

**THE EVER EVOLVING LANDSCAPE OF PERSONAL JURISDICTION:  
WHO CAN BE SUED WHERE?**

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“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.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, ---U.S.---, 131 S.Ct. 2846, 2850 (2011). The constitutional limitations on courts’ powers to exercise jurisdiction over corporate defendants have been the subject of recent opinions by the United States and Alabama Supreme Courts, which narrow the circumstances in which a court may require a defendant to defend an action in Alabama. In *Daimler AG v. Bauman*, --- U.S.---, 134 S.Ct. 746 (2014), the United States Supreme Court made clear that, in all but the most unusual of circumstance, general/all-purpose personal jurisdiction could only be permissibly exercised by courts in the state of the corporate defendant’s incorporation or principal place of business. In *Hinrichs v. General Motors of Canada, Ltd.*, ---So.2d---, 2016 WL 3461177 (Ala. June 24, 2016), the Alabama Supreme Court found that specific/case-linked jurisdiction over a product manufacturer requires, in effect, that the product must have originally been sold in Alabama. In concert, these opinions could significantly constrain the civil actions which may be resolved in Alabama courts.

**I. ALL-PURPOSE VS. CASE-LINKED PERSONAL JURISDICTION**

In the analysis of personal jurisdiction, courts “differentiate[] between general or all-purpose jurisdiction, and specific or case-linked jurisdiction.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, ---U.S.---, 131 S.Ct. 2846, 2851 (2011). Specific/case-linked jurisdiction “depends

on an affiliation between the forum and the underlying controversy, principally, activity that takes place in the forum State and is therefore subject to the State's regulation." *Id.* In addition to other factors, establishing case-linked jurisdiction requires a showing that the suit is based upon "the defendant's contacts with the forum." *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n. 8 (1984); *J. McIntyre Mach., Ltd. v. Nicastro*, ---U.S.---, 131 S.Ct. 2780, 2787-88 (2011); *Walden v. Fiore*, ---U.S.---, 134 S.Ct. 1115, 1121-23 (2014). See *Turner v. Regions Bank*, 770 F.Supp.2d 1244, 1248 (M.D. Ala. 2011) ("Specific jurisdiction is based on the party's contacts with the forum State that are related to the cause of action."). The specific/case-linked jurisdiction analysis turns on the relationship between the specific cause of action and the forum state.

The exercise of general/all-purpose jurisdiction empowers courts to exercise personal jurisdiction over a defendant in any case, even those where there is no nexus between the specific cause of action and the forum state. "[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter." *Nicastro*, 131 S.Ct. at 2787. Consequently, "[t]he due process requirements for general personal jurisdiction are more stringent than for specific personal jurisdiction." *Consolidated Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1292 (11th Cir. 2000). For general/all-purpose jurisdiction to apply, the defendant's affiliation with the forum State must be so strong and overriding "as to essentially render them at home in the forum." *Goodyear*, 131 S.Ct. at 2851. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regard as at home." *Id.* at 2853-54. Importantly, "ties serving to bolster the exercise of specific jurisdiction do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant." *Id.*

at 2855. The general/all-purpose analysis turns on whether the defendant's connections with the forum state are so strong that the defendant may fairly be deemed "at home" in that state.

## **II. GENERAL/ALL-PURPOSE PERSONAL JURISDICTION POST-*DAIMLER***

The United States Supreme Court's recent opinion in *Daimler AG v. Bauman*, --- U.S.---, 134 S.Ct. 746 (2014), expressly restricts the scope of general (all-purpose) jurisdiction over corporate entities permissible under the Fourteenth Amendment. In *Daimler*, the Supreme Court developed its prior pronouncements in *Goodyear*, and decreed that, absent yet fully defined exceptional circumstances, general jurisdiction over corporations exists only in: (1) the State of incorporation, or; (2) the State in which the corporation's principal place of business is located. *Daimler* makes clear that a substantial, continuous, and systematic course of business in the forum State will no longer be found sufficient to authorize the exercise of general personal jurisdiction over corporate entities.

