home’ state—our ‘king’—may have authority over us regardless of where we have acted, we do not owe the same universal allegiance to other states that we merely visit—even those we visit frequently or in which we may wield significant political influence. . . . I am not prepared to say that one can never form a ‘citizen-like’ relationship with multiple sovereigns, but mere ‘continuous and systematic activity’ does not begin to capture this citizen-like relationship.”).

187. See Rhodes, *Nineteenth Century*, *supra* note 23, at 428–29 (“If a corporation is conducting core executive and administrative functions within a state, such as controlling its operations, billing its customers, accounting for its financial status, managing its employees, and establishing its pricing structure, it is acting in a similar manner to a local business in the state.”); von Mehren & Trautman, *supra* note 14, at 1141 (“The community . . . in which [a corporation] has its head office occupies a position somewhat analogous to that of the community of a natural person’s domicile and habitual residence.”). *Contra* Hoffheimer, *supra* note 20, at 599 n.279 (“The location of executive offices has no necessary relationship to corporate activity that generates business or that constitutes the contacts and presence traditionally required for general jurisdiction.”); Stein, *Meaning*, *supra* note 7, at 546 (“[T]here is no need . . . to privilege the locus of corporate decision-making [in determining where corporations are subject to general jurisdiction]. . . . It is particularly important for courts to take into consideration how invested a defendant is in the forum state, and how apparent that investment is to the community. Accordingly, the number of employees should count, as well as other indicia of presence, such as manufacturing facilities or corporate offices.”) (citations omitted).

188. See *supra* notes 96–104 and accompanying text (discussing the fairness concerns inherent in a diversity subject matter jurisdiction analysis in terms of local bias); *Hertz*, 130 S. Ct. at 1192 (“[T]he general purpose of diversity jurisdiction . . . [is] to find the State where a corporation is least likely to suffer out-of-state prejudice when it is sued in local court.”); *supra* notes 27–28, 36 and accompanying text (discussing the fairness concerns inherent in a personal jurisdiction analysis in terms of minimum contacts with the forum).

189. See *supra* notes 96–104 and accompanying text.

190. See *supra* notes 130–133 and accompanying text.

191. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (quoting *Int’l Shoe Corp. v. Washington*, 326 U.S. 310, 319 (1945)) (“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 assurance as to where that conduct will and will not render them liable to suit.”).

192. Rhodes, *Predictability Principle*, *supra* note 13, at 137 (citing *World-Wide Volkswagen*, 444 U.S.

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test to mean a corporation's state of incorporation and the one state in which the corporation has its (pseudo-) headquarters best accommodates both needs.¹⁹³ A corporation clearly will know from which state it obtained its corporate charter, and it is fairly easy for an adversary to determine a potential corporate defendant's state of incorporation.¹⁹⁴ While determining in which state a court would deem a corporation's principal place of business to be located may not always be as straightforward, the "nerve center" test will at least lead in "a single direction, towards the center of overall direction," rather than requiring the parties to weigh various categories of contacts (like assets, sales, and property) in order to render a guess.¹⁹⁵ Thus, in today's marketplace, where "many major business entities do substantially systematic and continuous business in many if not every state,"¹⁹⁶ defining the principal place of business as the nerve center provides the most predictable results.

at 291–92) ("Predictability insures both that nonresidents will be able to structure their transactions to avoid the sovereign jurisdictional prerogative of a foreign state and that litigants will have some guidance as to when a jurisdictional challenge may be appropriate."); von Mehren & Trautman, *supra* note 14, at 1137 ("[J]ustice requires a certain and predictable place where a person can be reached by those having claims against him.").

193. See Feder, *supra* note 15, at 693 (quoting von Mehren & Trautman, *supra* note 14, at 1137) ("Doing business jurisdiction also falls short when viewed in light of another core justification for general jurisdiction: the notion that 'justice requires a certain and predictable place where a person can be reached by those having claims against him.' So long as the defendant's state of incorporation and/or its principal place of business remain available, this purpose is satisfied, and provides no reason to extend jurisdiction to multiple other locations."). Limiting the general jurisdiction test in this manner also prevents forum-shopping by plaintiffs. For example, a forum state will almost always apply its own statute of limitations to a claim, no matter where the claim arose. *E.g.*, Shannon Mcghee Hernandez, Comment, *Civil Procedure—Metropolitan Life Insurance Co. v. Robertson-Ceco Corp.: The Reasonableness Inquiry in the Context of General Jurisdiction*, 27 U. MEM. L. REV. 723, 740 (1997) (citing *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722–23 (1988)). And, some forums are "magnets for litigation . . . because of their tendency to render large jury awards." Stein, *Meaning*, *supra* note 7, at 540–41. Thus, when corporations are subject to general jurisdiction in numerous locations, plaintiffs are able to forum shop for, among other things, the most favorable law and the most sympathetic juries. See, *e.g.*, Stein, *Frontiers*, *supra* note 176, at 384–85 (discussing the effects of forum shopping); Hernandez, *supra*, at 739–40 ("Plaintiffs are often motivated to forum shop not because they seek the most convenient forum for themselves—or the least convenient one for the defendant—but rather because they want to take advantage of the law of a particular forum."); Lee Scott Taylor, *Registration Statutes, Personal Jurisdiction, and the Problem of Predictability*, 103 COLUM. L. REV. 1163, 1194 (2003) ("Statutes of limitations . . . are not the only problem associated with forum shopping. There are significant intangible considerations: perceived jury predispositions, judicial personalities, and the political responsiveness of state judiciaries, among others.").

