

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 GOODYEAR DUNLOP TIRES OPERATIONS, :

4 S.A., ET AL., :

5 Petitioners : No. 10-76

6 v. :

7 EDGAR D. BROWN, ET UX., :

8 CO-ADMINISTRATORS OF THE ESTATE OF:

9 JULIAN DAVID BROWN, ET AL. :

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11 Washington, D.C.

12 Tuesday, January 11, 2011

13

14 The above-entitled matter came on for oral
15 argument before the Supreme Court of the United States
16 at 11:15 a.m.

17 APPEARANCES:

18 MEIR FEDER, ESQ., New York, New York; on behalf of
19 Petitioners.

20 BENJAMIN J. HORWICH, ESQ., Assistant to the Solicitor

21 General, Department of Justice, Washington, D.C.; on
22 behalf of the United States, as amicus curiae,
23 supporting Petitioners.

24 COLLYN PEDDIE, ESQ., Houston, Texas; on behalf of
25 Respondents.

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1 P R O C E E D I N G S

2 (11:15 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 next in Case 10-76, Goodyear Dunlop Tires Operations v.
5 Brown.

6 Mr. Feder.

7 ORAL ARGUMENT OF MEIR FEDER

8 ON BEHALF OF THE PETITIONERS

9 MR. FEDER: Mr. Chief Justice, and may it
10 please the Court:

11 The North Carolina Court of Appeals asserted
12 jurisdiction over Petitioners in this case on claims
13 that arose from a bus accident in France that was
14 unrelated to any North Carolina contacts. Although the
15 Petitioners are located overseas and do not conduct any
16 business in North Carolina, the court held that North
17 Carolina had general jurisdiction over these defendants
18 based solely on the sale in North Carolina of a small
19 fraction of their products.

20 Under this Court's cases, the mere sale of a
21 defendant's products in a State does not permit the
22 State to reach out to assert judicial power over all of
23 that defendant's worldwide conduct. If that were
24 permissible, every significant seller of products would
25 be subject to suit everywhere on any claim arising

1 anywhere.

2 JUSTICE GINSBURG: There's one piece of this
3 I don't quite comprehend. You -- there's no contest
4 that there is jurisdiction over the parent, right?

5 MR. FEDER: Yes, Your Honor. The parent
6 company consented to jurisdiction in North Carolina.
7 It's appointed an agent for service of process there.

8 JUSTICE GINSBURG: So it's -- it's based on
9 consent?

10 MR. FEDER: Yes. They also have other
11 business that the parent does conduct in North Carolina,
12 but there is no objection to jurisdiction over the
13 parent here. This case solely concerns the Petitioners,
14 who are corporations from Turkey, France, and
15 Luxembourg.

16 JUSTICE KAGAN: Do you think there is
17 general jurisdiction over the parent? If the consent
18 were not in the picture, is there? Does general
19 jurisdiction go beyond State of incorporation, principal
20 place of business?

21 MR. FEDER: I think that that is a hard
22 question, Your Honor. The short answer is I think the
23 answer is "no," but I think that that is probably a
24 close case -- again, putting aside the consent. But I
25 do think that general jurisdiction is about suing a

1 company -- at least in the case of corporations, is
2 about suing the corporation essentially where it's
3 located or at home. It's always fair to bring a suit
4 against the corporation there.

5 I think that once you get beyond that, which
6 is a situation that would be analogous to a State's
7 power over a citizen or a resident of the State, I think
8 you run into great difficulty finding a basis for the
9 State to assert authority over claims completely
10 unrelated to any business that -- or any contacts that
11 the corporation has with the State.

12 That said, it wasn't contested here, and
13 there is a consent to service of process, which may or
14 may not create general jurisdiction. There's a
15 disagreement in the lower courts on that, but none of
16 that is contested in this case.

17 And without having to get to that particular
18 question of whether in fact it's limited to -- whether
19 general jurisdiction is limited to place of
20 incorporation or principal place of business, first of
21 all, there's much more directly controlling authority.
22 In this case, the most directly relevant cases are
23 *Helicopteros* and *Consolidated Textile v. Gregory*,
24 working in tandem.

25 In *Helicopteros*, which was this Court's last
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1 corporate general jurisdiction case, the Court said that
2 there was no general jurisdiction based on \$4 million in
3 purchases in the State and some other contacts. And the
4 key is that -- on that point, is that the Court held
5 that mere purchases could not provide the basis for
6 general jurisdiction because the pre-International Shoe
7 decision in Rosenberg was controlling on that point.

8 JUSTICE KENNEDY: Again, this is
9 preliminary, and it just goes back to Justice Ginsburg's
10 question. Suppose you could help me out. I assume that
11 there's general jurisdiction over the parent company.
12 Then under respondeat superior, it would be liable in
13 North Carolina for the -- all the acts of its agents.

14 MR. FEDER: I think that's a fair
15 assumption.

16 JUSTICE KENNEDY: Then why isn't it
17 automatically liable for all the acts of its
18 subsidiaries?

19 MR. FEDER: Well, because I think --

20 JUSTICE KENNEDY: And -- and does that
21 get -- and does that get into what in the Federal
22 practice would be necessary parties?

23 MR. FEDER: What -- Your Honor, I think that
24 really what it gets into is the difference between a
25 subsidiary and an agent, because a subsidiary is not

1 automatically acting as the agent of the parent company
2 in a way where you'd get respondeat superior. And I
3 think that part of what's going on in this case is that
4 when this does go back to North Carolina for trial or
5 for litigation against the parent company, I think that
6 under North Carolina or whatever State's or nation's
7 veil piercing or agency standards the North Carolina
8 courts will apply, the plaintiffs will have great
9 difficulty actually with the substantive case against
10 the parent company, because you would actually have to
11 show involvement in the actions that actually the claim
12 arose out of here.

13 The mere general control that's inherent in
14 the parent-subsidiary relationship is not going to
15 create liability, and here -- important to remember --
16 we're talking about a tire manufactured in Turkey,
17 accident in France which Goodyear Tire and Rubber
18 Company -- and, now, this is outside the record, as I
19 understand it -- did not have any direct connection
20 with. Again, not relevant to the jurisdictional
21 question here, but I -- just for sort of setting the --
22 the context.

23 JUSTICE GINSBURG: You are met with an
24 argument that it's all one ball of wax. Parent and sub,
25 they merge; it's one enterprise. And so if the subs do

1 something any place, the parent is -- it's all part of
2 one thing, so -- and I think that was the principal
3 argument made by the Respondents.

4 MR. FEDER: Yes, Your Honor, and I would
5 say, again, when it comes to liability in Goodyear Tire
6 and Rubber, they'll be free to make that argument. That
7 argument is not properly presented here. It was never
8 made below.