In *Goodyear*, the Court initially indicated that for general/all-purpose jurisdiction to apply, the defendant's affiliation with the forum State must be so strong and overriding "as to render them essentially at home in the forum." *Id.* Importantly, the Court explained that "ties serving to bolster the exercise of specific jurisdiction do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant." *Id.* at 2855 (emphasis in original). "A corporation's continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Id.* at 2856 (internal citation omitted). "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." *Id.* at 2853-54. Unfortunately, these pronouncements went largely

unheralded in lower courts' subsequent opinions, and the "at home" test was seldom implemented as the standard by which general jurisdiction was to be gauged.<sup>1</sup>

The Court obviously took notice of the lack of impact *Goodyear* had on lower courts' general jurisdiction analysis.<sup>2</sup> Although not squarely responsive to the issue upon which cert was granted, in *Daimler* the Court capitalized on the opportunity to emphasize the import of its holding in *Goodyear* by giving further definition to the "at home" test under which general/all-purpose jurisdiction must now be determined. *See* 134 S.Ct. at 760-62, and n. 11, n. 19, n. 20.

In *Daimler*, the Court directed that "*Goodyear* made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose [*i.e.* general] jurisdiction there," and reiterated *Goodyear's* holding that general jurisdiction can only be exercised if the corporate defendant is "at home" in the forum State. 134 S.Ct. at 760 (citing *Goodyear*, 131 S.Ct. at 2853-54). The Court then provided further guidance and explained, in all but an exceptional case, a corporation can only be deemed "at home" in the State of its incorporation or the State in which its principal place of business is located. *Id.* at 760-62. "With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction... Those affiliations have the virtue of being unique – that is, each ordinarily indicates only one place – as well as [being] easily ascertainable." *Id.* (internal quotation omitted). "These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate

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<sup>1</sup> While the primary issue was the exercise of specific jurisdiction, in *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011), decided the same day as *Goodyear*, the Court reiterated that "[c]itizenship or domicile – or, by analogy, incorporation or principal place of business for corporations – also indicates general submission to a State's powers... By contrast, those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter." *Id.* at 2787.

<sup>2</sup> Justice Ginsburg authored both *Goodyear* and *Daimler*, so it can be safely assumed that there is no speculation in *Daimler's* explanation of the intent and impact of *Goodyear's* holding.

defendant may be sued on any and all claims.” *Id. See Kipp v. Ski Enter. Corp. of Wisc., Inc.*, 783 F.3d 695, 698 (7th Cir. 2015) (“[G]eneral jurisdiction exists only when the organization is ‘essentially at home’ in the forum State. Thus far, the [Supreme] Court has identified only two places where that condition will be met: the state of the corporation’s principal place of business and the state of its incorporation.”).

Contrary to the standard applied by numerous lower courts, including those in Alabama, the Court expressly rejected “the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business.” *Daimler*, 134 S.Ct. at 761.<sup>3</sup> “That formulation, we hold, is unacceptably grasping.” *Id. Daimler* makes clear that grafting of the “continuous and systematic” test into the general jurisdiction analysis is erroneous. “[T]he words ‘continuous and systematic’ were used in *International Shoe* to describe instances in which the exercise of *specific* jurisdiction would be appropriate.” *Id.* at 761 (emphasis in original). “A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, ‘at home’ would be synonymous with ‘doing business.’” *Id.* at 762 n. 20. “Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state-defendants ‘to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.’” *Id.* at 761-62 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). *See Kipp*, 783 F.3d at 698 (post-*Daimler* the exercise of general jurisdiction now requires “more than the ‘substantial, continuous, and systematic course of business’ that was once thought to suffice” (internal citation omitted)).

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<sup>3</sup> The Court specifically reversed the Ninth Circuit’s application of a general jurisdiction test premised upon “whether [the defendant’s] activities in the forum are ‘substantial,’ or ‘continuous and systematic.’” *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 920 (9<sup>th</sup> Cir. 2011), *rev’d*, 131 S.Ct. 2846 (2011).

Applying *Goodyear's* “at home” test, the Court held that a California court’s exercise of general jurisdiction would exceed the bounds of the Fourteenth Amendment because “neither Daimler nor MBUSA is incorporated in California, nor does either entity have its principal place of business there,” and declared that it was error “to conclude that Daimler, even with MBUSA’s contacts attributed to it, was at home in California.” *Id.* at 761-62. The Court reached this conclusion despite the fact that “MBUSA has multiple California-based facilities...MBUSA is the largest supplier of luxury vehicles to the California market [and] over 10% of all [of MBUSA’s] sales of new vehicles in the United States take place in California.” *Id.* at 752. The Court deemed these operations “slim contacts with the State” which could “hardly render it at home there.” *Id.* at 760. In reversing the Ninth Circuit’s determination of general jurisdiction, the Court made the impact of the “at home” test clear by rejecting the exercise of general jurisdiction in the face of in-forum contacts much more substantial than are normally present; and upon which lower courts have routinely justified the exercise of general jurisdiction.