194. See Harry C. Sigman, *Improvements (?) to the UCC Article 9 Filing System*, 46 GONZ. L. REV. 457, 482 (2010–2011) ("[S]tates maintain filed corporate charters as a public record . . .").

195. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1194 (2010); see Sarah R. Cebik, "A Riddle Wrapped in a Mystery Inside an Enigma": *General Personal Jurisdiction and Notions of Sovereignty*, 1998 ANN. SURV. AM. L. 1, 11–12 ("Without any predictability in the courts' behavior, it is impossible for a defendant to structure conduct so as to avoid or subject itself to general jurisdiction. . . . Such unpredictability not only allows judges to act in a relatively arbitrary manner but also raises the costs of litigation since the attorneys in any matter are less likely to estimate properly which states will have jurisdiction over the defendant. This significantly lessens the value of the doctrine of personal jurisdiction—particularly general personal jurisdiction.").

196. Stravitz, *Sayonara*, *supra* note 31, at 759.

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Finally, the “fair play and substantial justice” component of the due process analysis, as articulated in *International Shoe*, has been interpreted by the Court to embody a “reasonableness” inquiry that consists of five factors: (1) “the burden on the defendant,” (2) “the interests of the forum State,” (3) “the plaintiff’s interest in obtaining relief,” (4) “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies,” and (5) “the shared interest of the several States in furthering fundamental substantive social policies.”¹⁹⁷ While some commentators debate whether these factors are applicable in the general jurisdiction analysis (or whether they are intended to apply only in the specific jurisdiction context),¹⁹⁸ most agree that they should be.¹⁹⁹

The Court did not explicitly address these factors in *Goodyear*; however, its “essentially at home” test, when viewed in light of the Court’s language and precedent as discussed in this Article, is inherently reasonable (and, therefore, needed no further explanation from the Court).²⁰⁰ First, there can be no question that the burden on the corporate defendant of litigating in the state where it has its corporate headquarters would be minimal. After all, it likely would have local attorneys on call who are familiar with its business, and it would have key executives and documents readily available.²⁰¹ While the burden of litigating in

197. *Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal.*, 480 U.S. 102, 113 (1987) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)); see, e.g., Walter W. Heiser, *Toward Reasonable Limitations on the Exercise of General Jurisdiction*, 41 SAN DIEGO L. REV. 1035, 1040–41 (2004) (discussing the genesis of the “reasonableness” factors); Rhodes, *Clarifying General Jurisdiction*, *supra* note 23, at 899 (same); Stravitz, *Sayonara*, *supra* note 31, at 752–53 (same).

198. See Hoffheimer, *supra* note 20, at 588–89 & n.229 (stating that “[i]t was never entirely clear” whether the reasonableness factors should be considered in the general jurisdiction analysis); Rhodes, *Clarifying General Jurisdiction*, *supra* note 23, at 899 (“[T]he Supreme Court did not specifically resolve whether these factors also apply to assertions of general jurisdiction rather than the specific jurisdiction that was at issue in *Asahi* and its prior decisions adopting these criteria.”); Silberman, *supra* note 69, at 594–95 (“[T]here seems to be some doubt as to whether the reasonableness prong applies in cases of general jurisdiction”); Stravitz, *Sayonara*, *supra* note 31, at 758 (noting that none of the Court’s general jurisdiction opinions address the reasonableness factors).

199. See Heiser, *supra* note 197, at 1042 (citing *George*, *supra* note 32, at 1129–41) (“[T]here is nothing in the Supreme Court’s discussions of these factors to indicate they apply only in specific jurisdiction cases. Indeed, . . . concerns about whether the exercise of jurisdiction is reasonable and fair should actually be heightened in general jurisdiction cases.”); Rhodes, *Clarifying General Jurisdiction*, *supra* note 23, at 899–901 (stating that the reasonableness factors should be part of the general jurisdiction analysis); Silberman, *supra* note 69, at 595 (“[G]eneral jurisdiction may present the strongest case for . . . invocation [of the reasonableness factors.]”); cf. Stravitz, *Sayonara*, *supra* note 31, at 758 (stating that lower courts have applied the reasonableness factors in general jurisdiction cases) (citations omitted). *But see* Hernandez, *supra* note 193, at 741 (arguing that the states’ interests in resolving a dispute are inherently weak in the general jurisdiction context and should not play any role in the analysis).

