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Boeing, Boeing, Gone: General Jurisdiction over Corporations, Principal Place of Business, and a Second Look at the Total Activities Test

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Boeing, Boeing, Gone

GENERAL JURISDICTION OVER CORPORATIONS, PRINCIPAL PLACE OF BUSINESS, AND A SECOND LOOK AT THE TOTAL ACTIVITIES TEST

INTRODUCTION

On June 15, 1916, a wooden B&W Bluebill biplane floated out of the boathouse hangar of the Pacific Aero Club onto the waters of Lake Union, Washington, where William E. Boeing piloted it into the sky for the first time.[1] A month later, Boeing incorporated Pacific Aero-Products Co.[2] The next year, he renamed it Boeing Airplane Company, the name that would carry it over the next one hundred years to become the most successful aerospace company in American history.[3] Today, Boeing is the largest aerospace company on the planet, with over 140,000 employees working in over sixty-five countries and all fifty states.[4] Of those, nearly half work in Washington, the state with which Boeing is, in its own words, "inextricably intertwined."[5]

The importance of Boeing to Washington, and Washington to Boeing, is difficult to overstate. Until recently, Boeing was the largest private employer in the state and the "backbone of the Puget Sound economy," leading one economist to note in 1990 that 15 percent of all jobs in Washington "depend[ed] on Boeing in one way or another."[6] Brad Smith,

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[1] Walt Crowley, *Boeing-Built Airplane, the B&W, Makes its Maiden Flight from Seattle's Lake Union on June 15, 1916*, HISTORYLINK.ORG (Nov. 23, 1998), https://www.historylink.org/file/369 [https://perma.cc/FAM5-LWXB].

[2] *Id.*

[3] *Id.*; *Boeing in Brief*, BOEING, https://www.boeing.com/company/general-info/ [https://perma.cc/8KH7-LSDW].

[4] *Id.*

[5] *Boeing in Washington*, BOEING, https://www.boeing.com/company/about-bca/washington [https://perma.cc/46S2-37ZX].

[6] Tony Lystra, *Amazon Surpasses Boeing to Become Washington's Largest Employer*, PUGET SOUND BUS. J. (Jan. 5, 2021, 6:34 PM), https://www.bizjournals.com/seattle/news/2021/01/05/amazon-is-now-washingtons-top-employer.html [https://perma.cc/QSD6-Z2WZ]; *Lesson Twenty-Three: The Impact of the Cold War on Washington, an Overview*, CTR. FOR STUDY PAC. NW. (internal quotation marks omitted), https://www.washington.edu/uwired/outreach/cspn/Website/Classroom%20Materials/Pacific%20Northwest%20History/Lessons/Lesson%2023/23.html [https://perma.cc/NH2Y-QHP5].

President of Microsoft, another Washington commercial giant,[7] said in a 2016 *Seattle Times* column, "Boeing touches virtually every person in our state."[8] Boeing's enormous factory in Everett, Washington—the single largest building in the world—sees over thirty thousand workers walk through its doors every day.[9] No other state or nation hosts a number of Boeing employees even close to *half* of the nearly sixty thousand working in Washington.[10] Even Boeing's corporate headquarters in Illinois employs less than 1 percent of that figure, and only then because Boeing is required by its tax arrangements with state and local government to employ a minimum of five hundred employees there—a bar it has repeatedly failed to meet.[11] Boeing's presence in Washington is so systematic that the company maintains a page on its website dedicated to its ongoing presence in the state, prompting every visitor to sign up for a special "Boeing in Washington" newsletter.[12] In 2019, Bill McSherry, Vice President of Government Operations for Boeing's Commercial Airplanes division, noted the company was "proud to call Washington our home."[13]

And yet, according to the personal jurisdiction jurisprudence evolving in the federal courts, Boeing has not been "at home" in Washington for over twenty years, since it moved its corporate headquarters from Seattle to Chicago in 2001.[14] Since the Supreme Court's 2011 decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, a corporation is subject to general personal jurisdiction—and thus open to suit on any

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[7] MICROSOFT, MICROSOFT IN WASHINGTON STATE 1 (2018), https://news.microsoft.com/uploads/prod/sites/370/2018/12/Microsoft-in-Washington-Fact-Sheet_11.28.pdf [https://perma.cc/PU8R-ACCW].

[8] Brad Smith & Jon Fine, *How Boeing Has Helped Washington State Thrive*, SEATTLE TIMES (July 15, 2016, 8:03 AM), https://www.seattletimes.com/opinion/how-boeing-has-helped-washington-state-thrive/ [https://perma.cc/A8R6-5KBG].

[9] Stephen Dowling, *What It's Like to Work in the Biggest Building in the World*, BBC (Dec. 11, 2018), https://bbc.com/future/article/20181211-what-its-like-to-work-in-the-biggest-building-in-the-world [https://perma.cc/DPR8-TUYP].

[10] *Employment Data*, BOEING, https://www.boeing.com/company/general-info/#/employment-data [https://perma.cc/A7YU-MPU4].

[11] Eric M. Johnson, *Boeing's Chicago HQ a 'Ghost Town' as Priorities Shift*, REUTERS (Oct. 7, 2021, 8:12 AM), https://www.reuters.com/business/aerospace-defense/boeings-chicago-hq-ghost-town-priorities-shift-2021-10-07/ (last visited Sept. 27, 2022).

[12] *Boeing in Washington*, *supra* note 5. "Boeing in Washington [seeks to] share stories with you that demonstrate Boeing's commitment to [Washington], our local environment and the good work being done by our hundreds of partners in the local communities around us," again noting that close to half of Boeing's employees work in the state. *Id.*

[13] *Latest "By the Numbers" Report Reinforces Boeing's Investments in People and Infrastructure in Puget Sound* [hereinafter *Latest "By the Numbers"*], BOEING (Feb. 5, 2019), https://www.boeing.com/company/about-bca/washington/by-the-numbers-02-05-19.page [https://perma.cc/G7TG-3Y59].

[14] *See* Daimler AG v. Bauman, 571 U.S. 117, 137 (2014); Johnson, *supra* note 11.

cause of action—wherever it "is fairly regarded as at home."[15] The Court's subsequent decisions in *Daimler AG v. Bauman* and *BNSF Railway Co. v. Tyrrell* made clear that a corporation is, practically speaking, only "at home" in its state of incorporation and "principal place of business,"[16] and that acquiring general jurisdiction over it anywhere else is "incredibly difficult."[17] In *Hertz Corp. v. Friend*, the Court defined "principal place of business" for diversity jurisdiction purposes to mean a corporation's "nerve center," usually its corporate headquarters.[18] Lacking clear guidance from the Supreme Court, the federal courts have largely applied the same definition for personal jurisdiction purposes, limiting application of general jurisdiction over a corporation to its state of incorporation and the state containing its corporate headquarters.[19]

As multiple district courts recognize, under the Nerve Center test Boeing is at home in Illinois, where it is headquartered, and Delaware, where it is incorporated, but most likely not in Washington.[20] However, the proposition that Boeing is not at home in the state where it was founded and where it employs nearly half its worldwide workforce, but is at home where it struggles to employ even one percent of that number, plainly strains credulity. A different test is needed for determining a corporation's "principal place of business" for personal jurisdiction purposes.[21]

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[15] Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011).

[16] *See id.*; *Daimler*, 571 U.S. at 137; *see* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1554 (2017).

[17] Monkton Ins. Servs. v. Ritter, 768 F.3d 429, 432 (5th Cir. 2014).

[18] Hertz Corp. v. Friend, 559 U.S. 77, 93 (2010).

[19] *See infra* Part IV.

[20] *Cf.* Wilmington Tr. Co. v. Boeing Co., No. C20-0402-RSM-MAT, 2020 WL 4004575, at *1, *4–5, *7 (W.D. Wash. June 8, 2020) (locating Boeing's "nerve center" in Illinois and recognizing Delaware as its state of incorporation for diversity jurisdiction purposes); SOCAR (Societe Cameroonaise d'Assurance et de Reassurance) v. Boeing Co., 144 F. Supp. 3d 391, 394 (E.D.N.Y. 2015) (accepting Boeing's representation that it is a Delaware corporation with its "principal place of business" in Illinois). *But see In re* Sept. 11th Litig., 494 F. Supp. 2d 232, 241 (S.D.N.Y. 2007) (finding Boeing's "principal place of business" in Washington, even after relocating its corporate headquarters to Illinois).

[21] The Boeing Company is hardly the only major company to present this kind of jurisdictional challenge. In September 2017, Amazon announced plans to open HQ2, a second corporate headquarters, whose planned 50,000 employees would rival the number at its original corporate headquarters in Seattle. Laura Stevens, Keiko, Morris, and Katie Honan, *Amazon Picks New York City, Northern Virginia for Its HQ2 Locations*, WALL ST. J. (Nov. 13, 2018) https://www.wsj.com/articles/amazon-chooses-new-york-city-and-northern-virginia-for-additional-headquarters-1542075336 [https://perma.cc/GXX5-VY2B]. If completed, how would a court determine which of these two locations—both called corporate headquarters and both housing equal numbers of employees—is the corporation's "principal place of business" using the Nerve Center test? Further complicating the matter, in 2018, Amazon announced that the jobs associated with HQ2 would be split between two new headquarters in Arlington, Virginia, and New York City. *Id.* The current Nerve Center test for determining a corporation's "principal place of

This note argues the Supreme Court should adopt a modified "Total Activities" test for personal jurisdiction, under which a corporation may have its "principal *place(s)* of business" at both its "nerve center" and its "locus of operations," an alternate location where its business operations are significantly larger than any other location in which it operates.[22] The corporation would be subject to general jurisdiction at both locations, as well as in its state of incorporation.[23] This test adequately accounts for the different policy considerations raised in the diversity and personal jurisdiction contexts when courts consider a corporation's "principal place of business."[24] Perhaps more significantly, this test harmonizes two potentially competing strands of Supreme Court general jurisdiction jurisprudence: the long standing "continuous and systematic" contacts framework, handed down in 1945's *International Shoe Co. v. Washington*, and the Court's much more recent emphasis on "relative contacts," as seen in 2014's *Daimler AG v. Bauman* and 2017's *BNSF Railway Co. v. Tyrrell*.[25]

This note proceeds in five parts. Part I provides a broad overview of the development of general jurisdiction, giving attention to the unique conceptual problems of jurisdiction over corporations, and also discusses the federal courts' reluctance to explore a tempting option for new general jurisdiction jurisprudence: the "exceptional case." Part II discusses how the Supreme Court came to define "principal place of business" in the context of diversity jurisdiction in *Hertz Corp. v. Friend*. Part III examines how the federal courts adapted post-*Hertz*, finding that they generally apply the Nerve Center test in personal jurisdiction cases. Part IV identifies serious problems with this approach. Part V argues that the courts should adopt an alternate test—the Total Activities test—for determining a corporation's "principal *place(s)* of business" in the personal jurisdiction context.

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business" is plainly inadequate in a circumstance where all three locations (Seattle, Virginia, and New York) may plausibly lay claims to being dominant centers of corporate control and direction.

[22] *See infra* Part V.

[23] *See infra* Part V.

[24] *See infra* Part V.

[25] *See infra* Part V; Int'l Shoe Co. v. Washington, 326 U.S. 310 (1945); Daimler AG v. Bauman, 571 U.S. 117 (2014); BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549 (2017).

I. GENERAL JURISDICTION AND CORPORATIONS

No court may render a binding judgment on a defendant over whom it does not possess personal jurisdiction.[26] The Due Process Clauses of the United States Constitution guard "an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'"[27] The "forum" is the state in which the action is brought; that is, if a defendant is subject to personal jurisdiction in Washington state, then both the federal and state courts in Washington may decide claims against that defendant without offending due process.[28] Today, personal jurisdiction presents in two forms: general (or "all-purpose") jurisdiction, which permits suit against the defendant on *all* claims, and specific (or "case-linked") jurisdiction, which only permits claims arising out of the defendant's contacts with the forum state.[29] Due process is satisfied so long as the courts of the forum state possess either general or specific jurisdiction—or both—over the defendant.[30]

A. Pennoyer *and* International Shoe

The Supreme Court's first word on personal jurisdiction came in 1877's *Pennoyer v. Neff*, where the Court distinguished between *in personam*, *in rem*, and *quasi in rem* jurisdiction.[31] Under *Pennoyer*, *in personam* jurisdiction—what we now call personal jurisdiction—is jurisdiction over a particular defendant and is strictly limited to the territorial bounds of the forum state.[32] *In personam* jurisdiction may be established by the defendant's consent to the forum state's jurisdiction, residence

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[26] Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011); Pennoyer v. Neff, 95 U.S. 714, 733 (1877) ("[P]roceedings 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."); *see also* Daimler AG v. Bauman, 571 U.S. 117, 121–22 (2014).