Underscoring the narrow constraints of “at home” jurisdiction, the Court specifically noted that “general and specific jurisdiction have followed markedly different trajectories...Specific jurisdiction has been cut loose from *Pennoyer's* sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized.” *Id.* at 757-58. When read in concert with the Court’s prior statement that “[i]n *Pennoyer v. Neff*, 95 U.S. 714[, 720] (1878)...the Court held that a tribunal’s jurisdiction over persons reaches no farther than the geographic bounds of the forum,” the clear indication is that the exercise of general jurisdiction is limited to defendants which are in truly in-state – defendants which can be fairly deemed “at home” in the forum. *Id.* at 753.<sup>4</sup>

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<sup>4</sup> In directing that the scope of general jurisdiction has not been stretched beyond its traditional *Pennoyer* limits, the Court cites von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv.L.Rev. 1121, 1179

Notably, the *Daimler* Court did “not foreclose the possibility that in an exceptional case, see, e.g., *Perkins*,...a corporation’s operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State.” *Id.* at 761 n. 19. However, in declining to precisely define what would be required to establish the necessary “exceptional case,” the Court effectively established an exceedingly high benchmark which could only be satisfied in the rarest of circumstance. Specifically, the Court’s judicial restraint was based upon its determination that “this case presents no occasion to explore that question, because Daimler’s activities in California *plainly do not approach* that level.” *Id.* (emphasis added). The obvious implication being that something much more than the in-state activity in *Daimler* is required before “exceptional case” general jurisdiction is constitutionally permissible. *Id.* See *Id.* at 760 (“Daimler’s slim contacts with the State hardly render it at home there.”); *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014) (post-*Daimler*, it is “incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business”).<sup>5</sup>

The Court’s citation to *Perkins v. Benguet Consl. Mining Co.*, 342 U.S. 437 (1952), as an example of the required “exceptional case” further emphasizes the rarity with which that basis for the exercise of general jurisdiction could be permissible. *Id.* at 761 n. 19. *Perkins* involved a foreign corporation sued in Ohio. At the time of suit, during the Japanese occupation of the Philippines in World War II, the company had ceased all mining activities, and its president had

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(1966) (“[T]he sole community where it is fair to require [a corporation] to litigate any cause of action...is the corporate headquarters-presumably both the place of incorporation and the principal place of business, where these differ.”).

<sup>5</sup> Of additional note, even though the Court side-stepped the issue of whether general jurisdiction over a parent company could be based upon an agency theory, the Court at least calls into question the validity of such an exercise of jurisdiction. See 134 S.Ct. at 759-60 and n. 13.

fled from the Philippines to Ohio, maintained the company's office and files in Ohio, and managed the company's affairs from Ohio. *See* 342 U.S. at 447-48; *Daimler*, 134 S.Ct. at 755-57; *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780, n. 11 (1984) (explaining that in *Perkins*, "Ohio was the corporation's principal, if temporary, place of business"). Contrasting the in-forum operations in *Daimler* with those in *Perkins*, which the Court deemed "the textbook case of general jurisdiction appropriately exercised over a foreign corporation," further illustrates that in-forum affiliations well beyond a continuous record of doing business within the forum is required before general jurisdiction may be permissibly invoked. *Daimler*, 134 S.Ct. at 755-56. *See Whitener v. Pliva, Inc.*, 2015 WL 1570051 at \* 2 (5th Cir.) ("it is the 'exceptional case' in which 'a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation subject to general jurisdiction 'in that State'" (quoting *Daimler*, 134 S.Ct. at 761 n. 19)).

In sum, *Daimler* establishes that before general jurisdiction can be exercised in any State not qualifying under one of the two "paradigm bases for general jurisdiction" – "the place of incorporation and principal place of business" – it must be established that the corporate defendant's in-forum business activities are so "exceptional" that the corporation is, for all practical purposes, "comparable to a domestic enterprise in that State." *Id.* at 758 n. 11. Given the Court's declaration that the in-forum operations attributed to *Daimler* "plainly do not approach [the] level" of the "exceptional case," there can be no cognizable argument that such "exceptional" circumstances exist when a corporate defendant's in-forum affiliations are less substantial than those which the *Daimler* Court characterized as "slim contacts with the State" and expressly deemed insufficient. *See id.* at 752, 760-62. Instead, circumstances analogous to those in *Perkins*, where the corporation had physically relocated its corporate operations to the forum state, appear

necessary before general jurisdiction can be founded upon something other than the two “paradigm bases for general jurisdiction.” *Id. See Goodyear*, 131 S.Ct. at 2853-54 (“For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.”).