9 It was never -- it was not made in the brief
10 in opposition to cert, so any argument for ignoring
11 corporate distinctions or an enterprise theory -- none
12 of that was made and, therefore, has been waived. I
13 think that, secondly, as we indicated in our reply
14 brief --

15 JUSTICE SCALIA: We haven't resolved a whole
16 lot if we leave that question open, have we? You want
17 us to write an opinion that says, unless you -- unless
18 you ignore the separate corporate existence of the
19 subsidiary -- parenthesis, a question on which we
20 express no opinion, close parenthesis -- there can be no
21 jurisdiction in cases like this? Is that the kind of an
22 opinion that the world is waiting for?

23 MR. FEDER: Well, Your Honor, I think that
24 actually in -- if the Court were to write that, it would
25 be left with the important general jurisdiction question

1 that the court below decided incorrectly, and
2 incorrectly in a few ways.

3 I think that, in fact, there would be
4 several ways for this Court to approach it, all of which
5 would actually help to clear up the law in this area. I
6 think that even if one gets past the waiver point -- and
7 the reason the Court shouldn't get past the waiver point
8 is, among other things, because it wasn't raised -- we,
9 of course, had no opportunity to put in evidence that,
10 in fact, these corporations are run separately,
11 independent decision making, observation of corporate
12 form, and all the other things that would normally go
13 into it.

14 If you want to reach it, first of all, there
15 is -- even on the standards articulated in the
16 Respondents' brief, there's nothing in the record to
17 support it, and --

18 JUSTICE SCALIA: I thought you were saying
19 we should not even -- not even address the situation
20 where there is no special basis for ignoring the -- the
21 separate incorporation. I -- of course, we should not
22 get into questions of whether, in fact, the subsidiary
23 was a sham --

24 MR. FEDER: Oh.

25 JUSTICE SCALIA: -- that there was control,
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1 all of that, but the simple question of whether, when
2 you have a totally owned subsidiary, its actions are
3 your actions.

4 MR. FEDER: That, I think, the Court --

5 JUSTICE SCALIA: Don't we have to reach
6 that?

7 MR. FEDER: You certainly do have to reach
8 that, Your Honor. The Court has reached it and decided
9 it before, and has said that the mere parent-subsubsidiary
10 relationship does not create attribution one to the
11 other, most recently in Keeton, in which the Court cited
12 some of its older cases for that very proposition.

13 And I think that in -- another way to look
14 at it is, even if you wanted to treat the sales in North
15 Carolina as if they were made there directly by these
16 Petitioners -- in other words, even if you picked --
17 assuming arguendo that you could attribute those sales
18 directly to the Petitioners and not, as the court below
19 found, treat them as not having been caused by them,
20 that does not come close to satisfying what is required
21 for general jurisdiction.

22 And, in particular, in going back to
23 Helicopteros and Gregory, just as the Rosenberg case was
24 binding in Helicopteros on the point that mere purchases
25 are not enough for general jurisdiction, here

1 Consolidated Textile v. Gregory is binding on the flip
2 side of that, which is that mere sales in the State are
3 not enough for general jurisdiction.

4 Even if Gregory weren't binding, I think
5 that you could look at Helicopteros and say there is no
6 real basis for a distinction between mere purchases and
7 mere sales. But, in fact, there is a case directly on
8 point, and as well as a lot of case law from the time of
9 Gregory more generally requiring much more substantial
10 -- a substantial physical presence in the State. In
11 terms of -- I think no personal jurisdiction argument
12 should go by without talking about International Shoe,
13 and if you look at just the International Shoe line of
14 cases, even aside from this issue of Gregory being
15 binding, the decision below is equally, if not more,
16 untenable.

17 International Shoe itself recognizes -- in
18 sort of carving out an area for what eventually came to
19 be called general jurisdiction, it recognizes the
20 extraordinary nature of the State power that we're
21 talking about when we talk about general jurisdiction,
22 which is this power to reach out and assert State power
23 over things that by hypothesis have no relationship to
24 contacts with the State. International Shoe uses the
25 language saying that you need continuous corporate

1 operations within the State and says that these
2 continuous corporate operations have to be so
3 substantial and of such a nature as to justify this
4 jurisdiction over conduct that is entirely unconnected
5 to the State.

6 The one case where the Court has upheld
7 general jurisdiction since International Shoe over a
8 corporation is Perkins, which was a case that involved
9 the corporation's principal place of business. And in
10 Helicopteros, following Perkins, when the Court
11 articulated the standard there, the Court said that
12 we're looking to see whether there are contacts of the
13 sort that we found to exist in Perkins. So --

14 JUSTICE GINSBURG: But Perkins is kind of an
15 unusual case, because it was a company that at the time
16 was doing business only in Ohio. It was a Philippine
17 mining company, and it was World War II, so the mines
18 couldn't be run. So to the extent that the corporation
19 was existing anywhere, it was in Ohio.

20 MR. FEDER: That's right, Your Honor, and I
21 guess what I would say about that is that it's
22 unusual -- those are unusual facts, but not unusual in
23 terms of what is required to be able to assert general
24 jurisdiction.

25 The Court in Keeton later described Perkins
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1 as essentially involving the corporation's principal
2 place of business, and I think that's right because in
3 order for the State to be able to assert jurisdiction
4 over things unrelated to the State, you need that type
5 of relationship equivalent to a citizen or resident that
6 gives a State authority over the corporation's actions
7 worldwide and not just -- because this goes far beyond
8 specific jurisdiction where the State has a manifest
9 interest in an accident or a claim that arose in the
10 State or connected to the State.

11 Helicopteros, just to circle back on that
12 point, does say we're looking for contacts of the sort
13 found to exist in Perkins, and -- and as we said, said
14 that even \$4 million in purchases were not enough. I
15 think that all of those cases help to make it clear why
16 the mere sales here are not enough.

17 And if there are no further questions, I'd
18 like to reserve the remainder of my time for rebuttal.

19 CHIEF JUSTICE ROBERTS: Thank you, counsel.
20 Mr. Horwich.

21 ORAL ARGUMENT OF BENJAMIN J. HORWICH,
22 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,
23 SUPPORTING THE PETITIONERS

24 MR. HORWICH: Mr. Chief Justice, and may it
25 please the Court:

1 The North Carolina State court was wrong to
2 assert general personal jurisdiction over Petitioners,
3 extending potentially to any claim against them arising
4 out of any conduct of theirs anywhere in the world, and
5 there are several ways to see why that's wrong. Even if
6 the Court were to accept the proposition that such
7 contacts with North Carolina as there are in the record
8 should be attributed to Petitioners, those contacts
9 still don't rise to the level of what this Court has --
10 has demanded in terms of continuous and systematic
11 contacts.

12 And even setting those more -- those more
13 precedential tests aside, I think there's also a -- the
14 result of the North Carolina court's decision is that
15 the jurisdictional consequences here would be quite
16 disproportionate to the contacts that -- that -- on
17 which it would be based.