[27] Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471–72 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945)); *Goodyear*, 564 U.S. at 919 ("A state court's assertion of jurisdiction exposes defendants to the State's coercive power, and is therefore subject to review for compatibility with the Fourteenth Amendment's Due Process Clause.").

[28] *See Daimler*, 571 U.S. at 125; *see also* FED. R. CIV. P. 4(k)(1)(A) (providing that service on a defendant creates federal court personal jurisdiction over that defendant only when that defendant "is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located").

[29] Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1779–80 (2017).

[30] *Id.*

[31] *Pennoyer*, 95 U.S. at 721–22.

[32] *Daimler*, 571 U.S. at 125–26 (2014) (citing *Pennoyer*, 95 U.S. at 720).

within the forum state, or physical presence in the forum state at the time of service of process.[33] *In rem* and *quasi in rem* jurisdiction are jurisdiction over property the defendant has in the forum state.[34] For all three, the territorial boundaries of the forum state were what mattered;[35] the Court was concerned with whether the defendant or their property was, in some relevant way, "present" in the forum state.[36]

Pennoyer authorized the courts to exercise transient or "tag" jurisdiction over any individual physically present in the forum state at the time of service, a power the courts retain to this day.[37] Corporations, however, present jurisdictional challenges because it is in "the very nature of a corporation [that it] 'is not embodied in any physical form comparable to an individual's body.'"[38] So determining where a corporation is "present" is as difficult as it is necessary.[39] This question only becomes more intractable for modern corporations, which often have decentralized operations spread across multiple states.[40] The Court was never willing to extend transient jurisdiction to bind a corporation whose officer was served with process while merely physically present in the forum state, instead requiring that the corporation be "doing business" in the state.[41] But once a corporation was "doing business" in the forum state, it became subject to suit there for any cause of action, i.e., it became subject to what we now call general jurisdiction.[42]

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[33] Donald L. Doernberg, *Resoling* International Shoe, 2 TEX. A&M L. REV. 247, 256 (2014).

[34] *Id.*

[35] *Pennoyer*, 95 U.S. at 722 ("[A] [s]tate possesses exclusive jurisdiction and sovereignty over persons and property within its territory . . . [and cannot] exercise direct jurisdiction and authority over persons or property without its territory.").

[36] Doernberg, *supra* note 33, at 256.

[37] *See* Burnham v. Super. Ct., 495 U.S. 604, 610 (1990).

[38] Doernberg, *supra* note 33, at 257 (citing Allan R. Stein, *The Meaning of "Essentially at Home" in* Goodyear Dunlop, 63 S.C. L. REV. 527, 534–35 (2012)); Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) ("[C]orporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact.").

[39] *Id.*

[40] 13F ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3625 (3d ed. 2021) ("Problems arise, however, in cases involving corporations with more complex structures and dispersed activities. For example, a corporation might locate all of its production facilities in one state, its executive and administrative functions in another state, and be incorporated in a third state.").

[41] *See, e.g.*, Int'l Harvester Co. of Am. v. Kentucky, 234 U.S. 579, 583 (1914) ("The mere presence of an agent upon personal affairs does not carry the corporation into the foreign state."); St. Louis Sw. Ry. Co. Tex. v. Alexander, 227 U.S. 218, 247 (1913); Tauza v. Susquehanna Coal Co., 115 N.E. 915, 918 (N.Y. 1917) ("The essential thing is that the corporation shall have come into the state. When once it is here, it may be served.").

[42] *Tauza*, 115 N.E. at 918 ("We hold, then, that the defendant corporation is engaged in business within this state. We hold, further, that the jurisdiction does not fail because the cause of action sued upon has no relation in its origin to the business here transacted.").

In 1945, the Supreme Court issued its "pathmarking" decision in *International Shoe v. Washington*, largely replacing the outdated and unwieldy territorial framework from *Pennoyer v. Neff* with a contacts-based approach.[43] In *International Shoe*, the state of Washington sought to recover taxes owed by the International Shoe Company to the state's unemployment insurance scheme.[44] International Shoe was headquartered in Missouri and maintained no offices in Washington, though it employed approximately twelve salespersons who lived in Washington and made sales to Washington customers.[45] International Shoe contended that it was not "present" in Washington and therefore, under the *Pennoyer* framework, not subject to the jurisdiction of the state's courts.[46] The Supreme Court disagreed, discarding *Pennoyer*'s strict geographic approach,[47] and discontinuing the practice of limiting the jurisdiction of a state's courts to that state's territorial boundaries.[48] Rather, under the *International Shoe* framework, courts possess personal jurisdiction over an out-of-state defendant when that defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."[49] *International Shoe* also distinguished for the first time, albeit somewhat cryptically, between what we now call general and specific jurisdiction.[50]

Specific jurisdiction exists over an out-of-state defendant when the defendant has purposefully created contacts with the forum state and the claims against that defendant "arise out of

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[43] Daimler AG v. Bauman, 571 U.S. 117, 117–18 (2014) (citing *Int'l Shoe*, 326 U.S. 310); Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011); Shaffer v. Heitner, 433 U.S. 186, 204 (1977) ("Thus, the 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, became the central concern of the inquiry into personal jurisdiction.").

[44] *Int'l Shoe*, 326 U.S. at 313–14.

[45] *Id.*

[46] *Id.* at 315–16.

[47] D.E. Wagner, Note, *Hertz So Good: Amazon, General Jurisdiction's Principal Place of Business and Contacts Plus as the Future of the Exceptional Case*, 104 CORNELL L. REV. 1085, 1094 (2019).

[48] Doernberg, *supra* note 33, at 260; Scott Dodson, *Personal Jurisdiction and Aggregation*, 113 NW. U. L. REV. 1, 16 (2018) (noting that more complex litigation and the "diminishment of state power, the rise of artificial entities, and the erosion of barriers to interstate travel led to reconsideration of [Pennoyer's] strict territorial approach").

[49] *Int'l Shoe*, 326 U.S. at 316.

[50] Daimler AG v. Bauman, 571 U.S. 117, 118 (2014) (citing *Int'l Shoe*, 326 U.S. at 318). *International Shoe* does not actually use the terms "specific" and "general" jurisdiction, instead describing circumstances to which scholars would later apply those labels. *See* Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966) (proposing for the first time the particular terminology of "specific" and "general" jurisdiction).

or relate to" those contacts.[51] Specific jurisdiction requires "an affiliation between the forum and the underlying controversy, principally [an] activity or an occurrence that takes place in the forum state."[52] So specific jurisdiction attaches to a broader set of defendants—those with more minimal contacts with the forum state—but governs a more limited set of claims—those relating to those minimal contacts.[53]

Conversely, general jurisdiction attaches to a narrower set of defendants—those "at home" in the forum state—but permits suit on the broadest possible array of claims.[54] General jurisdiction arises when the defendant's activities within the forum state are "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities."[55] That is, under general jurisdiction, a defendant is subject to suit in the forum state for *any* claim, so long as the defendant's contacts are "so 'continuous and systematic' as to render them essentially at home in the forum state."[56] For decades after *International Shoe*, however, the Supreme Court provided frustratingly little guidance on corporate general jurisdiction, and lower courts generally found that "doing business" in the forum state remained sufficient to sustain general jurisdiction over a corporation.[57]

B. Goodyear *and* Daimler*: A Return to Corporate Presence?*

It was not until 2011, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, that the Supreme Court provided meaningful clarification on what sort of activities are sufficiently "continuous and systematic" to justify exercise of general jurisdiction over a corporation.[58] In that case, plaintiffs sought to establish general jurisdiction in North Carolina over foreign subsidiaries of Goodyear, despite the fact that the subsidiaries manufactured tires abroad and the car accident underlying the

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[51] Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1024–25 (2021); *see also* Daimler AG v. Bauman, 128 HARV. L. REV. 311, 317 (2014) (noting that "[s]pecific jurisdiction's 'characteristic feature' is that it permits the plaintiff to reverse the roles and require the defendant to 'come . . . to him' by predicating the adjudicatory authority of the forum on its relation to the underlying controversy") (quoting Von Mehren & Trautman, *supra* 50, at 1167).

[52] Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1780 (2017).

[53] *Ford*, 141 S. Ct. at 1024–25 (2021).

[54] *See id.* at 1024.

[55] Int'l Shoe Co. v. Washington, 326 U.S. 310, 317–18 (1945).

[56] Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011) (quoting *Int'l Shoe*, 326 U.S. at 317).

[57] Wagner, *supra* note 47, at 1096–97.

[58] *See* Doernberg, *supra* note 33, at 265.

suit occurred in France.[59] The plaintiffs maintained that the presence of Goodyear manufacturing facilities and significant Goodyear sales in North Carolina justified the exercise of general jurisdiction over Goodyear's foreign subsidiaries.[60] The Court rejected this approach, holding that personal jurisdiction did not exist over the foreign subsidiaries in North Carolina because a corporation is only subject to general jurisdiction where it is "fairly regarded as at home."[61] It further held that a corporation is "at home" in such paradigmatic forums as its "place of incorporation, and principal place of business."[62]

Three years later, in *Daimler AG v. Bauman*, the Court doubled down on this approach.[63] There, plaintiffs brought a number of claims under the Alien Tort Statute and the Torture Victims Protection Act against Daimler, a German corporation, in district court in California.[64] The plaintiffs charged that Daimler, which operated manufacturing facilities in Argentina, collaborated with the nation's authoritarian government during its "Dirty War," leading to the kidnapping, detention, torture, and murder of their relatives by local security forces.[65] Though all the underlying conduct occurred in Argentina, the plaintiffs contended that general jurisdiction existed over Daimler in California based on the significant California contacts of its subsidiary, Mercedes-Benz USA.[66] The Court disagreed.[67] The Court held that a corporation is subject to general jurisdiction only in: (1) its state of incorporation; (2) its "principal place of business"; and (3) in an "exceptional case," where the corporation's operations are "so substantial and of such a nature as to render the corporation at home in that State."[68]

Daimler emphasized for the first time the importance of "relative contacts" in creating general jurisdiction.[69] The Court noted that a defendant corporation is not subject to general jurisdiction merely when it has a certain minimum quantum of contacts with the forum state, but rather when those contacts

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[59] *Goodyear*, 564 U.S. at 918–22.
[60] *See id.* at 918.
[61] *Id.* at 929.
[62] *Id.* at 924 (citing Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 728 (1988)).
[63] Daimler AG v. Bauman, 571 U.S. 117, 137–38 (2014).
[64] *Id.* at 122–23.
[65] *Id.* at 122.
[66] *Id.* at 122–23.
[67] *Id.* at 121–22.
[68] *Id.* at 137–39, 139 n.19.
[69] Doernberg, *supra* note 33, at 267.

are significant relative to its contacts with all other forums.[70] So, while Mercedes-Benz USA's contacts with California were significant, its sales there only accounted for 2.4 percent of Daimler's global sales, a proportion the Court found insufficient to sustain general jurisdiction.[71] In some ways, *Goodyear* and *Daimler*'s "at home" and "relative contacts" approaches represent a retreat to the corporate "presence" concern raised in *Pennoyer* and later rejected in *International Shoe*.[72]

The Court also never explained which prong of the general jurisdiction analysis this "relative contacts" concern speaks to.[73] It is not the first prong, since determining a corporation's state of incorporation is an exceedingly simple matter, leading one author to note that "only the principal place of business and the third category—the exceptional case—provide potential doctrinal flexibility."[74]

C. Relative Contacts and the Elusive Exceptional Case

The exceptional case branch of the general jurisdiction analysis has yielded disappointingly little fruit. The Supreme Court only recognized what we now call the exceptional case once, in 1952's *Perkins v. Benguet Consolidated Mining Co.*[75] In *Perkins*, Benguet Mining, a company based in the Philippines, was forced to relocate its operations and the president's office to Ohio after Japan invaded the Philippines during World War Two.[76] In Ohio, the company's president maintained an office, where he kept company files and correspondence and conducted company business.[77] Idonah Slade Perkins brought suit against Benguet Mining in district court in Ohio relating to its activities in the Philippines.[78] The Supreme Court found the lower court's exercise of general jurisdiction appropriate because the

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[70] *Daimler*, 571 U.S. at 139–40 n.20 ("[T]he general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts. General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them.").

