

THE EVOLVING STATE OF PERSONAL JURISDICTION IN INDIANA

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I. INTRODUCTION

In order to assert personal jurisdiction over a defendant, a court must conclude it has either general or specific personal jurisdiction.¹ “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.”² Although “‘only a limited set of affiliations with a forum will render a defendant amendable to’ general jurisdiction in that State,” a court with general jurisdiction over a defendant “may hear *any* claim against the defendant, even if all the incidents underlying the claim occurred in a different State.”³ In contrast, specific jurisdiction exists when the suit arises out of defendant’s contact with the forum.⁴ “In other words, there must be ‘an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.’”⁵ Of course, the venerable *International Shoe v. State of Washington*⁶ decision recognizes the purpose for such limitations: “a State may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has certain minimum contacts with [the State]

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¹ *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773, 1779-80, 198 L. Ed. 2d 395 (2017).

² *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924, 131 S. Ct. 2846, 2853-54, 180 L. Ed. 2d 796 (U.S. 2011).

³ *Bristol-Myers Squibb*, 137 S. Ct. 1773, 1779-80 (emphasis in original).

⁴ *Id.* at 1780.

⁵ *Id.* (quoting *Goodyear*, 564 U.S. 915, 919, 131 S. Ct. 2846).

⁶ 326 U.S. 310 (1945).

such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”⁷

The United States Supreme Court continues to shape the law of both general and specific personal jurisdiction. In *Daimler AG v. Bauman*,⁸ it considered whether a state properly may exercise general jurisdiction over a foreign manufacturer’s domestic subsidiary that had numerous contacts with the forum.⁹ Then, in *Walden v. Fiore*,¹⁰ the Supreme Court pointedly examined the boundaries of specific jurisdiction.¹¹ Most recently, on June 19, 2017, the Court decided *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*,¹² likewise expounding on concepts of specific jurisdiction announced in *Walden*.¹³ Because Indiana’s own long-arm statute adopts the same due process analysis,¹⁴ these decisions already have affected determinations on personal jurisdiction reached by Indiana courts.

This article discusses this recent United States Supreme Court case law and reviews its impact on decisions in Indiana courts. Section II provides an overview of the rationale underlying *Bauman*, *Walden*, and *Bristol-Myers Squibb*, including several seminal cases that set the stage for these major decisions. Section III examines Indiana cases interpreting or otherwise examining the issue of personal jurisdiction since *Bauman*, *Walden* and *Bristol-Myers Squibb*. Using the aforementioned case law as a guide, Section IV discusses implications for Indiana lawyers considering filing motions to dismiss for lack of personal jurisdiction.

II. RECENT UNITED STATES SUPREME COURT CASE LAW

A. SETTING THE STAGE: *HELICOPTEROS* AND *GOODYEAR*

Although this article does not undertake an exhaustive examination of the United States Supreme Court’s historic decisions addressing issues of personal jurisdiction, *Helicopteros Nacionales de Colombia, S.A. v. Hall*¹⁵ and *Goodyear* feature prominently in the Court’s recent decisions and thus deserve discussion.

In *Helicopteros*, survivors and representatives of four United States citizens who died in a helicopter crash brought an action in a Texas district

⁷ *Goodyear*, 564 U.S. 915, 923, 131 S. Ct. 2846, 2853 (quoting *International Shoe v. State of Washington*, 326 U.S. 310 at 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)) (internal quotations omitted).

⁸ 134 S. Ct. 746, 748, 187 L. Ed. 2d 624 (2014).

⁹ See *infra* Section II(B).

¹⁰ 134 S. Ct. 1115, 1119 (2014).

¹¹ See *infra* Section II(B).

¹² 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017); see *infra* Section II(B).

¹³ See *infra* Section II(B).

¹⁴ See *infra* Section IV(A).