18 So if I can, I guess, turn for a moment to
19 the continuous and systematic contacts proposition,
20 which this Court has certainly not elaborated in its
21 case law, but I think it -- it would be -- I think it's
22 useful to speak of, of what exactly the Court was trying
23 to get at. And what we think the Court was trying to
24 get at, particularly by -- as my friend referred to,
25 particularly by its reference in *Helicopteros to Perkins*

1 as -- as being sort of a benchmark for what continuous
2 and systematic contacts are, I think it requires seeing
3 an active volitional undertaking by the -- by the
4 defendant. It can't be based on the contact -- conduct
5 of third parties. Obviously, the continuous concept of
6 existing without interruption.

7 And with respect to systematic, we think
8 that that means there needs to be a plurality of
9 contacts, they have to be of different kinds or
10 qualities in a sense of perhaps employment as well as
11 contractual as well as regulatory as well as property as
12 well as sales or purchases, and that those contacts
13 together have to have some interrelationship that
14 results in something that might be thought of as more
15 than the sum of their parts. And --

16 JUSTICE GINSBURG: Well, suppose it's just a
17 corporation that's registered to do business in North
18 Carolina, and the connection with that registration --
19 it says: I appoint so-and-so my agent to receive
20 process for any and all claims.

21 MR. HORWICH: Well, as -- as Mr. Feder
22 referred -- referred to, there -- there is a division in
23 the lower courts on whether that sort of a consent is
24 effective to permit the State general jurisdiction
25 over -- over the consenting party. That -- but the

1 Court has, I -- I think, been -- been fairly clear in --
2 in setting notions of -- of formal consent to one side
3 when considering contacts-based cases. And so, in part,
4 this case, therefore, doesn't present that question, and
5 we don't have a position, as the Government, on that
6 today with respect to whether that's effective.

7 But it certainly is the case that simply
8 because one entity in a Goodyear family of -- of related
9 corporations has consented, that somehow that consent
10 should extend to the entire enterprise. And if I can
11 maybe take a minute to talk about where we think the
12 Respondents' view of -- of this enterprise jurisdiction
13 goes wrong, because we touched on it only -- only
14 briefly in our brief, which was, of course, filed before
15 theirs.

16 When -- when a court confronts a -- a set of
17 -- a corporate family, if you will, there seem to be two
18 principles that can be usefully applied in determining
19 the jurisdictional consequences of that relationship.
20 One is the alter ego concept, which certainly doesn't
21 seem to be supported on anything in the record here in
22 the sense that there's -- that there's no sound
23 suggestion in the record that -- that the European
24 entities were somehow a sham, that they didn't have any
25 separate existence, they were undercapitalized or any of

1 the other indicia that you would see.

2 And so, to your point, Justice Scalia, I
3 think it is certainly something the Court could say that
4 the record here is no basis for that kind of a decision
5 to disregard the corporate separateness.

6 Then the other concept is the agency
7 concept. And I think that may be what -- what
8 Respondents are placing somewhat greater reliance on.
9 And we certainly -- we certainly have the view that an
10 agent, acting on behalf of a principal within the scope
11 of its agency, can take actions that create contacts
12 with the jurisdiction that are, by virtue of the agency
13 relationship, attributable back to the principal.

14 But there are -- there are two important
15 things to realize, that that -- that that proposition is
16 somewhat modest in that, first of all, simply because
17 a -- a parent owns a subsidiary does not mean the
18 subsidiary is the parent's agent. Plenty of parents
19 simply own subsidiaries as property or for various
20 business reasons. It doesn't mean the subsidiary is
21 automatically always acting as the agent of the parent
22 for all purposes or any at all.

23 And -- and the second thing to be cautious
24 about in applying the agency principle is that the
25 agency relationship only runs one way; that is to say

1 the agent can do something that creates a contact on
2 behalf of the principal, but that's not to say that
3 everything the principal does in its independent
4 activities says anything about what contacts its agent
5 has. That's exactly backwards.

6 In the -- and so, here the -- the allegation
7 actually in the complaint is that the European companies
8 are the agents of the parent -- of the -- of the
9 Goodyear U.S. entity. That's -- that's paragraph 16 of
10 the complaint at page 112 of -- 122 of the joint
11 appendix. So it -- it might be -- it -- there might be
12 an argument that something that the European
13 subsidiaries have done, say, in Turkey is something that
14 could be chargeable to the U.S. parent in a case where
15 it was relevant what the parent's relationship with
16 Turkey was.

17 But what Respondents are asking for here, in
18 effect, turns that completely around and suggests
19 implicitly that the -- the -- this -- the parent of the
20 Goodyear organization in the United States was somehow
21 doing the bidding, acting at the direction and control
22 of the European companies as principals.

23 JUSTICE KAGAN: Mr. Horwich --

24 MR. HORWICH: Yes.

25 JUSTICE KAGAN: Could I ask you a different
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1 kind of question? And I apologize in advance for taking
2 you a little bit far afield. But -- but I wanted to ask
3 you about a particular sentence in your brief that seems
4 to have some relevance to -- not the general
5 jurisdiction question but some relevance to specific
6 jurisdiction. So this is on page 20.

7 You say: "If mere 'purposeful availment' of
8 commercial opportunities in a particular State" -- which
9 is, of course, the test for specific jurisdiction -- if
10 that purposeful availment "were sufficient to subject an
11 enterprise to the general jurisdiction of that State's
12 courts, a corporation that sold its goods to an
13 independent distributor, intending that they be resold
14 in all 50 States, could potentially be brought to
15 judgment in any State, on any claim against it."

16 So I -- I take that -- I understand that to
17 read that you think that it is purposeful availment that
18 subjects a company to specific jurisdiction -- not to
19 general jurisdiction, but to specific jurisdiction -- if
20 a corporation sold its goods to an independent
21 distributor intending that they be resold in all 50
22 States. Am I reading that correctly?

23 MR. HORWICH: No, I don't -- I don't believe
24 so, in the sense that I -- I think we were sort of
25 assuming arguendo a concept of purposeful availment

1 that -- that would be willing to attribute those --
2 those contacts for purposes of a specific-jurisdiction
3 -- excuse me -- for purposes of a specific-jurisdiction
4 analysis. I don't know if that helps with the -- with
5 the answer, but --

6 JUSTICE KAGAN: No, I was hoping that the
7 answer would be "yes," actually.

8 (Laughter.)

9 JUSTICE KAGAN: But --

10 CHIEF JUSTICE ROBERTS: There's at least one
11 other person in the courtroom who was hoping that, too.

12 (Laughter.)

13 JUSTICE KENNEDY: I -- I was wondering why
14 -- why is your interest in this case so much greater
15 than it would be in -- in the other case, and this --
16 I've been wondering that at the outset, and this
17 sentence that Justice Kagan points out brings that into
18 full focus.