[71] *Id.* at 123, 136.

[72] Doernberg, *supra* note 33, at 282 ("When *Goodyear* and *Daimler* speak of a corporation being 'essentially at home,' they speak of corporate presence in a place.").

[73] *See Daimler*, 571 U.S. at 139–40 n.20.

[74] Wagner, *supra* note 47, at 1088.

[75] Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447–48 (1952); Kuan Chen v. U.S. Sports Acad., Inc., 956 F.3d 45, 57 (1st Cir. 2020) ("The Court has singled out *Perkins v. Benguet Consolidated Mining Co.* as an avatar of such an exceptional case.") (citation omitted).

[76] *Perkins*, 342 U.S. at 447.

[77] *Id.* at 447–48.

[78] *Id.* at 439.

company's president directed Benguet Mining from Ohio while its normal headquarters in the Philippines was unavailable.[79] The Court noted years later, in *Keeton v. Hustler Magazine, Inc.*, that this also made Ohio Benguet Mining's "principal, if temporary, place of business,"[80] in an example of the federal courts' confusing tendency to synthesize the "principal place of business" and exceptional case analyses into a general inquiry as to the extent of a corporation's contacts with the forum state.[81]

Then followed a series of cases, foundational to first year law students, in which the Supreme Court declined to recognize general jurisdiction over corporate defendants through what we now recognize as the exceptional case analysis. In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, a plaintiff sought to establish general jurisdiction over a Colombian aviation company in Texas, where the company regularly purchased helicopters and sent pilots for training.[82] The Court found those contacts insufficient to support general jurisdiction.[83] In 2011, in *Goodyear*, the Court declined to recognize general jurisdiction over foreign Goodyear subsidiaries in North Carolina, even though Goodyear operated plants and made significant sales there.[84] Then in *Daimler*, the Court found exercise of general jurisdiction over Daimler in California inappropriate, even though its subsidiary, Mercedes-Benz USA, was the top seller of luxury cars in the state, because those sales constituted only a small percentage of Daimler's global sales.[85] The Court rejected the idea that a corporation should be subject to suit wherever its sales are considerable, calling that a "sprawling view of general jurisdiction."[86]

Most recently, in 2017, in *BNSF Railway Co. v. Tyrrell*, the Court declined to recognize general jurisdiction over BNSF in Montana, even though it operated over two thousand miles of railway track and employed two thousand workers in the state.[87] The Court emphasized that those contacts were minor compared to its business as a whole: those two thousand miles of track only accounted for 6 percent of its total track mileage, its two thousand workers made up less than 5 percent of the company's total workforce, and BNSF only derived around 10 percent of its

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[79] *Id.* at 448–49.

[80] Daimler AG v. Bauman, 571 U.S. 117, 129–30 (quoting Keeton v. Hustler Mag., Inc., 465 U.S. 770, 780 n.11 (1984)).

[81] Wagner, *supra* note 47, at 1111.

[82] Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 411 (1984).

[83] *Id.* at 415–16.

[84] Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 918, 929 (2011).

[85] *Daimler*, 571 U.S. at 123, 139.

[86] *Id.* at 136, 139 (2014) (quoting *Goodyear*, 564 U.S. at 929).

[87] BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1559 (2017).

revenue from Montana.[88] *BNSF* is notable for being the first general jurisdiction case before the Supreme Court in nearly eighty years to involve a US company, showing that *Daimler*'s tripartite general jurisdiction analysis and "relative contacts" doctrine applies with equal force to domestic corporations.[89]

Seemingly no threshold quantum of "minimum contacts" with the forum state is sufficient to establish general jurisdiction over a corporation outside its state of incorporation or "principal place of business."[90] Only an analysis of the corporation's operations in the forum state relative to its operations in all other forum states—*Daimler*'s relative contacts analysis—is relevant.[91] The lower courts have caught on, leading the Fifth Circuit to recognize in *Monkton Insurance Services v. Ritter* that establishing general jurisdiction over a corporation outside its place of incorporation or "principal place of business" is "incredibly difficult."[92]

To that point, in *Chufen Chen v. Dunkin' Brands Inc.*, the Second Circuit found Dunkin' Brands not "at home" in New York, despite having significant retail operations in the state, because its relationship with the state "was in [no] way significant or exceptional in relation to the company's nationwide business activity."[93] Similarly, the Second Circuit also found application of general jurisdiction inappropriate against Lockheed Martin in Connecticut in *Brown v. Lockheed Martin Corp.* because, while it earned over $160 million in revenue in the state over five years, that number represented only slightly more than a tenth of a percent of its global revenue over that period.[94] The Fourth Circuit, in *Fidrych v. Marriott International, Inc.*, declined to recognize general jurisdiction in

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[88] *Id.* at 1554.

[89] *See* B.N.S.F. Railway Co. v. Tyrrell, 131 HARV. L. REV. 333, 339 (2017).

[90] *Daimler*, 571 U.S. at 132; Chufen Chen v. Dunkin' Brands, Inc., 954 F.3d 492, 500 (2d Cir. 2020); *see also In re* Petrobas Sec. Litig., 393 F. Supp. 3d 376, 382 (S.D.N.Y. 2019) ("But even extensive business contacts such as significant physical infrastructure and thousands of employees in a particular state do not constitute such an exceptional case.").

[91] *Daimler*, 571 U.S. at 139–40 n.20 (2017); *see also BNSF*, 137 S. Ct. at 1559; Douglass v. Nippon Yusen Kabushiki Kaisha, No. 20-30382, 2022 WL 3368289, at *12 (5th Cir. Aug. 16, 2022) ("[D]etermining whether a defendant's contacts are so substantial and of such a nature as to render the corporation at home in the forum is an inherently comparative inquiry.") (internal quotation marks omitted).

[92] Monkton Ins. Servs. v. Ritter, 768 F.3d 429, 432 (5th Cir. 2014); *see also* Brown v. Showtime Networks, Inc., 394 F. Supp. 3d 418, 431 (S.D.N.Y. 2019) ("[W]hen a corporation is neither incorporated in a state nor maintains its principal place of business there, mere contacts, no matter how 'systemic and continuous,' are extraordinarily unlikely to add up to an 'exceptional case.'") (quoting Brown v. Lockheed Martin Corp., 814 F.3d 619, 629 (2d Cir. 2016)).

[93] *Chufen Chen*, 954 F.3d at 500.

[94] Brown v. Lockheed Martin Corp., 814 F.3d 619, 629 (2d Cir. 2016).

South Carolina over a defendant operating ninety of its approximately 6,200 hotels in the state.[95] In *Douglass v. Nippon Yusen Kabushiki Kaisha*, the Fifth Circuit blocked exercise of general jurisdiction over a Japanese shipping corporation which, despite "substantial" contacts with the forum, employed less than two percent of its global workforce and made less than 8 percent of its port calls in the United States.[96]

So, while in *Daimler* the Supreme Court did not definitively close the door to exercising general jurisdiction over a corporation incorporated or having its "principal place of business" outside the forum state,[97] it has declined to do so every time the issue has been raised, outside the truly exceptional circumstances in *Perkins*.[98] To the extent that the Court actually recognizes *Perkins* as a case where general jurisdiction was appropriate because Ohio was the defendant's "principal place of business," rather than merely its temporary location in an exceptional circumstance,[99] it closes that door even further.[100] Because it is "incredibly difficult" to find a corporation "at home"

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[95] Fidrych v. Marriott Int'l, Inc., 952 F.3d 124, 134 (4th Cir. 2020).

[96] *Douglass*, 2022 WL 3368289, at *12.

[97] Daimler AG v. Bauman, 571 U.S. 113, 137 (2014).

[98] Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 928–29 (2011); *see also* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1561–62 (2017) (Sotomayor, J., concurring in part) (noting that "[d]espite having reserved the possibility of an 'exceptional case' in *Daimler*, the majority here has rejected that possibility out of hand," seemingly limiting the "exceptional case" to the particular facts of *Perkins*, a reading "so narrow as to read the exception out of existence entirely").

[99] *Daimler*, 571 U.S. 117, 129–30 (2014) ("We held that the Ohio courts could exercise general jurisdiction over Benguet . . . because 'Ohio was the corporation's principal, if temporary, place of business.'") (quoting Keeton v. Hustler Mag., Inc., 465 U.S. 770, 780 n.11 (1984)).

[100] Research for this note discovered only two post-*Daimler* cases where a federal court has recognized general jurisdiction over a corporate defendant without finding it was incorporated or had its "principal place of business" in the forum state. Sokolow v. Palestine Liberation Org., No. 04 Civ. 397(GBD), 2014 WL 6811395, at *2 (S.D.N.Y. Dec. 1, 2014); *In re* Hellas Telecomm. (Luxembourg) II SCA, 524 B.R. 488, 508 (S.D.N.Y. 2015). In *Sokolow v. Palestine Liberation Org.*, the district court in New York found that the Palestine Liberation Organization (PLO) and Palestinian Authority (PA), while not "foreign corporations" per se, had sufficient business and commercial contacts with the US to open them up to general jurisdiction in New York. Sokolow v. Palestine Liberation Org., No. 04 Civ. 397 (GBD), 2014 WL 6811395, at *2 (S.D.N.Y. Dec. 1, 2014). The court stressed the difficulty of finding the PLO or PA "at home" in any other jurisdiction, including the West Bank or Gaza Strip. *Sokolow*, 2014 WL 6811395, at *2. However, these cases are very much outliers, and the court's holding in *Hellas* has been received particularly poorly in subsequent cases. *See* Livnat v. Palestinian Auth., 851 F.3d 45, 56 (D.C. Cir. 2017) (holding that the PA is not "at home" anywhere in the United States because it is headquartered and primarily operates in the West Bank); *In re* LIBOR-Based Fin. Instruments Antitrust Litig., No. 11 MDL 2262 NRB, 2015 WL 6243526, at *27 (S.D.N.Y. Oct. 20, 2015), *on reargument in part sub nom. In re* LIBOR-Based Fin. Instruments Antitrust Litig., No. 11 MD 2262 (NRB), 2016 WL 1301175 (S.D.N.Y. Mar. 31, 2016).

in a forum via the exceptional case prong,[101] the scope of general jurisdiction over corporations now depends heavily on the definition of "principal place of business."[102]

II. *HERTZ* AND THE MEANING OF PRINCIPAL PLACE OF BUSINESS FOR DIVERSITY JURISDICTION

Frustratingly, the Supreme Court has never expressly defined "principal place of business" in the context of personal jurisdiction.[103] However, the Court has grappled with the term in the context of diversity jurisdiction, where, by statute, a corporation is a citizen of the state in which its "principal place of business" is located.[104]

A. The Circuit Split Over "Principal Place of Business"

Federal courts are courts of limited jurisdiction and consequently may not hear a case over which they lack subject matter jurisdiction.[105] Article Three, Section Two of the United States Constitution provides that Congress may grant the federal courts jurisdiction over cases "between Citizens of different States."[106] Congress did exactly that through the federal diversity jurisdiction statute, 28 U.S.C. § 1332, which vests in the district courts original jurisdiction over any civil action between citizens of different states where the amount in controversy exceeds $75,000.[107] The parties to the action must be completely diverse, so that no plaintiff is a citizen of the same state as any defendant.[108] A corporation is a citizen of the state in which it is incorporated and the state in which its "principal place of business" is located.[109]

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[101] Monkton Ins. Servs. v. Ritter, 768 F.3d 429, 432 (5th Cir. 2014); *see also* Brown v. Showtime Networks, Inc., 394 F. Supp. 3d 418, 431 (S.D.N.Y. 2019) ("When a corporation is neither incorporated in a state nor maintains its principal place of business there, mere contacts, no matter how 'systematic and continuous,' are extraordinarily unlikely to add up to an 'exceptional case.'").