¹⁵ 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984).

court against Helicopteros Nacionales, the Columbian corporation that owned and operated the helicopter.¹⁶ While all parties in the case conceded that the claims against Helicopteros did not arise out of Texas-based activities, the Supreme Court examined whether the defendant's activities there were "continuous and systematic general business contacts" such that general jurisdiction could be asserted over it.¹⁷

It was undisputed that Helicopteros had no place of business in Texas and was never licensed to do business in the state.¹⁸ During a seven-year period, Helicopteros purchased helicopters, spare parts, and accessories for more than \$4 million from a Texas company.¹⁹ Helicopteros sent pilots to Texas both for training and to ferry the aircrafts to South America.²⁰ It also sent management and maintenance personnel to Texas for training.²¹ The CEO of Helicopteros had also traveled to Texas for a contract negotiation session.²²

The Supreme Court held that despite those interactions with Texas, the contacts failed to constitute "continuous and systematic contacts" sufficient to grant the Texas court general personal jurisdiction over Helicopteros.²³ According to the Court, "[m]ere purchases, even if occurring at regular intervals, [were] not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to the purchases."²⁴ Furthermore, that Helicopteros sent personnel into Texas for training in connection with the purchase of helicopters and equipment in the state did not "in any way enhance[] the nature of [Helicopteros'] contacts with Texas."²⁵

Then in 2011, the Supreme Court addressed the question whether "foreign subsidiaries of a United States parent corporation are amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State."²⁶ In *Goodyear*, two young boys from North Carolina were killed in a bus accident outside Paris, France.²⁷ Alleging that a defective tire caused the accident, the boys' parents brought suit in North Carolina against Goodyear Tire and Rubber Co. (Goodyear USA), and three of its

¹⁶ *Id.* at 1870.

¹⁷ *Id.* at 1872-73.

¹⁸ *Id.* at 1873.

¹⁹ *Id.* at 1870.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 1873.

²³ *Id.* at 1873-74.

²⁴ *Id.* at 1874.

²⁵ *Id.*

²⁶ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918, 131 S. Ct. 2846, 2850, 180 L. Ed. 2d 796 (2011).

²⁷ *Id.*

foreign subsidiaries, organized and operating in Turkey, France, and Luxembourg.²⁸ The defective tire was manufactured by one of the subsidiaries in Turkey.²⁹ Goodyear USA did not contest the North Carolina court's jurisdiction over it because it regularly engaged in commercial activity in North Carolina, but Goodyear USA's foreign subsidiaries maintained that the court lacked jurisdiction over them.³⁰

Because the accident giving rise to the litigation occurred in France and the tire alleged to have caused the accident was manufactured and sold abroad, North Carolina lacked specific jurisdiction.³¹ The North Carolina courts, however, determined that they had general jurisdiction, stressing that some of the tires manufactured by the foreign subsidiaries had reached North Carolina through "the stream of commerce."³² The Supreme Court rejected this understanding of general jurisdiction, holding instead that "[a] connection so limited between the forum and the foreign corporation" served as "an inadequate basis for the exercise of general jurisdiction."³³ In other words, the Supreme Court concluded that the connections with the state were so limited as to "fall far short of the 'continuous systematic business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State."³⁴

In *Goodyear*, the Supreme Court made several important distinctions between the "stream of commerce" arguments underlying specific and general jurisdiction. "To justify the exercise of general jurisdiction over petitioners, the North Carolina courts relied on the petitioners' placement of their tires in the 'stream of commerce.'"³⁵ However, "[t]he North Carolina court's stream-of-commerce analysis elided the essential difference between case-specific and all-purpose (general) jurisdiction."³⁶ According to the Supreme Court in *Goodyear*, "[f]low of a manufacturer's products into the forum . . . may bolster an affiliation germane to *specific* jurisdiction . . . [b]ut ties serv-

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* Specifically, the foreign subsidiaries noted that they were not registered to do business in North Carolina, and had neither place of business, employees, nor bank accounts in North Carolina. *Id.* at 2852. The foreign subsidiaries did "not design, manufacture, or advertise their products in North Carolina" and they did "not solicit business in North Carolina or themselves sell or ship tires to North Carolina customers." *Id.* While "a small percentage of petitioners' tires (tens of thousands out of tens of millions manufactured between 2004 and 2007) were distributed within North Carolina by other Goodyear USA affiliates," the type of tire involved in the incident was never distributed in North Carolina. *Id.*

³¹ *Id.* at 2851.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 2857.