19 MR. HORWICH: Well, Justice Kennedy, let
20 me -- let me put it this way. It -- it -- the
21 difference in our interest in the two cases is at bottom
22 just a difference in magnitude, but we think it's a
23 fairly significant difference in magnitude in the
24 sense -- in the sense that the jurisdictional
25 consequences of an assertion of general jurisdiction are

1 that -- with that one determination, it is the case that
2 that defendant can -- could potentially be brought to
3 judgment in a forum for all -- for claims arising from
4 any of its conduct anywhere in the world.

5 And specific jurisdiction by construction,
6 by its very nature, is only going to be a determination
7 -- whatever the contours of the specific rules that are
8 used, it's going to never be more than a determination
9 that jurisdiction in a claim, considering the
10 relationship between the defendant, the forum, and the
11 particular litigation, gives rise to jurisdiction.

12 JUSTICE BREYER: So, why -- why -- I mean,
13 you've heard the argument in the last case. I mean, it
14 seemed that potentially can subject the smallest
15 manufacturer to liability throughout the world because
16 it uses the Internet. And -- and that -- I don't know
17 what the foreign policy -- you've heard treaties
18 discussed, et cetera. Do you want to say anything?

19 CHIEF JUSTICE ROBERTS: And briefly.

20 MR. HORWICH: Yes. Yes, Mr. Chief Justice.

21 (Laughter.)

22 MR. HORWICH: The -- the -- the brief answer
23 is that the Internet questions, in particular, are so
24 complicated and, indeed, so potentially far-reaching
25 that in a case that presented them, our interest might

1 very well be different.

2 (Laughter.)

3 CHIEF JUSTICE ROBERTS: Saved by the bell.

4 (Laughter.)

5 CHIEF JUSTICE ROBERTS: Ms. Peddie.

6 ORAL ARGUMENT OF COLLYN PEDDIE

7 ON BEHALF OF THE RESPONDENTS

8 MS. PEDDIE: Mr. Chief Justice, and may it
9 please the Court:

10 The Goodyear Petitioners ask this Court to
11 assist them in avoiding the jurisdiction of the North
12 Carolina court. This Court should decline for two
13 reasons. First, there's nothing new here. Ample
14 evidence supports North Carolina's exercise of general
15 jurisdiction over the Petitioners under very well
16 established general jurisdiction and due process
17 principles. And --

18 JUSTICE GINSBURG: I think there's something
19 very new about this, because general jurisdiction is
20 all-purpose jurisdiction, and for a corporation it's
21 sort of like a residence for an individual. I think Mr.
22 Feder was making that point.

23 What's -- what's troubling here is that the
24 North Carolina court seems to be blending the two
25 together: specific jurisdiction based on the claim

1 arising in the forum, and general jurisdiction with a
2 claim that has nothing to do with the forum, and its
3 insertion of jurisdiction over any and all claims. And
4 I do not know of any case post-International Shoe -- the
5 only thing that we have is Perkins v. Benguet.

6 Is there -- is there any case in which this
7 Court has sanctioned the assertion of general
8 jurisdiction based on some prior -- some product coming
9 into the State, not the product that caused the injury
10 abroad? I don't know of any case.

11 MS. PEDDIE: Your Honor, if that's -- if
12 that's the characterization of the case and that's all
13 you had, then there wouldn't be a case. Our argument
14 here, and I think the -- what the -- what the evidence
15 in this case bears out is that is not the case here.
16 The characterization of the case by both the Government
17 and by Petitioners is that there is simply mere sales
18 here, and they ignore how the sales occurred.

19 Our focus is on how the sales occurred, and
20 I think Justice Scalia made a -- a correct distinction,
21 that what we're doing here is not talking about
22 attribution, that -- that sort of thing, and -- and
23 simply saying that because someone down the line sold
24 them, without any other discussion, there's general
25 jurisdiction. That's not correct.

1 JUSTICE KENNEDY: Well, then, you don't
2 defend the reasoning of the State supreme court?

3 MS. PEDDIE: I think that the -- the State
4 supreme court did a lot of things right, but, as we say
5 in the brief, we think that they took a detour in using
6 inappropriate stream-of-commerce language that isn't
7 there. It's not that they didn't have help doing it.
8 For example, the Petitioners have changed their tune
9 here. They talked routinely about purposeful availment
10 in their briefs to the court of appeals and to the
11 supreme court. For example, page 327 of their brief
12 requests that they -- that they find purposeful
13 availment here. So the court had a lot of help.

14 But that part of the opinion we don't really
15 think is appropriate, nor is it necessary. The point
16 that I'm making about there being nothing new is that
17 there is ample evidence in this case to apply to the
18 general jurisdiction principles that were used in
19 Perkins and used in Hall and that can cause this Court
20 to reach the correct result.

21 As the Court is well aware, this Court can
22 affirm on any basis supported in the record, and we
23 believe that there is a basis in well-established rules
24 supported in the record, whether it agrees with the
25 court of appeals' decision or not. It's not bound by

1 that analysis, nor are we.

2 I'd like to address the question of waiver
3 because it's -- it's come up. I think that the
4 Solicitor General has correctly --

5 JUSTICE SCALIA: You -- you've got -- you
6 have me in suspense.

7 (Laughter.)

8 JUSTICE SCALIA: Tell me why it is that the
9 general principles of jurisdiction do apply here, and
10 then we can get to waiver.

11 MS. PEDDIE: Okay, okay.

12 JUSTICE SCALIA: Don't leave me dangling
13 like that.

14 (Laughter.)

15 MS. PEDDIE: Your Honor, as far back as --
16 as Burger King, this Court recognized that commercial
17 activities, when they're conducted on behalf of an
18 out-of-State party, can sometimes be attributed. Even
19 the Solicitor General agrees that there's a different
20 jurisdictional analysis that may apply over and above
21 something like Cannon or Rush v. Savchuk, if there are
22 case-specific interactions between particular affiliated
23 corporations as you have here.

24 JUSTICE SCALIA: Excuse me. Case-specific
25 is not talking about general jurisdiction.

1 MS. PEDDIE: No, no, but --

2 JUSTICE SCALIA: It's talking about specific
3 jurisdiction.

4 MS. PEDDIE: But what they're talking about
5 are that there are evidentiary case-specific
6 interactions between the parties that would lead to the
7 conclusion of general jurisdiction and thus subjecting
8 them to suit on -- in dispute-blind -- or dispute-blind
9 jurisdiction.

10 In addition, this Court has used in a
11 variety of other areas a unitary business principle for
12 local taxation in Mobil. And even as far back as 15
13 years ago, the Hague Convention, our trade partners that
14 are complained of here, talked about the fact that
15 using -- attributing contacts or counting contacts that
16 were based on conduct performed by others was
17 appropriate and was not really a sticking point and that
18 they were perfectly content to leave that to other
19 cases.

20 JUSTICE SCALIA: Okay. Just give me a list
21 of -- of what -- what factors you think support general
22 jurisdiction here.