200. Similarly, it has been argued that Justice Ginsburg invoked, without explicitly naming, the reasonableness factors in her *McIntyre* dissent. See Stravitz, *Sayonara*, *supra* note 31, at 757.

201. See Heiser, *supra* note 197, at 1043 (“The inquiries relevant here include the location of potential witnesses, documents, and records; [and] whether the defendant has a subsidiary or agent, maintains an office or other physical presence, in the forum”).

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the state of incorporation may be greater for an entity that does no business there, modern transportation and communication abilities greatly lessen the inconvenience.²⁰² Second, the state of incorporation and the state in which the corporation's nerve center is located are the corporation's "home" states, and states have a great interest in determining the rights and obligations of their citizens.²⁰³ Third, while the plaintiff's interest in "obtaining convenient and effective relief" will depend in large part upon who the plaintiff is,²⁰⁴ having a predictable location in which a defendant may be subject to suit on any claim will, at the very least, reduce the cost and uncertainty inherent in litigation.²⁰⁵ Fourth, at least some efficiency in litigation will be achieved by virtue of suing a defendant in its home forum because the defendant will not contest jurisdiction through time-consuming pre-trial motion practice.²⁰⁶ And, fifth, subjecting a foreign-country corporation to general jurisdiction in the United States *only* when the corporation has essentially made itself at home in a particular state furthers foreign relations policies.²⁰⁷

The interpretation of "essentially at home" proposed in this Article satisfies due process requirements in ways the proposed tests discussed in Part II.C. cannot. For example, while it may seem fair in some instances to hale a defendant into court in a state in which it does a substantial amount of business, utilizing a corporate operations-related factor test (like the tests proposed by Professor Stein, Professor Hoffheimer, and Ms. Peddie) inhibits the goals of predictability and reasonableness inherent in the due process analysis. Leaving open the possibility that courts in an indefinite number of states may be able to assert general jurisdiction over a corporation (as suggested by Professor Rhodes) similarly yields unpredictability. And, foreclosing the possibility of being able to sue a foreign-country defendant somewhere in the United States (which would be

202. See Hoffheimer, *supra* note 20, at 590 ("Requiring continuous and systematic contacts comparable to the defendants' legal home . . . protects corporate defendants from the burden of litigating in seriously inconvenient places."); Wasserman, *supra* note 1, at 349 ("[M]odern technology, communications, travel, and commerce make it easier for people and entities to reach into and engage in foreign forums through their conduct and also to litigate there . . .") (citations omitted).

203. See Hoffheimer, *supra* note 20, at 590 ("Requiring continuing and systematic contacts comparable to the defendants' legal home assures that such states will have real interests in providing forums . . .").

204. See Heiser, *supra* note 197, at 1045 ("The relevant inquiries here may include whether the plaintiff is a resident or domiciliary of the forum state, where the plaintiff suffered injury, whether the forum state is more convenient for witnesses or other evidence than some other available forum, whether the plaintiff has a financial or physical ability to litigate elsewhere, whether all the parties to the dispute can be joined in the chosen forum, and whether the plaintiff will be able to enforce a judgment obtained from the forum.").

205. See *infra* Part IV.B.2.

206. *Id.*

207. See Heiser, *supra* note 197, at 1048 (quoting *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 115 (1987)) (stating that this factor requires "consideration of the procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction by a court in the United States" and of "the Federal Government's interest in its foreign relations policies.").

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a possibility under Mr. Feder's reading) may, in some instances, be contrary to the notion of "fair play and substantial justice."

2. *Promoting Simplicity and Administrative Efficiency*

While not of as prime importance as fairness and predictability, simplicity and administrative efficiency are very favorable attributes of a jurisdictional test.²⁰⁸ Personal jurisdiction tends to be a hotly contested issue in litigation,²⁰⁹ eating up not only the parties' time and money, but also valuable judicial resources. The use of complex jurisdictional tests only compounds the problem.²¹⁰ On the other hand, using a simple test to "limit the scope of general jurisdiction to a set of clearly defined circumstances [will] provide certainty and administrative efficiency."²¹¹