³⁵ *Id.* at 2854.

³⁶ *Id.* at 2855.

ing to bolster the exercise of specific jurisdiction do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over the defendant.³⁷ Finding no reason to differentiate the limited ties to Texas found insufficient in *Helicopteros* from the sporadic sales made by the foreign Goodyear defendants through intermediaries in North Carolina, the Supreme Court rejected “the sprawling view of general jurisdiction urged by respondents and embraced by the North Carolina Court of Appeals.”³⁸ Indeed, the Court wrote that if such a view of general jurisdiction persisted, “any substantial manufacturer or seller of goods would be amenable to suit, on any claim for relief, wherever its products are distributed.”³⁹ Thus, measured against cases like *Helicopteros*, the Supreme Court determined that the foreign Goodyear subsidiaries were “in no sense at home in North Carolina” and that their attenuated connections to the state fell short of the continuous and systematic general business contacts necessary to render them at home there and susceptible to claims unrelated to anything connecting them with the state.⁴⁰ As such, the Court concluded, North Carolina was “not a forum in which it would be permissible to subject petitioners to general jurisdiction.”⁴¹

B. OVERVIEW OF RECENT UNITED STATES SUPREME COURT CASE LAW

1. *Daimler AG v. Bauman*

In *Daimler AG v. Bauman*,⁴² “[j]urisdiction over the lawsuit was predicated on the California contacts of Mercedes-Benz USA, LLC (MBUSA), a subsidiary of Daimler incorporated in Delaware with its principal place of business in New Jersey.”⁴³ “MBUSA serve[d] as Daimler’s exclusive importer and distributor in the United States, purchasing Mercedes-Benz automobiles from Daimler in Germany, then importing those vehicles, and ultimately distributing them to independent dealerships located throughout the Nation.”⁴⁴ Thus, in *Bauman*, the United States Supreme Court specifically considered “whether the Due Process Clause of the Fourteenth Amendment precludes the District Court from exercising jurisdiction over Daimler in this case, given the absence of any California connection to the atrocities, perpetrators, or victims described in the complaint.”⁴⁵ Ultimately, the *Bauman* Court ruled that general personal jurisdiction did not

³⁷ *Id.* (emphasis in original).

³⁸ *Id.* at 2856.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² 134 S. Ct. 746, 748, 187 L. Ed. 2d 624 (2014).

⁴³ *Id.* at 751.

⁴⁴ *Id.* at 752.

⁴⁵ *Id.* at 751.

exist despite Daimler's United States subsidiary being the exclusive supplier of Daimler's products to car dealerships in the forum state, having three facilities of its own in the forum state, having a regional office in the forum state, being the largest supplier of luxury vehicles to the forum state, and receiving a significant amount of its revenue from sales in the state.⁴⁶ The Supreme Court held that *even if* it were to "assume that MBUSA is at home in California, and further to assume MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with the State hardly render[ed] it at home there."⁴⁷

2. *Walden v. Fiore*

The Supreme Court considered in *Walden v. Fiore*⁴⁸ "whether a court in Nevada may exercise personal jurisdiction over a defendant on the basis that he knew his allegedly tortious conduct in Georgia would delay the return of funds to plaintiffs with connections to Nevada."⁴⁹ In holding that the court in Nevada could not exercise jurisdiction under such circumstances, the Supreme Court addressed "the 'minimum contacts' necessary to create specific jurisdiction."⁵⁰ "The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation."⁵¹ "For a State to exercise jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a *substantial connection* with the forum State."⁵² The court explored two aspects of this necessary relationship relevant to the present discussion.⁵³

First, the Court in *Walden* emphasized that in order for personal jurisdiction to exist, the relationship must arise out of contacts that the "defendant *himself*" creates with the forum state.⁵⁴ In other words, "[d]ue process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties."⁵⁵ Thus, the "minimum contacts" inquiry is a "defendant-focused" inquiry,

⁴⁶ *Id.* at 752.

⁴⁷ *Id.* at 760.

⁴⁸ 134 S. Ct. 1115 (2014).

⁴⁹ *Id.* at 1119.

⁵⁰ *Id.* at 1121.