23 MS. PEDDIE: In terms of the --

24 JUSTICE SCALIA: One, two, three, four --

25 MS. PEDDIE: Okay.

1 JUSTICE SCALIA: Which ones are they?

2 MS. PEDDIE: Okay. In this case I think
3 it's the part -- and, frankly, we'll use the Solicitor
4 General's definition of a system, from their brief at --
5 at page 23, where they talked about conduct that forms a
6 system and aggregation of objects united by some form of
7 regular activity or interdependent.

8 Using their definition, I think you ask the
9 question: Is a defendant part of a continuous business
10 system or enterprise that conducts general business
11 activities in the forum? And the first question you
12 asked is: Is it a single system or an enterprise? This
13 Court has said in Mobil Oil that a unitary business is
14 identified by --

15 JUSTICE GINSBURG: Ms. Peddie, you haven't
16 -- you don't have anything in the record about this
17 being a unitary business. Unless you're trying to
18 present some sweeping piercing-the-corporate-veil
19 theory, there is nothing here that says that these
20 aren't corporations that are acting separately, that
21 have their own officers, have their own employees, keep
22 their own books. There's nothing to show that it's all
23 part of one enterprise.

24 MS. PEDDIE: I disagree with that, Your
25 Honor. Under the sort of traditional measures that the
Alderson Reporting Company

1 Court has used in terms of -- of ownership, et cetera, I
2 don't think there is anything. But even the Solicitor
3 General concedes, at page 27 of their brief, that the
4 court of appeals effectively treated the parent and
5 subsidiary corporations as an undifferentiated entity
6 for distribution of the Petitioners' product, and that
7 was our position below. And I think if you look at --

8 JUSTICE SCALIA: Well, the question isn't
9 whether they did that; the question is whether it was
10 right to do that.

11 MS. PEDDIE: That -- that's --

12 JUSTICE SCALIA: I mean, you don't make your
13 point by saying that the court of appeals made a
14 mistake.

15 MS. PEDDIE: No, no. But I think -- I think
16 what -- what -- at least as I understood her question --
17 and I may have misunderstood her question -- was is
18 there anything in the record where -- where they had
19 done that. I think the -- the evidence in the record is
20 part and parcel of the fact findings that the trial
21 court made about the existence of a highly integrated
22 supply and distribution system in the -- that operates
23 in the State.

24 The number of tires, for example, that
25 Petitioners manufactured in North Carolina was

1 determined solely by orders that were solicited in North
2 Carolina by Goodyear and forecasts made by Goodyear
3 based on data that they gathered there. On the
4 distribution side, the testimony from Mr. Kramer was
5 that they don't send tires for distribution; they don't
6 do any distribution. It was an internal distribution
7 system.

8 JUSTICE SCALIA: Well, I mean, those
9 arrangements could exist with a lot of distributors.
10 You don't want to ship a distributor stuff that the
11 distributor is not going to be using.

12 MS. PEDDIE: Your Honor, I think --

13 JUSTICE SCALIA: I mean, my goodness. The
14 fact that you coordinate with your distributor how much
15 of your product you're going to ship to him doesn't --
16 doesn't really show --

17 MS. PEDDIE: Your Honor --

18 JUSTICE SCALIA: -- that you are a unitary
19 business with your distributor.

20 MS. PEDDIE: Your Honor, I think this goes
21 way beyond coordination. For example, Mr. Kramer
22 testified that, quote, "Their job is just to be given a
23 forecast or a ticket, and then they just build widgets."
24 That's all they do. They were complete -- their --
25 their solicitation and their production was solely based

1 on the control and the requests from the parent. The
2 requests, as he testified, quote, "emanate from the
3 requests that Goodyear would make." And the production
4 and supply system was the same for all of them.

5 On the distribution side, the testimony was
6 even more -- I think was even more limited in that he
7 said the plant in Turkey doesn't control any
8 distribution. They wouldn't send anything into United
9 States without the approval and sanction of the parent,
10 and anything else, quote, "just doesn't happen."

11 So this was a closed system. It was
12 dominated by -- by the Goodyear parent, and there wasn't
13 a question of coordination. It was they didn't produce
14 unless the parent told them to; they sent it where the
15 parent said they should send it to; and when it got to
16 the United States, the testimony is, is that the parent
17 controlled it at that point.

18 JUSTICE GINSBURG: But the "it" wasn't the
19 product that caused the injury here. As I understand
20 the case, the tire that allegedly caused this bus to
21 turn over was designed for the European and Asian
22 markets, not the U.S. market.

23 MS. PEDDIE: The Goodyear Regional RHS tire
24 that was on the bus and that failed was not generally
25 designed for the U.S. market, although it was brought

1 over here under special circumstances.

2 The tires we're talking about are of three
3 kinds. There are passenger and bus tires that you would
4 ordinarily see that would be sold individually;
5 second -- a second category are tires that were sold as
6 original equipment on cars and buses; and, third, and
7 the predominant type that were sent to the United
8 States, were specialty tires for so-called low boy
9 trailers which were horse trailers, boat trailers, of
10 which there are in many North Carolina.

11 JUSTICE GINSBURG: But why did -- why should
12 -- Mr. Feder brought up the Helicopteros, and he said in
13 that case, it was purchases; and in this case, it's
14 sales. And in the purchaser case, certainly we said no,
15 there's no general jurisdiction. Why should it be any
16 different?

17 MS. PEDDIE: I think the distinction between
18 Hall and Perkins is not so much purchases and sales,
19 it's which contacts do you count? And the language that
20 is sort of forgotten in Hall is the language that they
21 talk about -- you needed to have the same general
22 business contacts that you had in Perkins.

23 I think the difference is, is that purchases
24 are sort of a one-shot deal. They may be supplies,
25 but -- but they're more irregular, but the core business

1 is selling -- is selling items, and so sales count more
2 than purchases.

3 I apologize for interrupting.

4 JUSTICE GINSBURG: In Perkins, it was the
5 home of the corporation. There was no other at the
6 time, because their permanent home was not functioning
7 because of the war. So there was only one place.

8 MS. PEDDIE: Your Honor, I think the facts
9 of that case are -- is that one officer of the
10 corporation came home, and he was -- he maintained
11 two --

12 JUSTICE GINSBURG: He was the president of
13 the corporation.

14 MS. PEDDIE: He was the president of the
15 corporation.

16 JUSTICE GINSBURG: And whatever business it
17 was doing, it was doing from that office in Ohio.

18 MS. PEDDIE: Right. And the Court
19 characterized that -- I think there's a difference
20 between what the Court did in Perkins and how it was
21 described in Keeton. That's the language that the
22 Petitioners have used.

23 But the language that the Court used in
24 Perkins was that the decision was based on the
25 supervisory activities; not the fact that it was the

1 principal place of business, but the fact that the
2 supervision over, for example, the renovation of the
3 factory after the war took place in the forum.

4 JUSTICE GINSBURG: May I ask you about the
5 ramifications of your theory that there's general
6 jurisdiction in North Carolina over these three
7 subsidiaries?