[102] Wagner, *supra* note 47, at 1088; *see also* Jonathan R. Nash, *The Rules and Standards of Personal Jurisdiction*, 72 ALA. L. REV. 466, 493 (2020) (noting that prior to *Goodyear* and *Daimler*, "precision in identifying a corporation's lone principal place of business was not required" because "general jurisdiction was proper in any state in which the corporation conducted sufficiently substantial business").

[103] Wagner, *supra* note 47, at 1088.

[104] Hertz Corp. v. Friend, 559 U.S. 77, 93 (2010); 28 U.S.C. § 1332(c)(1).

[105] Home Depot U.S.A., Inc. v. Jackson, 139 S. Ct. 1743, 1746 (2019).

[106] U.S. CONST. art. III, § 2.

[107] 28 U.S.C. § 1332(a)(1).

[108] Caterpillar v. Lewis, 519 U.S. 61, 68 (1996).

[109] 28 U.S.C. § 1332(c)(1).

Because the diversity statute grants federal courts jurisdiction over a suit only when it is between completely diverse parties, the greater the number of states in which a corporation is considered a citizen, the less exposed it is to federal diversity jurisdiction.[110] Conversely, a narrower definition of corporate citizenship would expand the reach of the federal courts over that corporation by minimizing the number of states in which it is considered a citizen.[111] However, it is important to note that lack of subject matter jurisdiction does not have the same drastic geographic implications as lack of personal jurisdiction.[112] A plaintiff who lacks access to the federal courts in Washington through diversity jurisdiction can bring the same action in Washington state court; a plaintiff who cannot acquire personal jurisdiction over a defendant in Washington is shut out of both the state and federal courts there.[113] Jurisdictional uncertainty is, of course, frustrating for both plaintiffs and corporations, so the impact a corporation's "principal place of business" has on the viability of litigation raised the need for a consistent definition of the term.[114]

Much to the chagrin of concerned litigants, "principal place of business" long went undefined by the Supreme Court, eventually opening up a Byzantine circuit split.[115] The Third Circuit used the Corporate Activities test, under which a corporation has its "principal place of business" where "the majority of [its] production and service activities are located."[116] Under the Corporate Activities test, Boeing's "principal place of business" is likely in Washington, where its single greatest concentration of employment and production exists.[117] The Seventh Circuit used the Nerve Center test, which looked to the location of the corporation's "executive headquarters."[118] Under the Nerve Center test, Boeing's "principal place of business" is, of course, its corporate headquarters in Chicago.[119] The First

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[110] *See* Wagner, *supra* note 47, at 1117.

[111] *Id.* at 1117–18. A corporation incorporated and having its "principal place of business" in only one state will find itself open to diversity actions from citizens of the other forty-nine states. But a corporation that is a citizen of multiple states will more often find that it shares citizenship with an opposing party, who will thus be precluded from bringing that claim as a diversity action in federal court. *See id.*

[112] *Id.*

[113] *See id.*

[114] *See* Hertz Corp. v. Friend, 559 U.S. 77, 94–95 (2010).

[115] Lindsey D. Saunders, *Determining A Corporation's Principal Place of Business: A Uniform Approach to Diversity Jurisdiction*, 90 MINN. L. REV. 1475, 1479–83 (2006).

[116] *Id.* at 1480–81; *see also* Kelly v. U.S. Steel Corp., 284 F.2d 850, 853 (3d Cir. 1960).

[117] *See, e.g.*, *Hertz*, 559 U.S. at 90–91; *see Employment Data*, *supra* note 10.

[118] Saunders, *supra* note 115, at 1479–80.

[119] Wilmington Tr. Co. v. Boeing Co., No. C20-0402-RSM-MAT, 2020 WL 4004575, at *3–5 (W.D. Wash. June 8, 2020) (finding Boeing's "nerve center" at its

Circuit applied either the Nerve Center test or the Locus of Operations test, with the latter asking "where the bulk of the corporation's actual physical operations are located."[120] The Ninth Circuit looked to where a "substantial predominance" of the corporation's business activities occur.[121]

The Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits used the Total Activities test, functionally a synthesis of the Corporate Activities and Nerve Center tests.[122] Under the Total Activities test, the court looks to both a corporation's "nerve center" and its "place of activities" —the location where the bulk of its production or service activities occur—and decides which to afford greater weight.[123] To make such a determination, the court considers "the totality of the facts, including the corporation's organization and the nature of its activities."[124] When a corporation's operations are "far-flung" and decentralized, the court should look to the corporation's "nerve center."[125] But "when a corporation has its sole operation in one state," and its corporate headquarters in another, its "place of activities" takes precedence.[126] When a corporation's activity in one location is "passive," and its core executive functions occur in another location, its "nerve center" is more significant.[127] In certain respects, the Total Activities test is not a freestanding test at all, but rather a framework for determining whether to apply the Corporate Activities or Nerve Center tests.[128] Yet, if complexity is the test's primary weakness, flexibility is its strength: the goal of the Total Activities test is to look to the totality of the circumstances to find a corporation's "center of gravity."[129]

It is not obvious where Boeing's "principal place of business" is located under the traditional, diversity derived

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headquarters in Chicago, where its executives "provide enterprise-wide direction and services to Boeing's business units").

120 Diaz-Rodriguez v. Pep Boys Corp., 410 F.3d 56, 59 (1st Cir. 2005) (quoting Topp v. CompAir Inc., 814 F.2d 830, 834 (1st Cir. 1987)).

121 Connor D. Deverell, *Defining A Corporation's "Principal Place of Business": The United States Supreme Court's Decision in* Hertz Corp. v. Friend, 56 LOY. L. REV. 733, 744 (2010).

122 Saunders, *supra* note 115, at 1481–82.

123 MILLER, *supra* note 40, § 3625; Teal Energy USA, Inc. v. GT, Inc., 369 F.3d 873, 876 (5th Cir. 2004).

124 *Teal Energy USA*, 369 F.3d at 876.

125 *Id.* (quoting J.A. Olson Co. v. City of Winona, 818 F.2d 401, 411 (5th Cir. 1987)).

126 *Id.*

127 *Id.* The Fifth Circuit contrasted one corporation's "significant autonomous administrative functions" in Alabama—its passive activities—with its corporate headquarters in New York, from which its executives made key business decisions and otherwise directed the corporation. *Olson*, 818 F.2d at 412.

128 MILLER, *supra* note 40, § 3625.

129 Hertz Corp. v. Friend, 559 U.S. 77, 91 (2010).

Total Activities test.[130] Boeing's operations are "far-flung" in certain respects: it operates in sixty-five nations and all fifty states.[131] But its operations are also heavily concentrated: close to two-thirds of its 141,000 global employees work in just four American states, and nearly half work in Washington.[132] And Boeing has its corporate headquarters in one state—Illinois—and its largest, but not "sole," operation in Washington.[133] Whether Illinois or Washington would win out is unclear, but it is obvious that Illinois is Boeing's "nerve center" and Washington is its "locus of operations" or "place of activities," as envisioned in the Corporate Activities test.

B. Hertz Corp. v. Friend *and the Nerve Center Test*

In 2010's *Hertz Corp. v. Friend*, the Supreme Court finally resolved the circuit split, determining that, for diversity jurisdiction purposes, a corporation's "principal place of business" is its "nerve center," "where a corporation's officers direct, control, and coordinate the corporation's activities."[134] Normally, this is "where the corporation maintains its headquarters."[135] The headquarters must be the corporation's "actual center of direction, control, and coordination"—a location that "is nothing more than a mail drop box, a bare office with a computer, or the location of an annual executive retreat" cannot be a corporation's "principal place of business."[136]

The Court adopted the Nerve Center test for three distinct reasons.[137] First, because diversity jurisdiction is a grant of authority from Congress, the Court looked to the plain text of 28 U.S.C. § 1332.[138] The statute provides that a corporation is a citizen of "the State . . . where it has its principal *place* of business."[139] The Court noted that "place" is singular, not plural, indicating a corporation's "principal place of business" is a single place.[140]

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[130] As this note argues, under a modified Total Activities test for personal jurisdiction, it is much easier to determine Boeing's "principal place(s) of business." *See infra* Part V.

[131] *Boeing in Brief*, *supra* note 3.

[132] *Employment Data*, *supra* note 10.

[133] *Boeing in Brief*, *supra* note 3.

[134] *Hertz*, 559 U.S. at 78.

[135] *Id.*

[136] *Id.* at 93, 97.

[137] Wagner, *supra* note 47, at 1088.

[138] MILLER, *supra* note 40, § 3625.

[139] 28 U.S.C. § 1332(c)(1) (emphasis added); *see also Hertz*, 559 U.S. at 80, 93.

[140] *Hertz*, 559 U.S. at 93 ("The word 'place' is in the singular, not the plural . . . A corporation's 'nerve center,' usually its main headquarters, is a single place. The public often (though not always) considers it the corporation's main place of business.").

Second, the Court stressed the virtue of simplicity in jurisdictional rules and its benefits to both plaintiffs and corporate defendants.[141] Simple jurisdictional rules promote predictability, and corporate defendants naturally would like to know where they are open to suit and what for.[142] But the Court also noted that predictability is of great value to plaintiffs, as well, because it allows them to better exercise their choice of filing in state or federal court.[143] A Washington plaintiff bringing a diversity action against Boeing must know if the court will find Boeing a citizen of Washington as well, and accordingly dismiss the action for lack of diversity.[144] So, the Court found it relevant that lack of subject matter jurisdiction closes the door to the federal courts, but leaves open the local state courts as avenues for bringing the same action.[145]

Third, the Court looked to the legislative history surrounding amendments to § 1332.[146] Legislators initially considered making a corporation a citizen of the state from which it derived more than half its "gross income."[147] But, finding that test "too complex and impractical to apply," Congress opted instead for the simpler "principal place of business" language.[148] This choice indicated to the Court that Congress preferred a simpler test that did not rely on difficult calculations or other impractical considerations.[149]

Taken together, the considerations upon which the Court's decision was based, while clearly relevant to diversity jurisdiction, have no obvious application in the context of personal jurisdiction.[150] Personal jurisdiction is governed by court created doctrines, so there is no statute to interpret or legislative history to consult.[151] And the Court's consolation that a simple standard facilitates a plaintiff's choice between the state or federal courts is negated when lack of personal jurisdiction shuts the door to both the federal and local courts of

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141 Deverell, *supra* note 121, at 748.

142 *Hertz*, 559 U.S. at 94 ("Simple jurisdictional rules also promote greater predictability. Predictability is valuable to corporations making business and investment decisions.").

143 *Id.* at 95.

144 *See id.*

145 *See id.* ("Predictability [in jurisdictional rules] also benefits plaintiffs deciding whether to file suit in a state or federal court.").

146 Wagner, *supra* note 47, at 1087–88.

147 *Hertz*, 559 U.S. at 95.

148 *Id.*

149 *Id.*

150 *See* Wagner, *supra* note 47, at 1116–18.

151 *See id.* at 1117; Personal jurisdiction is, of course, also regulated by state long-arm statutes, but it is common for these statutes to require no more than the Constitution does. *No Bad Puns: A Different Approach to the Problem of Personal Jurisdiction and the Internet*, 116 HARV. L. REV. 1821, 1822 n.4 (2003).

the forum state.[152] Rather conspicuously, *Hertz* makes no mention of personal jurisdiction, prompting the question of whether the Nerve Center test also applies in that context.[153]

III. THE NERVE CENTER TEST AND PERSONAL JURISDICTION IN THE FEDERAL COURTS

Despite the lack of any specific instruction from the Supreme Court to do so, federal courts post-*Daimler* have generally applied the Nerve Center test in the context of personal jurisdiction,[154] sometimes implicitly, but more often expressly, especially in the district courts.[155]

In *Nespresso USA, Inc. v. Ethical Coffee Co.*, the district court expressly applied the Nerve Center test for purposes of determining personal jurisdiction over a corporation in Delaware.[156] Similarly, in *Estate of Rosario v. Falken Tire Corp.*, the district court declined to recognize general jurisdiction in Puerto Rico over an Indonesian tire manufacturer, in part because its "nerve center" was located outside the forum.[157] In *International Union v. Consol Energy, Inc.*, the district court found there was no general jurisdiction in West Virginia over a defendant whose "nerve center" was located in Pennsylvania.[158] In *Atwal v. Lawrence Livermore National Security, LLC*, the district court found that the plaintiff failed to establish the defendant's "principal place of business" was located in the District of Columbia, explicitly referencing *Hertz* and the Nerve Center test.[159] Numerous unreported cases take the same approach and expressly apply the Nerve Center test.[160]

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[152] *See* Wagner, *supra* note 47, at 1117–18.