⁵¹ *Id.* (internal quotations omitted).

⁵² *Id.* (emphasis added).

⁵³ *Id.* at 1121-22.

⁵⁴ *Id.* at 1121 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)) (emphasis in original).

⁵⁵ *Id.* at 1122.

which cannot be established “by demonstrating contacts between the plaintiff (or third parties) and the forum State.”⁵⁶

Second, the Court in *Walden* noted that the “minimum contacts” analysis “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.”⁵⁷ “Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.”⁵⁸ The Supreme Court explicitly held in *Walden* that the “plaintiff cannot be the only link between the defendant and the forum.”⁵⁹ “Rather, it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.”⁶⁰

3. *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*

In *Bristol-Myers Squibb*,⁶¹ 600 plaintiffs filed a civil action in California against Bristol-Myers Squibb Company (BMS), “asserting a variety of state-law claims based on injuries allegedly caused by a BMS drug called Plavix.”⁶² The California Supreme Court concluded that California courts could exercise specific jurisdiction, but the U.S. Supreme Court reversed.⁶³ The group of plaintiffs consisted of 86 California residents, but the remaining 592 plaintiffs were residents from 33 other states.⁶⁴ BMS moved to quash service of summons on the nonresidents’ claims, claiming that California courts did not have personal jurisdiction.⁶⁵ The California Superior Court denied the motion, “finding that the California courts had general jurisdiction over BMS ‘[b]ecause [it] engages in extensive activities in California.’”⁶⁶

After the California Supreme Court “instructed the California Court of Appeal ‘to vacate its order denying mandate and to issue an order to show cause why relief sought in the petition should not be granted,’” the court of appeal changed its initial decision on the issue of general jurisdiction.⁶⁷ Re-

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 1123 (citing *Burger King*, 471 U.S. at 475).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017).

⁶² *Id.* at 1777.

⁶³ *Id.*

⁶⁴ *Id.* at 1778.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

lying on *Bauman*, the court of appeal eventually determined that “general jurisdiction was clearly lacking, but it went on to find that the California courts had specific jurisdiction over the nonresidents’ claims against BMS.”⁶⁸ The California Supreme Court affirmed on the issue of specific jurisdiction in a split decision.⁶⁹ Specifically, the majority applied a “sliding scale approach” to the question of specific jurisdiction, concluding that specific jurisdiction existed “because the claims of the nonresidents were similar in several ways to the claims of the California residents.”⁷⁰ The dissenting justices critiqued this approach, finding that the “mere similarity” of the nonresidents’ claims was insufficient.⁷¹ The United States Supreme Court granted certiorari to determine whether the exercise of specific jurisdiction over the nonresident plaintiffs’ claims violated the Due Process Clause of the Fourteenth Amendment.⁷²

Citing both *Goodyear* and *Walden*, the United States Supreme Court determined that its “settled principles regarding specific jurisdiction” controlled the outcome of the case.⁷³ The Court reiterated that “[i]n order for a court to exercise specific jurisdiction over a claim, there must be an ‘affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.’”⁷⁴ “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.”⁷⁵ For this reason, the United States Supreme Court took issue with the California Supreme Court’s “sliding scale approach” to specific personal jurisdiction, finding that such approach “resemble[d] a loose and spurious form of general jurisdiction.”⁷⁶ “For specific jurisdiction, a defendant’s general connections with the forum are not enough.”⁷⁷

Looking specifically at the connections between the nonresident plaintiffs and California, the United States Supreme Court noted that California had determined specific jurisdiction existed even though “the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California.”⁷⁸ The United States Supreme Court ultimately determined “[t]he

⁶⁸ *Id.*

⁶⁹ *Id.* at 1778-79.

⁷⁰ *Id.*

⁷¹ *Id.* at 1779.

⁷² *Id.*

⁷³ *Id.* at 1781.