8 Suppose that one of the children on a bus
9 was a Canadian citizen, was going home to Canada. And
10 had the idea that juries in North Carolina are more
11 liberal than in France. Well, there wouldn't be any
12 jury in France, but -- so could the Canadian come and
13 sue because there's general jurisdiction in the United
14 States?

15 MS. PEDDIE: I think it would depend upon a
16 lot of factors, Your Honor. Are you assuming that
17 there's -- it's established that there's general
18 jurisdiction there, or are we in the same fact pattern
19 as here?

20 JUSTICE GINSBURG: No, you -- we're talking
21 about Goodyear and these three subsidiaries. You say
22 there's general jurisdiction in North Carolina. Those
23 companies can be sued on any and all claims.

24 So my question is: Could anyone on that bus
25 that turned over in Paris come to North Carolina to

1 bring the wrongful death, or whatever, suit?

2 MS. PEDDIE: I think -- I think, in theory,
3 they could; I think, in practice, the case would never
4 stay there because of the controls that we talked about
5 on forum shopping; about, particularly, forum non
6 conveniens. One of the suggestions, for example, that
7 we made is one may want to consider for due -- for due
8 process purposes the residence of the plaintiff. Is it
9 fair, for example, to have a case in North Carolina
10 where the plaintiff doesn't live in North Carolina, as
11 they do here, but lives in Canada?

12 So that's -- that's one limitation. And as
13 this Court said in the Sinochem case, you can look at
14 the forum non conveniens issue before you look at the
15 jurisdictional issue.

16 JUSTICE KENNEDY: Well, that's an -- that's
17 an odd way to think about general jurisdiction. General
18 jurisdiction is principally status -- your residence,
19 the principal place of business, the place of
20 incorporation. And this -- these factors that you're
21 mentioning are -- in fact, some of the factors you
22 mention in the brief are quite different than that.

23 MS. PEDDIE: Your Honor, I think if -- if
24 the limitation -- if the Court's view is basically the
25 Petitioners', that you are limited to principal place of

1 business, State of incorporation, and physical presence,
2 which we don't think is the state of the law, and,
3 frankly, if it were the state of the law, then we would
4 have a Hague Convention now and it wouldn't have taken
5 20 years to negotiate.

6 If -- if that's the position that the Court
7 is taking, then I don't think that -- you know, that
8 this case represents something different. I think that
9 the state of the law is that -- or at least the
10 professed state of the law is that it is based on
11 continuous and systematic contacts.

12 JUSTICE SOTOMAYOR: Ms. Peddie, let's assume
13 that you're right, that on some level that some -- that
14 it's not just the place of incorporation or the
15 principal place of business, that it could be created by
16 something more. The only something more here is
17 Goodyear USA, so your adversary is right that what
18 you're asking us to do is sort of a reverse
19 principal-agent.

20 You're saying that the subsidiary has used
21 the principal, its owner, as its agent. That's
22 really -- that's the core problem with your argument,
23 isn't it?

24 MS. PEDDIE: Your --

25 JUSTICE SOTOMAYOR: Because without the
Alderson Reporting Company

1 Goodyear USA activities, there's no other activity by
2 the foreign corporations.

3 MS. PEDDIE: Your Honor, I think what --
4 what we're talking about is not so much attribution as
5 more of a merger or a joint activity. What we're saying
6 is that there is a system, by the Solicitor General's
7 own definition, the kind of interdependent relationship
8 that the Solicitor General --

9 JUSTICE SOTOMAYOR: Does -- do any of these
10 companies, the Goodyear Turkey Company, the others -- do
11 any of them sell the tires directly to Goodyear USA for
12 distribution to the United States? As I understand it,
13 these tires were sold to other entities, foreign
14 entities, who then sold them to the U.S.

15 MS. PEDDIE: That's -- that's not borne out
16 by the record. That -- it was represented by the
17 Petitioners. We put a footnote in the brief that the
18 citations that they give do not bear that out. There's
19 nothing in the record -- and we've read it twice since
20 then -- that indicates that they were sold. And they
21 have backed off on that in their reply brief.

22 Instead, the -- there were three methods of
23 distribution. They are discussed at page 265 of the
24 brief. Items were either sent directly from the factory
25 to the buyers that were identified by Goodyear. They

1 were either then sent to Goodyear that took ownership or
2 took possession of them when they arrived in the United
3 States. They were put in warehouses and sold outside of
4 those, but there were several distribution methods.

5 JUSTICE SCALIA: At page 265 of the brief?
6 I didn't read that many pages.

7 MS. PEDDIE: No, no. Excuse me. Page 265
8 of the Joint Appendix. I'm sorry, Your Honor.

9 JUSTICE KAGAN: Ms. Peddie, this is just a
10 -- this is an I'm-just-curious question: Why do you
11 care? You have Goodyear USA, which has consented to
12 jurisdiction. Why does it make a difference to get
13 these other companies in the North Carolina courts?
14 Does North Carolina not make Goodyear USA substantively
15 liable for this accident?

16 MS. PEDDIE: Your Honor, North Carolina has
17 particularly Draconian requirements for piercing the
18 corporate veil and alter ego, some of which Petitioners
19 refer to. For example, the proximate causation of the
20 wrong has to be related to the domination and control,
21 and so ideally it would be great if we could go back and
22 simply deal with them and let them collect from their --

23 JUSTICE KAGAN: So -- but what you're
24 saying, then, is that North Carolina treats the parent
25 and the subs very differently as a matter of substantive

1 law, but you would want identical treatment as a matter
2 of jurisdiction?

3 MS. PEDDIE: Right. They have very -- in
4 most States, frankly, there's a -- a lesser requirement
5 for the exercise of jurisdiction, merely allowing the
6 suit to go forward, than there is for actual imputation
7 of liability or imposition of liability, and so North
8 Carolina, I think, is a very good example of that.

9 They have a fairly liberal requirement or
10 state of the law that we've cited in the Manley case,
11 where general personal jurisdiction exists over a
12 foreign corporation where it is controlled by or
13 controls a local corporation. And that's the Wyatt
14 Confectionary case that we cited in the -- excuse me --
15 the Chocolate Confectionary case cited in the Manley
16 case.

17 JUSTICE SOTOMAYOR: I'm not sure that that
18 answered -- I understood you to be saying that,
19 substantively, they might not be liable for the defect
20 that caused the accident. Is that it?

21 MS. PEDDIE: Yes. That -- I mean, we -- I
22 think you have to understand that this case is at a very
23 embryonic state. We've done no discovery in this case.
24 This was a -- an appeal, an interlocutory appeal from
25 the denial of a motion to dismiss, and so there's been

1 one deposition on a very limited jurisdictional issue.