[153] *Id.* at 1088.

[154] *Id.* at 1108–09. While this note addresses only the federal courts' treatment of this issue, state courts also seem willing to mechanically apply the Nerve Center test for personal jurisdiction purposes. *See, e.g.*, Forever Living Prod. Int'l, LLC v. AV Eur. GmbH, 638 S.W.3d 719, 724 (Tex. App. 2021) (collecting cases).

[155] *See, e.g.*, Payrovi v. LG Chem Am., Inc., 491 F. Supp. 3d 597, 604 (N.D. Cal. 2020); *see also* Johnson-Howard v. AECOM Special Missions Servs., Inc., 434 F. Supp. 3d 359, 370 (D. Md. 2020) (declining to locate the defendant's "principal place of business" in Virginia for personal jurisdiction purposes because the court had located it in Maryland for diversity jurisdiction purposes).

[156] Nespresso USA, Inc. v. Ethical Coffee Co. SA, 263 F. Supp. 3d 498, 503 (D. Del. 2017) (citing Hertz Corp. v. Friend, 559 U.S. 77, 77 (2010)).

[157] Estate of Rosario v. Falken Tire Corp., 109 F. Supp. 3d 485, 494 (D.P.R. 2015).

[158] Int'l Union v. Consol Energy, Inc., 243 F. Supp. 3d 755, 761 (S.D.W. Va. 2017).

[159] Atwal v. Lawrence Livermore Nat. Sec., LLC, 786 F. Supp. 2d 323, 327 (D.D.C. 2011).

[160] Forsburg v. Wells Fargo & Co., No. 5:20-CV-00046, 2022 WL 989246, at *7 (W.D. Va. Mar. 30, 2022); Sutton v. Quinnipiac Univ., No. 1:21-CV-0181 (GTS/TWD), 2021 WL 5883789, at *10 n.8 (N.D.N.Y. Dec. 13, 2021); Lopez v. AngioDynamics, Inc., No. 21-CV-11353-ADB, 2021 WL 5040320, at *2 (D. Mass. Oct. 28, 2021); Mora v.

The circuit courts appear more hesitant to apply the Nerve Center test expressly.[161] In *Chufen Chen*, the Second Circuit applied the Nerve Center test only implicitly, declining to recognize general jurisdiction over Dunkin' Donuts's parent company in New York because it was not "incorporated or *headquartered*" there.[162] The Second Circuit adopted a similar view in *Gucci America, Inc. v. Weixing Li*, finding general jurisdiction did not exist over a Chinese bank in New York because it was "headquartered elsewhere."[163] In *SPV Osus Ltd. v. UBS AG*, the Second Circuit, citing *Lockheed*, maintained "Lockheed was neither headquartered nor incorporated" in the forum state, and declined to recognize general jurisdiction over UBS for the same reason.[164] In *Douglass v. Nippon Yusen Kabushiki Kaisha*, the Fifth Circuit rejected exercise of general jurisdiction over a defendant corporation "incorporated and headquartered in Japan."[165] In *Waite v. All Acquisition Corp.*, the

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Angiodynamics, Inc., No. 21-CV-11352-ADB, 2021 WL 5040333, at *2 (D. Mass. Oct. 28, 2021); Walters v. AngioDynamics, Inc., No. 21-CV-11225-ADB, 2021 WL 5040331, at *2 (D. Mass. Oct. 28, 2021); Serje v. Rappi, Inc., No. 19-CV-07415-VC, 2021 WL 2633536, at *4 (N.D. Cal. June 25, 2021); AOP Orphan Pharms. AG v. Pharmaessentia Corp., No. 20-12066-MLW, 2021 WL 2516103, at *9 (D. Mass. June 18, 2021); Rosen v. Movie Times, Inc., No. 20-CV-07043-EJD, 2021 WL 1338960, at *2 (N.D. Cal. Apr. 9, 2021); A-V Fluids, Inc. v. Jana Media, LLC, No. 2:20-CV-196, 2021 WL 5155698, at *3 (S.D. Tex. Mar. 22, 2021); Howard v. Waste Pro USA, Inc., No. 6:20-CV-1339-ORL-31DCI, 2020 WL 7407232, at *6 (M.D. Fla. Nov. 30, 2020); Davila v. Adesa Utah, LLC, No. 2:20-CV-00055, 2020 WL 4784766, at *3 (D. Utah Aug. 18, 2020); Michael Grecco Prods., Inc. v. Enthusiast Gaming, Inc., No. 19-CV-06399-LHK, 2020 WL 4207445, at *4 (N.D. Cal. July 22, 2020); Hannah v. Johnson & Johnson Inc., No. 18-10319, 2020 WL 3497010, at *17 (D.N.J. June 29, 2020); King v. Bumble Trading, Inc., No. 18-CV-06868-NC, 2020 WL 663741, at *3 (N.D. Cal. Feb. 11, 2020); Elite Motorsports, LLC v. RLB Constr., Ltd., No. CIV-19-901-D, 2020 WL 130145, at *2 (W.D. Okla. Jan. 10, 2020); Fox v. Michael Berenis, Bootaholics, Inc., No. 3:17-CV-2066-SI, 2018 WL 6313003, at *3 (D. Or. Dec. 3, 2018); Hegemann v. M & M Am., Inc., No. 2:18-CV-00064, 2018 WL 4502181, at *3 (D. Vt. Sept. 20, 2018); Bd. of Trs. of Glazing Health & Welfare Fund v. Z-Glass, Inc., No. 2:17-CV-01638-JAD-NJK, 2018 WL 4053320, at *5 (D. Nev. Aug. 24, 2018); Retail Pipeline, LLC v. JDA Software Grp. Inc., No. 2:17-CV-00067, 2018 WL 1621508, at *10 (D. Vt. Mar. 30, 2018); Thunderbird Resorts, Inc. v. Zimmer, No. 15CV1304-JAH, 2018 WL 1542044, at *8 (S.D. Cal. Mar. 28, 2018); Live Face on Web, LLC v. Archevos Corp., No. 17-CV-1487-WQH-NLS, 2018 WL 1035209, at *4 (S.D. Cal. Feb. 23, 2018); Gallagher v. Roberts, No. 3:16-CV-01437-BEN-DHB, 2017 WL 1365792, at *3 (S.D. Cal. Apr. 11, 2017); Hood v. Ascent Med. Corp., No. 13CV0628 (RWS) (DF), 2016 WL 1366920, at *9 (S.D.N.Y. Mar. 3, 2016).

[161] *See, e.g.*, Kuan Chen v. U.S. Sports Acad., Inc., 956 F.3d 45, 57 (1st Cir. 2020) (noting that Ohio "functioned as the nerve center of the corporation's wartime operations" in *Perkins*, but declining to expressly apply *Hertz*'s Nerve Center test for personal jurisdiction purposes).

[162] Chufen Chen v. Dunkin' Brands, Inc., 954 F.3d 492, 500 (2d Cir. 2020) (emphasis added).

[163] Gucci Am., Inc. v. Weixing Li, 768 F.3d 122, 135 (2d Cir. 2014).

[164] SPV Osus Ltd. v. UBS AG, 882 F.3d 333, 344 (2d Cir. 2018) (citing Brown v. Lockheed Martin Corp., 814 F.3d 619, 628–31 (2d Cir. 2016)).

[165] Douglass v. Nippon Yusen Kabushiki Kaisha, No. 20-30382, 2022 WL 3368289, at *12 (5th Cir. Aug. 16, 2022). Curiously, the dissent in *Douglass* appears more willing to own up to the federal courts' clear tendency to apply the Nerve Center test for

Eleventh Circuit echoed the language of the Nerve Center test in finding no general jurisdiction over a corporation that had not "directed its operations from Florida."[166]

On limited occasions, other courts bypassed the Nerve Center test and looked instead at the nature of the defendant's contacts with the forum state.[167] In these cases, it is not clear if the courts are using a "relative contacts" approach to determine the location of the defendant's "principal place of business," or if courts are attempting to determine whether the defendant is an exceptional case and otherwise "at home" in the forum state.[168] The lack of guidance from the Supreme Court on what "principal place of business" means in the context of personal jurisdiction––and its seeming merger of the exceptional case and "principal place of business" analyses in *Keeton*[169]—has likely further confounded the lower courts as they necessarily grapple with this issue.

IV. THE NERVE CENTER TEST IS ILL-SUITED TO PERSONAL JURISDICTION

Application of the Nerve Center test in the personal jurisdiction context improperly narrows the scope of corporate general jurisdiction. Under the Nerve Center test, general jurisdiction over a corporation is effectively limited to two places: its (1) state of incorporation and (2) corporate headquarters, without regard to whether the corporation maintains significant business operations in another location.[170] While this definition may be perfectly sensible in the context of diversity jurisdiction, there are a myriad of reasons the courts should not apply it

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personal jurisdiction, noting that "the Supreme Court has fashioned rules under the Fourteenth Amendment to limit state courts to the exercise of general personal jurisdiction over corporate defendants that are incorporated in their state, *house their 'nerve center' there*, or are otherwise 'essentially at home' in the state." *Id.* at *30 (Elrod, J., dissenting) (emphasis added).

166 Waite v. All Acquisition Corp., 901 F.3d 1307, 1318 (11th Cir. 2018).

167 *See, e.g.*, Barnett v. Surefire Med., Inc., No. JFM-17-1332, 2017 WL 4279497, at *2 (D. Md. Sept. 25, 2017); Google Inc. v. Rockstar Consortium U.S. LP, No. C 13-5933 CW, 2014 WL 1571807, at *5 (N.D. Cal. Apr. 17, 2014).

168 Wagner, *supra* note 47, at 1111.

169 *See* Daimler AG v. Bauman, 571 U.S. 117, 130 (2014) (quoting Keeton v. Hustler Mag., Inc., 465 U.S. 770, 780 n.11 (1984)). In a footnote, the *Keeton* court engages in both a general analysis of the defendant's contacts with the forum state in *Perkins*, looking to how many accounts and meetings were held there, but also a determination as to where the defendant's "principal place of business" is located. *Keeton*, 465 U.S. at 780 n.11. But *Keeton* leaves it unclear whether these are really separate analyses, as the number of accounts and meetings held by the company's CEO within the forum state is relevant to whether the corporation's "principal place of business" is located within that state. *Id.*

170 Monkton Ins. Servs. v. Ritter, 768 F.3d 429, 432 (5th Cir. 2014); *see supra* Section II.B.

broadly in the context of personal jurisdiction.[171] The Supreme Court has declined to explicitly apply the Nerve Center test for personal jurisdiction purposes, despite having multiple opportunities to do so.[172] The statutory interpretation considerations from *Hertz* are irrelevant in the context of personal jurisdiction, a doctrine of judicial construct.[173] In the context of diversity jurisdiction, limiting a corporation's "principal place of business" to only its "nerve center" increases a corporation's exposure to suit, and, correspondingly, a vulnerable plaintiff's potential access to justice. In the context of personal jurisdiction, however, it does the opposite.[174] That denial of jurisdiction is particularly indefensible when the Court has simultaneously narrowed specific jurisdiction, leaving American personal jurisdiction jurisprudence out of step with what is common internationally.[175] Perhaps most significantly, the Nerve Center test removes general jurisdiction from *International Shoe*'s framework, wherein general jurisdiction over a defendant emanates from their "continuous and systematic" contacts with the forum state.[176]

A. Judicial Silence

The most obvious reason that courts should not apply the Nerve Center test in the personal jurisdiction context is simply that the Supreme Court did not mention personal jurisdiction anywhere in *Hertz*, and explicitly noted the decision was "for diversity purposes."[177] Moreover, since *Hertz*, the Court decided three general jurisdiction cases—*Goodyear*, *Daimler*, and *BNSF*—without once mentioning the Nerve Center test.[178] The closest the Court has ever come to saying the Nerve Center test applies outside the diversity jurisdiction context came in *Daimler*, where the Court cited briefly to *Hertz* when describing a corporation's "principal place of business" as an easily ascertainable location.[179] Yet again, despite having ample opportunity to do so, the Court declined to hold that the Nerve Center test applies for personal

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171 Wagner, *supra* note 47, at 1116–18.