⁷⁴ *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 2846 (2011)).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—[did] not allow the State to assert specific jurisdiction over the nonresidents’ claims.”⁷⁹ This rule remained true even where third parties—the resident plaintiffs—could bring claims similar to those brought by the nonresidents.⁸⁰ Just as the Court noted in *Walden*, “a defendant’s relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction.”⁸¹ Because “the conduct giving rise to the nonresidents’ claims occurred elsewhere,” the Court reached the same conclusion it had in *Walden*: a state’s courts could not claim specific jurisdiction over the nonresidents’ claims.⁸²

III. EXAMINATIONS OF PERSONAL JURISDICTION IN INDIANA

Several courts in Indiana have examined the issue of personal jurisdiction over foreign manufacturers after the Supreme Court’s recent decisions. Like many recent commentators,⁸³ a federal judge in the Southern District of Indiana aptly noted: “Recent case law reveals a strong trend that something more than an attenuated link is necessary to establish a defendant’s personal jurisdiction.”⁸⁴ As the case law addressed below demonstrates, the decisions handed down by the Supreme Court invariably shape the decisions reached by Indiana courts.

A. *BROWN V. BMW OF NORTH AMERICA, LLC*

In *Brown v. BMW of North America*,⁸⁵ a personal injury product liability case, a judge in the Southern District of Indiana considered whether personal jurisdiction existed over BMW AG, a corporation organized under the laws of the Federal Republic of Germany.⁸⁶ The plaintiff contended that BMW AG designed and manufactured the plaintiff’s MINI Cooper and distributed it to BMW of North America for use in the United States and Indiana.⁸⁷ BMW AG filed a motion to dismiss for lack of personal jurisdiction, asserting that BMW AG was a separate and independent legal entity, was

⁷⁹ *Id.* (emphasis in original).

⁸⁰ *Id.*

⁸¹ *Id.* (quoting *Walden v. Fiore*, 134 S. Ct. 1115, 1123 (2014)) (internal quotations omitted).

⁸² *Id.* at 1782.

⁸³ See, e.g., Brett A. Tarver and Anthony J. Martucci, *Farewell to Extreme Litigation Tourism*, FOR THE DEFENSE (Oct. 2017) (concluding that recent Supreme Court decisions on personal jurisdiction “will have far-reaching influence in forum-shopping litigation and is a mighty tool to be used by defendants to eradicate nonresidents claims in dangerous jurisdictions . . .”).

⁸⁴ *Martin v. Eide Bailly LLP*, No. 1:15-CV-1202-WTL-DKL, 2016 WL 4496570, at *3 (S.D. Ind. Aug. 26, 2016).

⁸⁵ No. 114CV00931JMSDML, 2016 WL 427517 (S.D. Ind. Feb. 4, 2016).

⁸⁶ *Id.* at *1-2.

⁸⁷ *Id.* at *2.

not qualified to do business in Indiana, had no office or agent for service of process in Indiana, and neither advertised nor sold to customers in Indiana.⁸⁸

The plaintiff did not respond directly to BMW AG's general jurisdiction arguments, instead arguing that personal jurisdiction existed over BMW AG because of Indiana's long-arm statute.⁸⁹ In addition, the plaintiff generally alleged BMW AG was connected to Indiana BMW dealerships through the revenue purportedly gleaned from selling those vehicles in Indiana.⁹⁰

To the extent the plaintiff argued that general jurisdiction existed over BMW AG, the court rejected such contentions, concluding that the plaintiff "fail[ed] to present sufficient evidence or arguments as to how BMW AG maintains the level of contact with Indiana to support a conclusion that it can be considered 'at home' here."⁹¹ In particular, the court in *Brown* took issue with the plaintiff's unsupported assumption that BMW AG was somehow connected to BMW dealerships in Indiana.⁹² According to the court, the plaintiff "wholly fail[ed] to present an evidentiary link either to connect BMW [North America] to any of the BMW dealerships in Indiana, or to support the foregoing assertion of 'certain knowledge' by BMW AG."⁹³ Even if such allegations were true, the court reasoned that such a "stream of commerce" argument would be insufficient for establishing general jurisdiction over a foreign corporation after the United States Supreme Court's *Goodyear* decision.⁹⁴

Next, the *Brown* court addressed BMW AG's assertion that it lacked specific jurisdiction over it, again noting that the plaintiff did "not assert that BMW AG has sufficient minimum contacts in Indiana or that it purposely availed itself of the benefits of Indiana."⁹⁵ Rather, the plaintiff cited to the Indiana long-arm statute and "assume[d] that her unsubstantiated allegations about BMW AG's contacts with Indiana satisfy the provisions of the statute and establish personal jurisdiction."⁹⁶ Although the plaintiff had submitted the foreign manufacturer's annual report and its financial statement, the *Brown* court concluded that such reports were insufficient to es-

⁸⁸ *Id.*

⁸⁹ *Id.* at *3.