Post-*Daimler*, there can be no debate that the only viable test for general/all-purpose jurisdiction is whether the corporate defendant may fairly be considered “at home” in the forum State. *Id.* at 760-62. General jurisdiction may no longer be advanced upon an argument that the corporate defendant “does business” in the forum. *Id.* at 761-62, n. 20. *Daimler* simply forecloses “the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business.” *Id.* at 761. Therefore, in all but the most unique situation, an Alabama court may only permissibly exercise general/all-purpose jurisdiction over a corporate defendant if Alabama is that defendant’s: (1) state of incorporation, or; (2) principal place of business.

### **III. SPECIFIC/CASE-LINKED PERSONAL JURISDICTION POST-*HINRICH*S**

Specific/case-linked jurisdiction serves to allow the exercise of personal jurisdiction over a defendant who cannot be deemed “at home” in the forum state, when there is a substantial connection between the defendant’s in-forum activities and the specific cause of action at issue. *See Burger King*, 471 U.S. at 472-73. In evaluating specific/case-linked jurisdiction against product manufacturers, most courts have applied some variation of either the “stream-of-commerce” or “stream-of-commerce plus” tests discussed in the plurality opinions in *Asahi Metal Indus. Co. v. Superior Court of California*, 408 U.S. 102 (1987). Although the Court did not adopt either the “stream-of-commerce” or “stream-of-commerce plus” tests, lower courts have generally concluded that the requirements of due process are satisfied where the accident or injury giving

rise to the action occurred in the forum state, and the defendant manufacturer had sufficient minimum contacts with that forum such that it could reasonable foresee being haled into court in that forum. Specifically, courts considered the actions or efforts of the defendant manufacturer “to serve, directly or indirectly, the market for its product in” the forum state. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980). “The forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” *Id.*

Upon this logic, the Alabama Supreme Court previously held that where the sale of a manufacturer’s products “is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its products in [Alabama], it is not unreasonable to subject it to suit in [Alabama] if its allegedly defective merchandise has there been the source of the injury to its owner or others.” *Ex parte DBI, Inc.*, 23 So.3d 635, 651 (Ala. 2009). This analysis focused primarily on the manufacturer’s purposeful actions to reach the Alabama market with the product upon which the plaintiff’s claims were based. *Id.* Consequently, manufacturers who intentionally and routinely directed their products to Alabama have generally been found subject to specific/case-linked jurisdiction in Alabama when the manufacturer’s product was alleged to have caused injury in Alabama. *Id.* at 654-57.

The Alabama Supreme Court’s recent opinion in *Hinrichs v. General Motors of Canada, Ltd.*, ---So.2d---, 2016 WL 3461177 (Ala. June 24, 2016), has injected significant uncertainty as to the limitations on Alabama court’s exercise of specific/case-linked personal jurisdiction over product manufacturers. The plaintiff in *Hinrichs* was the passenger in a 2004 GMC Sierra 1500 pickup truck that was involved in an accident in Geneva County. GM Canada manufactured certain

parts of the truck, assembled the vehicle in its Ontario production facility, and sold the vehicle to General Motors Corporation (“GM”)<sup>6</sup>, who distributed the vehicle for sale through its dealer network. The vehicle was originally delivered to a dealership in Pennsylvania, where it was sold to the driver, who later moved to Alabama when he was assigned to Fort Rucker.

The plaintiff named GM – not GM Canada – as the product manufacturer defendant in the action. Subsequent to GM’s 2009 bankruptcy, the plaintiff settled its claims with GM for \$2 million in the bankruptcy case. The plaintiff then amended his complaint to bring crashworthiness products liability claims against GM Canada. GM Canada moved for dismissal based upon lack of personal jurisdiction. The trial court granted that motion, and the plaintiff appealed. Not surprisingly, the Court affirmed the finding of no general/all-purpose jurisdiction under the *Goodyear/Daimler* “at home” analysis. In a divided opinion, a plurality of the Court likewise found that the exercise of specific/case-linked jurisdiction was constitutionally impermissible. Notably, Retired Justice Champ Lyons, Jr. had to be appointed as a Special Justice to break the 4-4 split which existed on the Court. Ultimately, Justices Stuart, Main, Bryan and Special Justice Lyons concurred in the *per curiam* opinion, and Justice Bolin concurred in the result reached on the specific/case-linked jurisdiction issue. In his concurrence, Justice Bolin seems reluctant to fully subscribe to the accuracy of the main opinion’s specific/case-linked analysis – but “in the absence of clear guidance from the Supreme Court” he agreed that “applying the most recent case involving specific jurisdiction is the correct approach.” 2016 WL 3461177 at \*29. Justice Parker and Justice Murdock each authored dissenting opinions, and Justice Wise concurred in Justice Murdock’s position. *Id.* at \*30-\*40.