172 *See infra* Section IV.A.

173 *See infra* Section IV.B.

174 *See infra* Section IV.C.

175 *See infra* Sections IV.D and IV.E.

176 Doernberg, *supra* note 33, at 254–55.

177 Hertz Corp. v. Friend, 559 U.S. 77, 94 (2010).

178 *See generally* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011) (declining to specify if the Nerve Center test applies in the personal jurisdiction context); Daimler AG v. Bauman, 571 U.S. 117 (2014) (same); BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549 (2017) (same).

179 *Daimler*, 571 U.S. at 137.

jurisdiction purposes, instead including an explanatory parenthetical suggesting its citation to *Hertz* was for the plain proposition that "[s]imple jurisdictional rules . . . promote greater predictability."[180] While the Court did choose the diversity derived term "principal place of business,"[181] if the Court had meant to require the Nerve Center test for personal jurisdiction purposes, it could have done so explicitly, either in *Hertz* or subsequent cases. That it chose not to says something.

B. Statutory Interpretation

Second, *Hertz* was ultimately an exercise in statutory interpretation, while personal jurisdiction is governed by judicial doctrines dictating the requirements of the Due Process Clauses.[182] The *Hertz* Court chose to interpret "principal place of business" narrowly for diversity purposes because Congress indicated an intent to keep its grant of jurisdiction to the federal courts narrow and easily ascertainable.[183] Congress used the singular "place," rather than the plural "places," and rejected as too cumbersome an earlier proposal to make corporations citizens of states from which a significant portion of their revenues are derived.[184] However, neither of these considerations are directly applicable for personal jurisdiction purposes. There is no statute commanding courts to consider a singular "principal place of business" to determine corporate general jurisdiction—only judicially created requirements that the courts could easily modify.[185]

C. Race, Class, and the Burden on Plaintiffs

Third, the Court specifically noted that one of the virtues of an easily ascertainable definition of "principal place of business" is to simplify a plaintiff's choice between state and

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[180] *Id.*

[181] *See* 28 U.S.C. § 1332(c)(1).

[182] *See supra* Part III; Seungwon Chung, *The Shoe Doesn't Fit: General Jurisdiction Should Follow Corporate Structure*, 100 MINN. L. REV. 1599, 1638 (2016) ("The principal place of business is a creature of statute. Imposing such a limitation, crafted by Congress for an entirely different purpose, upon a doctrine limited only by the Constitution constitutes judicial overreach."); *see, e.g.*, *Daimler*, 571 U.S. at 121.

[183] Hertz Corp. v. Friend, 559 U.S. 77, 93–95 (2010).

[184] *Id.* at 93–95.

[185] Howard M. Erichson, *The Home-State Test for General Jurisdiction*, 66 VAND. L. REV. EN BANC 81, 86 (2013) ("Unlike the definition of principal place of business under the diversity jurisdiction statute, there is no reason why general jurisdiction cannot encompass multiple home states in special cases."); Wagner, *supra* note 47, at 1117 ("Justice Ginsburg . . . wrote the principal place of business language in *Daimler* to build on earlier federal precedent rather than to clarify a federal statute.").

federal court.[186] If the federal courts lack diversity jurisdiction in Washington, the plaintiff is free to pursue their claim in Washington state court, but if the Washington courts lack personal jurisdiction, then neither the federal nor state courts there are available.[187] A Washington plaintiff seeking to bring a claim against Boeing that is only within the scope of general jurisdiction may find great difficulty in pursuing that claim across the country in Illinois or Delaware, so far from their home state.[188] As a result, a narrow definition of "principal place of business" for diversity purposes broadens the reach of the federal courts over a corporate defendant, but a narrow definition for personal jurisdiction purposes radically reduces a corporation's exposure to suit.[189]

That restriction is all the more pernicious when it may serve to exacerbate already worrying racial and class disparities in utilization of the civil litigation system.[190] Poor and minority plaintiffs are significantly less trustful of the civil system and consequently far less likely to enforce their rights through litigation.[191] And while the Due Process Clauses protect a defendant against the coercive power of a forum's courts, they also protect the plaintiff's property right in their cause of action; a court's determination with respect to personal jurisdiction affects both simultaneously.[192] If placing extra burdens on

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[186] *Hertz*, 559 U.S. at 94–95.

[187] *See id.*

[188] *See* Daimler AG v. Bauman, 571 U.S. 117, 158–59 (2014) (Sotomayor, J., concurring only in judgment); *see also* B.N.S.F. Railway Co. v. Tyrrell, 131 HARV. L. REV. 333, 342 (2017) ("Especially when their claims are small or would require lengthy litigation, rational individuals may choose not to pursue completely valid claims rather than bring a lawsuit that would cost them more than they could reasonably expect to recover in damages.").

[189] Judy M. Cornett & Michael H. Hoffheimer, *Good-Bye Significant Contacts: General Personal Jurisdiction After* Daimler AG v. Bauman, 76 OHIO ST. L.J. 101, 148 n.228 ("Creating two places of citizenship deprives federal courts of subject matter jurisdiction in up to twice as many cases-destroying diversity in claims brought by plaintiffs that are citizens of either of the corporation's places of citizenship. In contrast, defining general personal jurisdiction to include a corporation's principal place of business potentially doubles the number of courts that may constitutionally exercise personal jurisdiction.").

[190] *See* Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1288–89 (2016).

[191] *Id.* at 1288–89, 1309–13 (2016) (noting that poor and minority litigants are far more likely to express distrust of the civil justice system, believe that its outcomes are more dependent on wealth than the merits of the case, and accordingly forego litigation in favor of self-help).

[192] R.D. Rees, *Plaintiff Due Process in Assertions of Personal Jurisdiction*, 78 N.Y.U. L. REV. 405, 418 ("Rather, a jurisdictional proceeding merely serves to adjudicate the defendant's individual liberty interest to remain free of overreaching fora. What has been overlooked is that a second individual right—the plaintiff's property right to maintain her cause of action—is necessarily adjudicated at the same time. The Due Process Clauses should adequately protect both rights.").

plaintiffs will disproportionately force Black, brown, and poor litigants out of the civil system, and further divest them of that protected right, the Court should be maximally hesitant before concluding this is a result the Constitution requires.[193]

The fact that the Nerve Center test serves to aid a plaintiff in the context of diversity jurisdiction, but significantly hampers them in the context of personal jurisdiction, counsels against applying the same definition for both.[194] The Court should emphasize consistency with principles of Due Process over the simplicity concerns that guided it in *Hertz*.[195]

D. The Uncertain Future of Specific Jurisdiction

Since *Goodyear*, where it first articulated a domicile-based test for general jurisdiction, the Court has expressed a desire to limit the scope of general jurisdiction and implied that the scope of specific jurisdiction would correspondingly continue to expand.[196] During oral arguments in *Daimler*, Justice Ginsburg noted that general jurisdiction was much broader pre-*Goodyear*, "[b]ut now that we have specific jurisdiction, so you can sue where the event occurred, just as specific jurisdiction has expanded, so general jurisdiction has shrunk."[197]

But the dream of a broad specific jurisdiction to compensate for the Court's significant restriction of general jurisdiction has largely gone unrealized.[198] After *International Shoe*, the Court decided a number of cases designed to "put meat on the bones" of specific, or case-linked, jurisdiction,[199] expanding it from mere concept to "the centerpiece of modern jurisdiction theory."[200] But then, in 2011's *J. McIntyre Machinery, Ltd. v. Nicastro*, the Court declined to allow New Jersey to hail a foreign manufacturer into its courts, even when

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193 *See* Sternberg Greene, *supra* note 190.

194 Wagner, *supra* note 47, at 1117–18.

195 *See id.* at 1118 ("Simplicity and ease of application should be less important when the stakes are higher.").

196 Daimler AG v. Bauman, 571 U.S. 117, 128, 132–33 (2014) (explaining that "general and specific jurisdiction have followed markedly different trajectories post-*International Shoe*," with specific jurisdiction expanding, while "general jurisdiction has come to occupy a less dominant place in the contemporary scheme").

197 Transcript of Oral Argument at 38–39, Daimler AG v. Bauman, 571 U.S. 117 (2014) (No. 11-965).

198 Alan M. Trammell, *A Tale of Two Jurisdictions*, 68 VAND. L. REV. 501, 507–08 (2015).

199 *See* Andrew D. Bradt & D. Theodore Rave, *Aggregation on Defendants' Terms:* Bristol-Myers Squibb *and the Federalization of Mass-Tort Litigation*, 59 B.C. L. REV. 1251, 1269 (2018).

200 Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 925 (2011) (quoting Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 628 (1988)).

its machinery had malfunctioned within the state, severely injuring a worker.[201] In 2014, in *Walden v. Fiore*, the Court found that specific jurisdiction emanates from direct contacts by the defendant with the forum state, and cannot rest on mere interactions with forum state citizens that occurred in a different state.[202]

Then, in 2017, the Court narrowed specific jurisdiction significantly in *Bristol-Myers Squibb v. Superior Court of California, San Francisco County*.[203] There, a group of claimants harmed by Bristol-Myers Squibb's (BMS) drug Plavix, some of them California residents and some not, sued BMS in California state court.[204] The Court held that while the California courts had specific jurisdiction over the claims of the California residents, the claims of nonresidents did not "aris[e] out of or relat[e] to" BMS's contacts with the forum state, as they must to support specific jurisdiction.[205]

Bristol-Myers Squibb is of particular concern because it effectively makes a corporation's "at home" states—i.e., where the corporation is subject to general jurisdiction—the only fora in which all similarly injured plaintiffs may bring an action together, putting new emphasis on the general jurisdiction analysis[206] and further constraining plaintiffs' already limited options for enforcing their rights.[207]

For example, suppose a group of Boeing employees living and working in Washington, Oregon, California, and Idaho seek to redress workplace discrimination together in federal court in Washington. If the court does not find Boeing subject to general jurisdiction in Washington because it applies only the Nerve Center test to determine Boeing's "principal place of business,"

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[201] J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 877–79 (2011).

[202] Walden v. Fiore, 571 U.S. 277, 290 (2014) ("[M]ere injury to a forum resident is not a sufficient connection to the forum . . . An injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State."). In *Walden*, plaintiffs brought a *Bivens* action against federal officers living in Georgia, charging that their tortious conduct, all of which occurred in Georgia, prevented the arrival of funds rightfully belonging to the plaintiffs to their home in Nevada. *Id.* at 279–81. The Court unanimously rejected the plaintiffs' contention that the federal officers' interactions with the plaintiffs in Georgia gave rise to specific jurisdiction over those officers in Nevada. *Id.* at 279.

[203] Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1775–76 (2017).

[204] *Id.* at 1775.

[205] *Id.* at 1775–76 (alterations in original).

[206] *See id.* at 1789 (Sotomayor, J., dissenting); Bradt & Rave, *supra* note 199, at 1282 (noting that the Court's holding makes it "unlikely that plaintiffs could maintain a multistate class action or mass joinder in state court anywhere other than the defendant's home state(s)"); *see also* Dodson, *supra* note 48, at 13 (recognizing that *Bristol-Myers Squibb* threatens "a primary goal of aggregation [which] is to enable litigation that might be too inefficient or uneconomical to pursue individually").