The interpretation of the "essentially at home" test articulated in this Article is both simple and administratively efficient; the Court already explained as much in *Hertz*. In that case, the Court rejected the "corporate activities" and "total activity" tests used by some lower courts to determine a corporation's principal place of business because the tests were too complicated and required consideration of too many factors.²¹² Instead, the Court adopted the "nerve center" test because it is "[comparatively] simple to apply" and will not consume judicial resources.²¹³ Similarly, the "essentially at home" tests based on revenue, employee count, the location of manufacturing facilities, and "a host of plus factors, far too lengthy to list" (as proposed by Professor Stein, Professor Hoffheimer, and Ms. Peddie)²¹⁴ involve contemplation of multiple factors and would invite too much time-consuming and unnecessary litigation.²¹⁵ Thus, those tests should be disregarded in favor of a "state of incorporation and (pseudo-) nerve center" test.²¹⁶ The state of incorporation will be readily apparent, so

208. See *supra* notes 125–129 and accompanying text; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980) (quoting *Int'l Shoe Corp. v. Washington*, 326 U.S. 310, 319 (1945)) ("[T]he Due Process Clause ensures not only fairness, but also the 'orderly administration of the laws . . .'").

209. See Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531, 531 (1995) ("[T]he threshold determination of personal jurisdiction has become one of the most litigated issues in state and federal courts.").

210. See *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010) ("[A]dministrative simplicity is a major virtue in a jurisdictional statute. Complex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims. . . . Judicial resources too are at stake.").

211. Twitchell, *Myth*, *supra* note 23, at 681.

212. *Hertz*, 130 S. Ct. at 1194.

213. *Id.* at 1193.

214. See *supra* Part II.C.

215. Peddie, *supra* note 7, at 726; see *supra* notes 70–78 and accompanying text.

216. See Twitchell, *Myth*, *supra* note 23, at 676 (stating that limiting general jurisdiction "can provide plaintiffs with a forum whose power over a defendant is so undisputed that the parties and the judiciary will not need to expend significant resources in the preliminary jurisdictional inquiry.").

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making that determination should require extremely minimal use of party or court resources. The same will be true for determining the location of a corporation's nerve center in the vast majority of cases where a corporation has only one identifiable headquarters. It is true that there will be "hard cases" in which it may be difficult to determine, for example, which of a corporation's offices is its "main" office.²¹⁷ However, outliers would occur under any test, and such limited challenges do not outweigh the vast benefits provided by the "nerve center" approach.

V. CONCLUSION

In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the U.S. Supreme Court announced a new and somewhat vague test for determining in which states a corporation can be subject to general personal jurisdiction: those states in which it is "essentially at home."²¹⁸ In comparison to the Court's notorious decision in *Goodyear's* companion case, *J. McIntyre Machinery, Ltd. v. Nicaastro*, the nebulous "essentially at home" standard received minimal attention. However, *Goodyear* marked the first time in nearly three decades that the Court addressed the issue of general jurisdiction, so it seems unlikely that it will do so again in the near future. Therefore, it is imperative that the lower courts, litigators, and potential litigants know what that test means.

This Article proposes the following interpretation of *Goodyear*: A corporation is "at home" only in its state of incorporation and in the one state where its principal place of business, or nerve center, is located. In the event the corporation's headquarters is located outside of the United States, it is "essentially at home" in the one state, if any, in which it has administrative and executive contacts comparable to those found at a corporate headquarters (i.e., a pseudo-nerve center). Importantly, this interpretation gives meaning to the Court's express language, which demonstrates its intent to allow for the exercise of general jurisdiction over a corporation where it is domiciled—i.e., in its state of incorporation and the state in which it has its principal place of business. It also properly reconciles *Goodyear* with the Court's earlier opinion in *Hertz Corp. v. Friend*, in which the Court determined that a corporation's principal place of business for purposes of diversity subject matter jurisdiction is located at its nerve center. In both instances, the Court was trying to determine in which state a corporation has such significant contacts that it can be forced to litigate there without being subject to local prejudice. Furthermore, this interpretation explains

217. *Hertz*, 130 S. Ct. at 1194. The *Hertz* Court noted that "there will be hard cases" under the "nerve center" test, such as the corporation that divides its supervisory functions among multiple locations, but that at least "[c]ourts do not have to try to weigh corporate functions, assets, or revenues different in kind, one from the other." *Id.*

218. 131 S. Ct. 2846, 2851 (2011).

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the Court's use of such a vague standard by allowing for the exercise of general jurisdiction over a corporation that is not domiciled in the United States, but that does have contacts with a particular state that are comparable to having a principal place of business there. Finally, in addition to explaining the Court's express language, interpreting "essentially at home" as proposed in this Article will not only promote fairness and predictability for the defendant—central concerns when exercising personal jurisdiction and applying the Due Process Clause—but it also will promote simplicity and administrative efficiency.