2 So we've not had an opportunity to develop the facts.

3 We hope we will be able to develop those
4 facts, but what we're faced with here is a situation
5 where North Carolina would permit the exercise of
6 jurisdiction under its well-established law on general
7 personal jurisdiction, but when it comes to the
8 imposition of liability for substantive purposes, that
9 may be a much, much -- much tougher sledding. And so in
10 order to preserve the interests of our client, we've --
11 we've gone down this road as well.

12 JUSTICE GINSBURG: Do you have any case law
13 that supports your position, which, I take it -- and
14 correct me if I've got it wrong -- that a subsidiary is
15 subject to jurisdiction wherever the parent is, so long
16 as some products made by the subsidiary are shipped by
17 the parent to the -- to buyers in the forum State?

18 MS. PEDDIE: No, Your Honor, because that's
19 not our position here. Our position is that if you
20 participate in this kind -- not a general one, but in
21 this kind of very tightly controlled system,
22 distribution and supply system, then there is general
23 jurisdiction in the forum over the foreign subsidiary
24 that participates in this. But simply generally having
25 a parent-subsidiary relationship and shipping goods into

1 the forum, that's not what we're contending. And,
2 frankly, I don't think that that would be a situation in
3 which general jurisdiction would apply.

4 JUSTICE GINSBURG: I see nothing in the
5 North Carolina court's opinion that explains that this
6 is the -- this is a corporation where we can obliterate
7 the distinction between parent and sub.

8 MS. PEDDIE: Your Honor, they do talk
9 repeatedly about the existence of this highly integrated
10 distribution system. I think it might be helpful to
11 sort of flip it over and say what would happen if we
12 adopted the Petitioners' view that you ignore the
13 system, and all you look at is a -- is a few sales. I
14 think that then you would end up with a situation that
15 would be unfair to the State of North Carolina in terms
16 of providing a forum for its residents.

17 For example, if I may give a hypothetical,
18 if you have a -- not a manufacturing plant in Turkey,
19 but, let's say, in China that is producing a massive
20 amount of tires for importation into the United States,
21 thousands of tires, in this same distribution system.
22 Based on their view that it has to be principal place of
23 business, State of incorporation, and that mere sales
24 are not -- don't count, and it has the same jurisdiction
25 system, then even that -- that producer -- and, frankly,

1 Goodyear is one of those producers -- wouldn't be liable
2 in North Carolina if the injury occurred someplace else.

3 JUSTICE GINSBURG: There's -- there's a --
4 you open your brief saying something to the effect of
5 this case is about outsourcing, jobs in the U.S. going
6 to some subsidiary port. But then these subsidiaries
7 are making tires which, on your own admission, very
8 rarely come to the United States because they're
9 designed specifically for vehicles in Asia and in
10 Europe. And so I would think that Turkey would be the
11 ideal location for -- for such a place. I don't get
12 your outsourcing pitch.

13 MS. PEDDIE: Your Honor, our -- our position
14 here is that you will incentivize outsourcing if you
15 agree with the Petitioners' view. With regard to the
16 existing plants, 1,500 miles, which is the distance from
17 Istanbul to Paris, is -- is not exactly local
18 production. But what we're talking about is, again,
19 something like the example that I gave you of a
20 production in China, that you have -- and -- and it's
21 based on the definition that we make of outsourcing,
22 which are jobs that simply were in the United States.

23 If a CEO is faced with a situation of
24 locating a plant in -- in North Carolina and subjecting
25 the production of that plant, even if it's completely

1 for export, and particularly if it's completely for
2 export, to the jurisdiction, the general jurisdiction,
3 of the State courts and can put that plant in China and
4 send items around the world and not be subject to the
5 jurisdiction of North Carolina, where do you think
6 they're going to put that plant?

7 Now, I don't disagree that --

8 JUSTICE SCALIA: Do you think he'd rather be
9 sued in China?

10 MS. PEDDIE: I think they would rather be
11 sued in China.

12 JUSTICE SCALIA: I wouldn't. I don't know
13 why anybody would.

14 MS. PEDDIE: Well --

15 CHIEF JUSTICE ROBERTS: And don't you think
16 that's a question as to which we ought to have some
17 sensitivity to the views of the United States expressed
18 here by the Solicitor General? It certainly implicates
19 foreign relations concerns.

20 MS. PEDDIE: Your Honor, I think that the --
21 well, let me answer this in two ways. The first way is
22 the policy considerations, either on our side or their
23 side, are not due process issues.

24 And the second point that I was going to
25 make was the idea that the Due Process Clause doesn't

1 trump the exercise of jurisdiction over the Petitioners
2 here based on policy. Instead, it has to be a showing
3 of unfairness --

4 CHIEF JUSTICE ROBERTS: I thought your
5 argument about outsourcing sounded an awful lot like a
6 policy argument to me.

7 MS. PEDDIE: Well, it is a policy argument,
8 but I think, Your Honor, that -- in all candor, I think
9 we felt the need to -- to respond to the policy
10 arguments of not just the Government but also to the
11 other side.

12 I would -- I would say, let me -- if I might
13 complete -- complete the other thought, is that all of
14 those considerations, as interesting as they are, as
15 compelling as they may seem, you know, are not due
16 process considerations. This Court really isn't
17 empowered to restrict the jurisdiction of State courts
18 based on assisting the United States in negotiating
19 trade treaties; instead, it has to be based on
20 unfairness and a showing of undue burden.

21 With regard to -- getting back to the --

22 JUSTICE SCALIA: It's just not unfairness
23 and undue burden. It's a matter of what -- what power a
24 sovereign has.

25 MS. PEDDIE: That's --

1 JUSTICE SCALIA: I mean, it could be
2 perfectly fair if you announce that you're going to
3 assert jurisdiction over anybody who harms an American
4 citizen anywhere in the world, and you give notice to
5 every manufacturer in the world. That would be
6 perfectly fair, but you have no power to do that
7 under -- under accepted notions of what a sovereign can
8 do.

9 MS. PEDDIE: And -- and it would be tempered
10 by the -- the burdens test that is articulated in Asahi
11 and elsewhere, but none of that impacts, you know,
12 policy considerations such as trade negotiations,
13 et cetera. And the focus has been fairness and balance
14 of interests. And here you have a -- a manufacturer and
15 you have Petitioners who voluntarily participated in an
16 enterprise that operates in the State here. And we
17 think that there's nothing unfair about -- when they
18 agreed to deal with this, when they made money off of
19 doing this, when they do this on an ongoing basis,
20 there's nothing unfair about -- about subjecting them to
21 liability there.

22 And particularly when you look at the Asahi
23 factors, there's really no burden on the defendants
24 here. One of the things that the Petitioners did not
25 respond to in our -- our brief is the notion that no

1 matter what this Court decides, two of these Petitioners
2 are going to be litigating in a foreign country
3 anywhere. And the only thing that they have interjected
4 as a burden is the presumptive burden of litigating in
5 another country. They're going to be litigating in
6 another country unless a court atomizes this case and
7 says that the Petitioners have to litigate in four
8 different states.