[207] *See supra* Section IV.C.

then those plaintiffs will either have to abandon their hope of aggregation and pursue separate actions in their home states, claiming specific jurisdiction, or travel across the country and sue jointly in Illinois or Delaware.[208] Faced with this choice, many plaintiffs will forego litigation entirely.[209] Alternatively, if the court were able to exercise general jurisdiction over Boeing in Washington, then those plaintiffs would have a convenient forum in which to bring a more economical aggregated action.[210]

Taken together, *J. McIntyre*, *Walden*, and *Bristol-Myers Squibb* signaled that the Court intended to limit the scope of personal jurisdiction as a whole, restricting specific jurisdiction while at the same time dramatically narrowing the scope of general jurisdiction in *Goodyear*.[211] But then the Court seemingly changed course in 2021 with *Ford Motor Co. v. Montana Eighth Judicial District Court*.[212] In *Ford*, the Court consolidated two cases with similar facts, one in Montana and the other in Minnesota; both concerned accidents occurring in the forum state, but involved vehicles that entered the forum only by resale, and were not individually sold or marketed in the forum state by Ford.[213] The question was whether the plaintiffs' tort claims sufficiently related to Ford's contacts with Minnesota and Montana, despite the lack of direct causal links between Ford's activities in the forum states and the accidents.[214] The Court found that they did.[215] It was enough that Ford marketed and sold the same model of car in Montana and Minnesota extensively, despite not having sold the individual vehicles involved in each accident in those states.[216]

Ford was the first time a plaintiff prevailed in a personal jurisdiction case before the Supreme Court since the 1980s.[217] The case also potentially represents a broad expansion of the scope of specific jurisdiction to cover not only claims that directly arise from the defendant's contacts with the state, but also those that bear some relation to the kind of business the defendant does in the

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[208] *See* Dodson, *supra* note 48, at 13–14.

[209] *See id.*

[210] *See id.*

[211] Wagner, *supra* note 47, at 1131.

[212] Rebecca M. Plasencia & Nicole S. Alvarez, *Supreme Court Changes Gears on Specific Personal Jurisdiction*, HOLLAND & KNIGHT (Mar. 29, 2021), https://www.hklaw.com/en/insights/publications/2021/03/supreme-court-changes-gears-on-specific-personal-jurisdiction [https://perma.cc/3M59-JS8E].

[213] Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1023 (2021).

[214] *See id.* at 1022, 1026.

[215] *Id.* at 1026–27.

[216] *Id.* at 1029.

[217] Plasencia & Alvarez, *supra* note 212.

state.[218] Justices Alito and Gorsuch, joined by Justice Thomas, filed concurrences expressing concern with the potentially expansive reach of the majority's holding,[219] raising questions about its durability as the Court grows more conservative.[220] Lack of certainty over the future of specific jurisdiction counsels against preemptively narrowing general jurisdiction.

E. International Comity

Justice Ginsburg's majority opinion in *Daimler* noted that the "doing business" general jurisdiction that predominated prior to *Goodyear*—which recognized general jurisdiction wherever a defendant conducted business—was considered excessive internationally, and threatened "international comity" by impeding the negotiation of a treaty governing reciprocity of judgments.[221] Justice Ginsburg stressed that "considerations of international rapport thus reinforce[d]" the Court's move to restrict corporate general jurisdiction to a domicile-based framework more similar to that which predominates in Europe.[222] However, even if those considerations appropriately lie with the judiciary,[223] with *Goodyear*, *Daimler*, and *BNSF* the Court has now restricted corporate general jurisdiction beyond what is common internationally.[224]

While EU jurisdictions generally follow a domicile-based approach to general jurisdiction, major exceptions exist which

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[218] *Id.*

[219] Patrick J. Borchers et al., Ford Motor Co. v. Montana Eighth Judicial District Court*: Lots of Questions, Some Answers*, 71 EMORY L.J. ONLINE 1, 12–16 (2021).

[220] *Cf. id.* at 3 n.16 (noting that Justice Barrett took no part in the decision).

[221] Daimler AG v. Bauman, 134 U.S. 117, 141–42 (2014). American efforts during negotiations of the Hague Conference on Private International Law to have "doing business" recognized as an appropriate basis for exercise of personal jurisdiction were so adamantly opposed by European negotiators, who viewed "doing business" jurisdiction as exorbitant, that the final rules explicitly prohibit recognition of judgments where jurisdiction was premised solely on that basis. Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. CHI. LEGAL F. 141, 161–62 (2001).

[222] *Daimler*, 571 U.S. at 142; *see* Scott Dodson, *Personal Jurisdiction in Comparative Context*, 68 AM. J. COMPAR. L. 701, 716 (2021) (noting that one justification the Court gave for its holding in *Daimler* was "to bring U.S. personal jurisdiction more in line with other countries").

[223] Justice Sotomayor's concurrence in *Daimler* contends that considerations of international comity are not the province of the courts and "the task of weighing those policy concerns belongs ultimately to legislators, who may amend state and federal long-arm statutes in accordance with the democratic process." *Daimler*, 571 U.S. at 156 (Sotomayor, J., concurring in judgment only).

[224] Dodson, *supra* note 222, at 716; Kate Bonacorsi, Note, *Not at Home with "At-Home" Jurisdiction*, 37 FORDHAM INT'L L.J. 1821, 1851–52 (2014) ("Defendant-oriented, the US minimum contacts approach to personal jurisdiction is more restrictive than the approach taken by the European Union, Germany, France, or England. This places US plaintiffs at a disadvantage in obtaining relief as compared to their EU counterparts.").

serve the general goal of affording an EU plaintiff a reasonable venue in which to bring their claim.[225] In Germany, general jurisdiction is appropriate over a non-EU corporation owning property within the country.[226] French law permits jurisdiction over any claim "for obligations contracted by [the defendant] in a foreign country towards French persons."[227] Jurisdictions outside the EU generally take a similar approach, with Japan permitting general jurisdiction over a corporation when a business office cannot be located, but an agent of the corporation resides in Japan.[228] While foreign law often seeks to provide plaintiffs convenient access to the courts, American personal jurisdiction law is concerned almost exclusively with fairness to the defendant, and, as a result, "rigidly resists exceptions to domicile-based general jurisdiction."[229]

The American focus on defendant fairness is difficult to square with transient or "tag" jurisdiction—wherein individuals are subject to general jurisdiction merely by being physically present in the forum state at the time of service of process—a practice that is exceptionally rare and frowned upon internationally.[230] Contrary to expectations, the Court reaffirmed transient jurisdiction over individuals in 1990's *Burnham v. Superior Court of California, County of Marin*.[231] The Court's subsequent narrowing of corporate general jurisdiction in *Goodyear*, *Daimler*, and *BNSF* highlights a gross imbalance between individuals, who are subject to general jurisdiction simply by being served while physically present in the forum state, and corporations, who are essentially only subject to general jurisdiction in their state of incorporation and at their "principal place of business," even when they maintain extensive business operations in the forum state.[232] That application of the Nerve Center test exclusively for determining a corporation's "principal place of business" would further exacerbate that imbalance, and further narrow corporate general jurisdiction beyond what is common internationally, cuts against its adoption.

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[225] Bonacorsi, *supra* note 224, at 1843–44.

[226] *Id.* at 1835.

[227] *Id.* at 1839.

[228] Dodson, *supra* note 222 at 716.

[229] Bonacorsi, *supra* note 224, at 1842–43; Dodson, *supra* note 222, at 716.

[230] Dodson, *supra* note 222 at 711–12.

[231] Cody J. Jacobs, *If Corporations Are People, Why Can't They Play Tag?*, 46 N.M. L. REV. 1, 8 n.42 (2016).

[232] Doernberg, *supra* note 33, at 289–90.

F. International Shoe*'s Continuous and Systematic Contacts Framework*

Perhaps most significantly, application of the Nerve Center test in the context of personal jurisdiction serves to dislodge the corporate general jurisdiction analysis from its precedential moorings outlined in *International Shoe*.[233] In *Daimler* and *Goodyear*, the Court went to great lengths not to overrule its precedent in *International Shoe*.[234] As long as *International Shoe* is good law, general jurisdiction over a corporation must derive from its "continuous and systematic" operations in the forum state.[235] However, if a corporation's "principal place of business" exists only at its "nerve center," then the general jurisdiction analysis becomes a mechanical routine of noticing a corporation's state of incorporation and its corporate headquarters.[236] This kind of "analysis" can hardly be characterized as seriously searching for a corporation's "continuous and systematic" contacts with the forum state, as originally imagined in *International Shoe*.[237]

Scholars and courts repeatedly emphasize the importance of "reciprocal benefits and burdens" in forming the basis for general jurisdiction.[238] By operating within the forum state, a corporation enjoys the protection of that state's laws, eventually incurring, through sustained and deep contacts with the forum state, an obligation to submit to suit there on any cause of action.[239]

By contrast, the state in which a corporation is incorporated has nothing, necessarily, to do with where it operates.[240] A corporation may easily have a relatively minor corporate office in Illinois, while it conducts enormous amounts

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[233] *Id.* at 254–56.

[234] *See* Trammell, *supra* note 198, at 521.

[235] Int'l Shoe Co. v. Washington, 326 U.S. 310, 317, 320 (1945); *see also* Daimler AG v. Bauman, 571 U.S. 117, 119 (2014) (reiterating that general jurisdiction emanates from "affiliations with the State [that] are so 'continuous and systematic' as to render [it] essentially at home in the forum State") (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).

[236] *See* Dodson, *supra* note 222, at 711 (noting the Court's "general-jurisdiction cases eliminate any vestige of 'doing business' jurisdiction and essentially reduce general jurisdiction to a domicile test").

[237] *See Int'l Shoe*, 326 U.S. at 319–20 (making a serious effort to determine if the defendant's activities in Washington were sufficiently "continuous" and "systematic").

[238] Doernberg, *supra* note 33, at 273; *Int'l Shoe*, 326 U.S. at 319 ("[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations," like the obligation to submit to suit); *accord* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1025 (2021).

[239] *See* Doernberg, *supra* note 33, at 273.

[240] *See id.* at 290–91.

of business and employs many thousands of people in Washington.[241] Application of this analysis to Boeing almost certainly yields the result that Boeing is subject to general jurisdiction only in Delaware, where it is incorporated, and in Illinois, where it is headquartered.[242] The fact that Boeing employs nearly half of its global workforce in Washington, far more than at any other single location, [243] and even calls Washington its home,[244] is irrelevant to the analysis.

With general jurisdiction determined by reference to a corporation's place of incorporation and corporate headquarters, and the exceptional case prong effectively unavailable,[245] no part of the analysis now speaks to the "continuous and systematic" operations requirement that is supposed to be its guiding principle.[246] And application of the Nerve Center test alone for personal jurisdiction purposes compels us to ignore what is plain: that Boeing is, and has always been, "at home" in Washington and thus subject to general jurisdiction there. Lacking any basis in the Court's precedent from *International Shoe*, or the policy considerations that guided the Court in *Hertz*, the Nerve Center test is ill-suited, at least on its own, for determining "principal place of business" in the context of personal jurisdiction.

V. LOCUS OF OPERATIONS AND THE TOTAL ACTIVITIES TEST FOR PERSONAL JURISDICTION

A modified version of the Total Activities test, one that considers a corporation to have its "principal *places* of business" at both its "nerve center" and "locus of operations," is the proper test to apply in determining corporate general jurisdiction.[247] Under the Total Activities test for personal jurisdiction, the court would locate

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[241] *See* Teal Energy USA, Inc. v. GT, Inc., 369 F.3d 873, 876 (5th Cir. 2004).

[242] *See* Wilmington Tr. Co. v. Boeing Co., No. C20-0402-RSM-MAT, 2020 WL 4004575, at *1, *4 (W.D. Wash. June 8, 2020).

[243] *Employment Data*, *supra* note 10.

[244] *Latest "By the Numbers"*, *supra* note 13.

[245] *See supra* Section I.C.; Monkton Ins. Servs. v. Ritter, 768 F.3d 429, 432 (5th Cir. 2014).

[246] *See* Doernberg, *supra* note 33, at 254–55.