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<sup>6</sup> n/k/a Motors Liquidation Company (“MLC”)

Although the division in the Court calls into question the *per curiam* opinion's precedential impact, if followed, the *Hinrichs* opinion could result in a dramatic restriction of the exercise of specific/case-linked jurisdiction over product manufacturers in Alabama. Under the *Hinrichs* analysis, specific/case-linked jurisdiction can only be exercised over a product manufacturer if: (1) the injury giving rise to the suit occurred in Alabama, and; (2) the specific product involved in the accident was originally sold in Alabama. "[W]e have found no caselaw that upholds specific jurisdiction where the stream of commerce for the product does not end in the forum state. Here, there simply is no 'suit related conduct' that creates a substantial connection between GM Canada and Alabama if the vehicle was not sold in Alabama, even though *Hinrichs* was injured in Alabama." *Id.* at \*27. As Justice Murdock characterized in his dissent, "the main opinion holds that GM Canada has insufficient contacts with Alabama to subject it to specific jurisdiction in a case arising out of an accident that occurred in Alabama and that involved one of the vehicles sold into the United States market, of which Alabama is a part. The main opinion bases its holding on the fact that GM Canada's distributor happened to introduce the particular GM Canada vehicle involved in the accident into the United States market by selling it to an automobile dealership in Pennsylvania, rather than Alabama." *Id.* at \*33.

Justice Murdock contends that the exercise of specific/case-linked jurisdiction over GM Canada is consistent with the Due Process Clause and the United Supreme Court's prior precedent, because, in his view, "GM Canada is not deprived of fair play and substantial justice by being required to answer in Alabama for an accident that took place here involving one of the vehicles it chose to manufacture for sale into the nationwide market that includes this state." *Id.* at \* 40. Under his analysis, "[i]t is 'reasonable,' 'fair,' and 'substantially just' to conclude that the trial court has specific jurisdiction over GM Canada in this case." *Id.*

The split in the Court appears to fall on the issue of the required nexus between the defendant's in-forum activities and the underlying suit. The main opinion holds that exercising specific/case-linked jurisdiction when the defendant manufacturer did not direct the *particular product* involved in the accident to Alabama would be tantamount to "dispute-blind specific jurisdiction." *Id.* at \*27. The dissent offers that "in actions against a manufacturer that has designed and manufactured a product for distribution throughout the entire United States market, the defendant's 'suit-related conduct' is in fact the design and manufacturing of such automobiles and the placement of them into the stream of commerce for that United States market. GM Canada's suit-related conduct of manufacturing vehicles for distribution by MCL [f/k/a "GM"] throughout the United States is the reason GM Canada has a connection to any state, regardless of where MCL happens to place any one particular vehicle." *Id.* at \*38.<sup>7</sup>

On July 15, 2016, the plaintiff in *Hinrichs* filed an application for rehearing with the Alabama Supreme Court. It is also believed that if that effort is unsuccessful, it will seek review of the specific/case-linked jurisdiction issue by the United States Supreme Court. Consequently, it appears that the state of specific/case-linked jurisdiction in Alabama could remain murky for some time. However, to the extent the *Hinrichs* analysis is deemed controlling, Alabama courts only have specific/case-linked jurisdiction over actions in which the product was originally sold in Alabama. 2016 WL 3461177 at \*27.

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<sup>7</sup> Some courts appear to have applied the analysis promoted by Justice Murdock. *E.g. Ford Motor Co. v. McGRaw*, 2016 WL 2953973 (W.Va. May 18, 2016); *Mason v. Mooney Aircraft Corp.*, 2003 WL 21244160 (W.D. Mo. May 8, 2003). However, others are more aligned with the "particular product" analysis employed by the main opinion. *E.g. Pitts v. Ford Motor Co.*, 127 F.Supp.3d 676 (S.D. Miss. 2015); *Graham v. Hamilton*, 872 F.Supp.2d 529 (W.D. La. 2012).