9 So there's nothing -- there's nothing to
10 sort of suggest that there's -- there's any burden, nor,
11 therefore, a basis for restricting the jurisdiction of
12 the North Carolina State courts based on due process
13 concerns.

14 By contrast -- and the other thing that --

15 JUSTICE SCALIA: Only if you believe that
16 burden is the only issue. The issue is power, not just
17 burden.

18 MS. PEDDIE: That's -- that's correct, but
19 the -- but at least this Court has said, since *Pennoyer*
20 *v. Neff*, that the power is tempered only by the Due
21 Process Clause, not about policy concerns. And so,
22 it -- as -- as -- I think the Court is correct that it
23 may be perfectly fair to announce this to the world, but
24 it's up to this Court to determine whether due process
25 would restrict the exercise of that power, and it does

1 it on an enunciated set of factors, none of which
2 includes assisting the United States in negotiating
3 trade treaties.

4 The Petitioners, I think, as we've
5 suggested, have not really shown any sort of burden
6 here, and they would be litigating with the same lawyers
7 in the -- same lawyers in the same forum as their
8 parent. And the Court has observed that even the kinds
9 of litigation that would take place, the burdens on
10 litigating in a foreign -- foreign forum are much
11 reduced, and that was in 1957, the year that I was born.

12 The primary objections here are based on
13 trade. I think it's -- it's interesting that the
14 Government has -- has talked about those, but I don't
15 think that's a basis for restricting jurisdiction.

16 JUSTICE GINSBURG: Could you go back?
17 You -- you said something about the two of them are
18 subject to suit. You said this is a question of one
19 lawsuit instead of four. Could you explain that?

20 MS. PEDDIE: Well, for example, the parent
21 and the three Petitioners all have principal places of
22 business in four different countries. And we have
23 general jurisdiction over the parent in the forum. We
24 have the same lawyers that are representing all the
25 parties in the forum, and we intend to go forward in

1 the forum.

2 JUSTICE GINSBURG: What about France?

3 MS. PEDDIE: Well, in France the -- the
4 Petitioners from Luxembourg and from Turkey -- if they
5 litigate in France, they're going to be litigating in a
6 foreign country as well. And so, our question is: Why
7 is it somehow more convenient to litigate in France than
8 it is in the United States when you've got the same
9 lawyers and the --

10 JUSTICE GINSBURG: It's not a question of
11 more convenience. It's a question that the claim arose
12 there, and then, of course, there was -- just because
13 the claim arose there, there would be some convenience
14 factors. All the witnesses to the accident are there;
15 whatever is left of the bus is there.

16 MS. PEDDIE: Well, those -- those are the
17 forum non conveniens issues that -- that a -- that a
18 court would consider. But I'm talking about the due
19 process question in terms of investigating the -- the
20 actual burden on the Petitioners in litigating in the
21 forum. And the only thing that they've really focused
22 on is their preference for that forum, which is not a
23 due process concern.

24 Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you, counsel.

1 Mr. Feder, you have 5 minutes remaining.

2 REBUTTAL ARGUMENT OF MEIR FEDER

3 ON BEHALF OF THE PETITIONERS

4 MR. FEDER: Thank you, Your Honor.

5 The purported integrated distribution that
6 Respondents are pointing to as the basis for ignoring
7 the corporate separation here, whatever else you could
8 say about it and whether it's really any different from
9 normal coordination, it only relates to the tiny
10 fraction of Petitioners' business that involved tires
11 going to the United States.

12 So -- where they didn't normally market
13 their products, and so, of course, everything that they
14 sent to the United States was only when the U.S.
15 affiliate reached out to get tires. That does not --
16 under any theory of which I'm aware, even the most
17 aggressive enterprise theory, that would not amount to a
18 basis for merging the two companies and treating parent
19 and sub as if they were one.

20 As far as the hypothetical about China goes,
21 I wanted to briefly address that. Of course, to the
22 extent that there are a lot of tires sent in from China
23 or anywhere else to North Carolina or any other State,
24 there will be specific jurisdiction most likely in those
25 cases.

1 Our position here is simply that the fact
2 that tires are coming in, over which you may have
3 specific jurisdiction, is no basis to say that you can
4 also bring in North Carolina what general jurisdiction
5 would allow you to bring: claims from workplace
6 accidents in China, lease disputes, and whatever else.

7 JUSTICE SCALIA: What about special
8 jurisdiction? Why don't -- why we decide this on the
9 basis of special jurisdiction? It's an accepted basis
10 of jurisdiction. Citizenship is. Countries can make it
11 a crime -- in fact, I think Italy does -- to kill an
12 Italian citizen abroad, and that person can be tried for
13 that crime in Italy. So I assume that -- that that is
14 an acceptable basis of jurisdiction.

15 So why don't we say that there's a
16 specialized jurisdiction when a citizen of -- of North
17 Carolina is -- is injured abroad, so long as there is --
18 what -- what is the word? The submission to the -- to
19 the courts of North Carolina by having enough contacts
20 with North Carolina. The previous case -- what's that
21 crazy word that's --

22 MR. FEDER: Availment.

23 JUSTICE SCALIA: Availment. I meant to look
24 that up. I'm not sure --

25 (Laughter.)

1 JUSTICE SCALIA: I'm not sure it's ever been
2 used except in this courtroom.

3 (Laughter.)

4 JUSTICE SCALIA: Why -- why don't we decide
5 it that way?

6 MR. FEDER: Well, Your Honor, I don't -- I
7 don't think our law has a concept of special
8 jurisdiction like that, as consistent with the Due
9 Process Clause, and I think that even -- I won't purport
10 to speak for the Respondents in the other case, but I
11 think that they would probably agree that if the
12 accident had happened to a New Jersey citizen in France,
13 that that would not create, even under their
14 stream-of-commerce theory, jurisdiction.

15 Under our due process precedents, you need
16 purposeful availment. And for general jurisdiction, of
17 course, you need quite a bit more than that. And so,
18 while creative, I don't think that would quite carry the
19 day.

20 JUSTICE GINSBURG: There is -- there is a
21 country that has this -- what Justice Scalia -- France,
22 in the Civil Code, says that any French citizen can sue
23 anybody on any claim in France. But we consider that an
24 exorbitant jurisdictional rule.

25 MR. FEDER: We -- we do, Your Honor, and
Alderson Reporting Company

1 obviously we wouldn't recognize that under our Due
2 Process Clause, and I think it points up some of the
3 reasons why, at least at the margins, it is important to
4 be able to negotiate treaties so that we can avoid
5 having that sort of jurisdiction exercised against our
6 citizens, just as within the European Community they
7 have an agreement that it's not exercised within that
8 community.

9 If there are no further questions --

10 CHIEF JUSTICE ROBERTS: Thank you, counsel.

11 The case is submitted.

12 (Whereupon, at 12:16 p.m., the case in the
13 above-entitled matter was submitted.)

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