[247] Also recognizing that the Nerve Center test is too narrow, at least on its own, for application in the personal jurisdiction context, D.E. Wagner argues that the "exceptional case" prong of the general jurisdiction analysis should expand to take account of a corporation's significant business contacts in fora other than its state of incorporation and the location of its "nerve center" through a "Contacts Plus" test. Wagner, *supra* note 47, at 1124 However, given the Supreme Court's extreme reticence to explore the "exceptional case," this note argues that the unresolved meaning of "principal place of business" offers a more promising place for addressing these concerns. *See supra* Section I.C.

the corporation's "nerve center," usually its corporate headquarters,[248] and then look at the extent of the corporation's business operations in other locations. If a "bulk of the corporation's actual physical operations" (1) are located in a different state than its "nerve center;" (2) are significantly larger than the corporation's operations in any other single location; and (3) constitute a substantial percentage of the corporation's total operations, then the court should find that this alternate location is the corporation's "locus of operations."[249] The "locus of operations" need not consist of the majority of the corporation's operations; it need only consist of much more significant operations than the corporation has at any other location, including its "nerve center," and constitute a significant percentage (20 percent at a minimum) of its total operations. When this occurs, the court must determine that the corporation has two "principal places of business" and is subject to general jurisdiction at both locations.[250] The corporation would remain subject to general jurisdiction in its state of incorporation, as well.[251]

This approach is superior to plain application of the Nerve Center test. Unlike the Total Activities test used by numerous circuits pre-*Hertz* for diversity jurisdiction purposes, whose primary weakness lay in the complexity of deciding whether to focus on a corporation's "nerve center" or "place of operations,"[252] the Total Activities test for personal jurisdiction is simple to apply. Under this test, it is not necessary to subjectively weigh the relative importance of a corporation's executive direction against its physical operations. Rather, courts need only assess whether a corporation's physical operations in one state are larger than its operations anywhere else, and whether these operations are located in a different state than its "nerve center." In other words, the court need only determine if a corporation's distinct "locus of operations" exists, not if it is more fairly regarded as "at home" there than at its "nerve center."[253]

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[248] *See* Hertz Corp. v. Friend, 559 U.S. 77, 93 (2010).

[249] *See* Diaz-Rodriguez v. Pep Boys Corp., 410 F.3d 56, 59 (1st Cir. 2005) (quoting Topp v. CompAir Inc., 814 F.2d 830, 834 (1st Cir. 1987)).

[250] Erichson, *supra* note 185, at 86 ("[T]here is no reason why general jurisdiction cannot encompass multiple home states in special cases.").

[251] Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011).

[252] Saunders, *supra* note 115, at 1481–82.

[253] Courts may find that the practical effects of adopting the Total Activities test for personal jurisdiction over the Nerve Center test are limited because relatively few corporations have a distinct "locus of operations" in a different state than their "nerve center." Boeing is, of course, the most prominent example of a corporation that would present this kind of jurisdictional challenge, but it's also possible that Amazon's HQ2 would raise similar issues. *See* Wagner, *supra* note 47, at 1118–24. And other, far

Applying this test to Boeing, the court would first note that the company is subject to general jurisdiction in its state of incorporation, Delaware, and the location of its corporate headquarters, Illinois.[254] The court would then look to see if there is any other location where Boeing's operations are significantly larger or more continuous compared to its other locations. The court would, of course, notice that Boeing was founded and employs nearly half its global workforce in Washington, more than twice the number it employs at any other location.[255] The court would accordingly find that Washington is Boeing's "locus of operations," and hold that it is subject to general jurisdiction there as well.

This test also resolves the policy dilemmas encountered when applying the diversity-derived Nerve Center test in the personal jurisdiction context. Under the Total Activities test, a Washington plaintiff would not have to bring a general jurisdiction only claim against Boeing all the way in Illinois or Delaware when Boeing is clearly "at home" in Washington. But neither does it radically expand the scope of general jurisdiction over Boeing or allow plaintiffs to forum shop: Boeing would be subject to general jurisdiction in three forum states rather than two.[256] The "doing business" jurisdiction that predominated prior to *Goodyear* genuinely was excessive, and closing off the enormous potential it created for plaintiff forum shopping through a domicile-based general jurisdiction test likely will have positive effects on economic growth, litigant predictability,

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less notable, cases have turned on how to determine the "principal place of business" of a corporation with its main business operations in one state and a comparatively minor corporate headquarters in another state. *See, e.g.*, Praetorian Ins. Co. v. First Class Grp., Inc., No. 16-CV-9565, 2017 WL 2180517, at *4 (N.D. Ill. May 18, 2017) (determining the defendant's "principal place of business" for purposes of diversity jurisdiction, not personal jurisdiction); *see also* J.A. Olson Co. v. City of Winona, 818 F.2d 401, 412–13 (5th Cir. 1987). In *Praetorian*, the plaintiff corporation, QBE, was headquartered at a relatively minor office in New York, while its "main administrative office" was in Wisconsin. *Praetorian*, 2017 WL 2180517, at *3. Following *Hertz*, the district court applied the Nerve Center test and located QBE's "principal place of business" in New York. *Id.* As this note argues, that determination may make sense for diversity jurisdiction purposes, but if that court were instead asked to determine where QBE is "at home" for personal jurisdiction purposes, and thus where QBE may fairly be hailed into court, Wisconsin is as plausible an answer as New York. The fact that analogous situations occur somewhat infrequently does not negate the "Nerve Center" test's inadequacy as a determiner of domicile, nor the unfairness to individual plaintiffs who may find themselves without a convenient forum in which to seek restitution.

[254] Wilmington Tr. Co. v. Boeing Co., No. C20-0402-RSM-MAT, 2020 WL 4004575, at *1, *3–4 (W.D. Wash. June 8, 2020).

[255] *Employment Data*, *supra* note 10.

[256] *See* Stephanie Denker, Note, *The Future of General Jurisdiction: The Effects of* Daimler AG v. Bauman, 20 FORDHAM J. CORP. & FIN. L. 145, 165 (2014); A corporation could also choose to incorporate, headquarter, and mostly operate in one state, and thus be subject to general jurisdiction in only that one state.

and international comity.[257] However, there is a reasonable balance to be struck between fairness to defendants and guaranteeing plaintiffs a convenient venue in which to seek justice, and the Total Activities test best strikes that balance.

Accordingly, under the Total Activities test, the new forum in which Boeing would find itself subject to general jurisdiction would necessarily be one where its operations are so significant that it could hardly be an unacceptable inconvenience to litigate there.[258] If the facts make Washington an unreasonable place for Boeing to defend—perhaps because all the underlying conduct occurred at Boeing's corporate headquarters in Illinois—then prudential alternatives like transfer of venue and the common law doctrine of *forum non conveniens* will step in to address these concerns.[259]

Most importantly, the Total Activities test returns the general jurisdiction analysis to its rightful place within the "continuous and systematic" contacts framework announced in *International Shoe*.[260] The Total Activities test also harmonizes *International Shoe*'s approach with the "relative contacts" approach from *Daimler*. Determining whether a corporation has a "locus of operations" distinct from its "nerve center" necessarily requires the court to examine whether the corporation passes a threshold minimum of sustained contacts with the forum state, speaking directly to *International Shoe*'s "continuous and systematic" contacts requirement. But the Total Activities test also demands that a corporation's activities

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[257] *Id.* at 166 ("Companies prefer to invest and do business in places where they can predict the jurisdictional consequences of their actions. When jurisdictional consequences are unpredictable, there is a disincentive to invest or do business in a forum because a corporation could be liable in that forum for any of its actions anywhere worldwide; thus, increasing costs. However, when a corporation can predict which forums have the capability of holding it liable, it has the ability to buy insurance, the opportunity to incorporate the costs of potential litigation into its products' prices, and the chance to decide whether to operate in a state whose costs outweigh its benefits."); *see supra* Section IV.F.

[258] Brilmayer, *supra* note 62, at 741 (noting that the inconvenience for the defendant of litigating in the forum state is a central concern, but that "litigating where one carries on continuous and systematic activities is also likely to be convenient"); *see* Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945) (noting that only litigation "away from [the corporation's] home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process").

[259] *See* 28 U.S.C. § 1404(a) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented."); *see* Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd., 328 F.3d 1122, 1135–36 (9th Cir. 2003) ("Even if personal jurisdiction is established, a district court may decline to exercise jurisdiction on the basis of forum non conveniens if an adequate alternative forum exists, and the balance of public and private factors favors dismissal.").

[260] *See supra* Section IV.F.

in the forum state be significant in comparison to its total activity worldwide, speaking to *Daimler*'s concern with "relative contacts." So long as *International Shoe* remains good law, the general jurisdiction analysis must speak to both concerns.[261] The Total Activities test for personal jurisdiction satisfies this demand and the Nerve Center test does not.

CONCLUSION

The Boeing Company is, in its own words, "inextricably intertwined" with the state of Washington, where it was founded and where it employs nearly half its global workforce.[262] Its executives proclaim they are "proud to call Washington [their] home."[263] Corporations present unique jurisdictional challenges because they are "incorporeal," having "no feet."[264] But if Boeing has feet anywhere, it is in Washington. And yet, if we take the corporate personal jurisdiction case law developing in the federal courts today as our guide, we are bound to conclude that Boeing has not been "at home" in Washington since 2001, when it opened its comparatively minor corporate headquarters in Chicago.[265]

Since the Supreme Court's decision in *Goodyear*, a corporation is subject to general personal jurisdiction—and thus open to suit on any cause of action—wherever it "is fairly regarded as at home."[266] Subsequent decisions made clear that a corporation is, practically speaking, only "at home" in its state of incorporation and "principal place of business,"[267] and that acquiring general jurisdiction over it anywhere else is "incredibly difficult."[268] In *Hertz*, the Court defined "principal place of business" for diversity jurisdiction purposes to mean a corporation's "nerve center," usually its corporate headquarters.[269] However, the Court said nothing about whether the same definition applies in the context of personal jurisdiction.[270] Rushing blindly into that gap, as they must, the lower courts have largely applied the Nerve Center test for personal jurisdiction purposes.[271]

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[261] *See* Daimler AG v. Bauman, 571 U.S. 117, 138 (2014).

[262] *Boeing in Washington*, *supra* note 5; *Employment Data*, *supra* note 10.

[263] *Latest "By the Numbers"*, *supra* note 13.

[264] Doernberg, *supra* note 33, at 257 (quoting Stein, *supra* note 39, at 534–35).

[265] *See Daimler*, 571 U.S. at 137; Johnson, *supra* note 11.

[266] Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011).

[267] *Daimler*, 571 U.S. at 137–38; *see* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1554 (2017).

[268] Monkton Ins. Servs. v. Ritter, 768 F.3d 429, 432 (5th Cir. 2014).

[269] Hertz Corp. v. Friend, 559 U.S. 77, 93 (2010).

[270] Wagner, *supra* note 47, at 1088; *see generally Hertz*, 559 U.S. 77 (2010) (neglecting to so much as mention personal jurisdiction when defining "principal place of business").

[271] *See supra* Part III.

For a variety of reasons, this is the wrong approach.[272] Most significantly, plain application of the Nerve Center test for personal jurisdiction purposes effectively limits general jurisdiction over a corporation to (1) its state of incorporation and (2) the location of its corporate headquarters.[273] Neither of these require the court to examine whether the defendant corporation's contacts with the forum are so "continuous and systematic" as to justify exercise of general jurisdiction over them, as *International Shoe* demands.[274]

The Supreme Court has an opportunity to reground the corporate general jurisdiction analysis within the "continuous and systematic" contacts framework set out in *International Shoe*, and to harmonize that framework with *Daimler*'s "relative contacts" analysis, by adopting the Total Activities test for determining a corporation's "principal *place(s)* of business" for personal jurisdiction purposes.[275] The Total Activities test for personal jurisdiction rejects the notion that a corporation necessarily has only one "principal place of business," instead finding both the corporation's "nerve center" and "locus of operations" independently sufficient to confer general jurisdiction.[276] The Total Activities test balances the equity issues inherent in a narrow scope of corporate personal jurisdiction with the need to bring general jurisdiction in line with international norms, discourage plaintiff forum shopping, and speak to *Daimler*'s "relative contacts" analysis.[277] Perhaps most significantly, the Total Activities test returns the general jurisdiction analysis to its rightful precedential foundation—*International Shoe*'s "continuous and systematic" contacts framework—allowing us to recognize the plain fact that a corporation is "at home" where its contacts are greatest.[278]

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[272] *See supra* Part IV.

[273] *See supra* Part IV.

[274] Doernberg, *supra* note 33, at 249, 254–56.

[275] *See supra* Part V.

[276] *See supra* Part V.

[277] *See supra* Part V.

[278] *See supra* Part V.

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