⁹⁰ *Id.*

⁹¹ *Id.* at *4.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011)).

⁹⁵ *Id.* at *5.

⁹⁶ *Id.*

establish even a *prima facie* case of personal jurisdiction of BMW AG.⁹⁷ This court found such evidence unconvincing.

These reports are insufficient to establish specific personal jurisdiction because the reports make absolutely no connection between BMW AG and Indiana. Within her response brief, Ms. Brown cites to several BMW websites to support her allegations, but again those websites also make no connection between BMW AG and Indiana.⁹⁸

Moreover, the plaintiff admitted that “she lack[ed] information to know how much BMW AG makes in revenue from Indiana.”⁹⁹ Rather, the plaintiff “assume[d] that BMW AG must be connected to Indiana because it sells its vehicles to its North American distributor, BMW NA.”¹⁰⁰ However, because the plaintiff made “no evidentiary connection between the Indiana dealerships and BMW AG beyond these allegations,” the Southern District concluded that the plaintiff “fail[ed] to satisfy her burden that personal jurisdiction exists over BMW AG.”¹⁰¹

B. *JAYCO, INC. V. NATIONAL INDOOR RV CENTERS, LLC*¹⁰²

After Jayco, Inc. filed suit in federal court in the Northern District of Indiana asserting allegations of unfair competition and trademark infringement, the defendants moved to dismiss the suit based on lack of personal jurisdiction and improper venue.¹⁰³ Jayco did not contend general jurisdiction existed.¹⁰⁴ Instead, Jayco alleged that the defendants had subjected themselves to specific jurisdiction in Indiana by entering into dealership agreements with Jayco, purchasing motorhomes from Jayco, purchasing parts from Jayco, submitting warranty work and claims to Jayco, sending six service technicians to Indiana for training, and repeatedly communicating with Jayco in Indiana by telephone, e-mail, and mail.¹⁰⁵

The *Jayco* court determined that specific personal jurisdiction did not exist because Jayco’s trademark, unfair competition, and breach of contract

⁹⁷ *Id.* at *6. “When the Court does not hold an evidentiary hearing to determine personal jurisdiction . . . the plaintiff needs to make out a *prima facie* case of personal jurisdiction.” *Id.* (citing *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003)).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* The court further noted that ignorance of facts sufficient to establish jurisdiction was no defense. *Id.* at *6 n.3.

¹⁰² No. 3:17-CV-458 RLM-MGG, 2017 WL 4270201 (N.D. Ind. Sept. 26, 2017).

¹⁰³ *Id.* at *1.

¹⁰⁴ *Id.* at *5.

¹⁰⁵ *Id.*

claims did not “‘arise out of or relate to’ any of those contacts.”¹⁰⁶ Instead, “[t]he dealership agreements were executed in Texas, not Indiana, and all of the wrongful conduct alleged occurred in Texas.”¹⁰⁷ Relying explicitly on the *Bristol-Myers Squibb* and *Walden* decisions, the *Jayco* court determined that because the relevant conduct occurred in Texas, “the mere fact that [this] conduct affected plaintiffs with connections to the forum State d[id] not suffice to authorize jurisdiction.”¹⁰⁸ Thus, just as in *Walden* and *Bristol-Myers Squibb*, specific jurisdiction was determined to be lacking, and the court refused to examine the extent of the defendant’s “unconnected activities in the State” for purposes of establishing specific jurisdiction.¹⁰⁹

C. *SIMEK V. NOLAN*

The defendant in *Simek v. Nolan*¹¹⁰ sought an interlocutory appeal after the trial court denied her motion to dismiss for lack of personal jurisdiction.¹¹¹ The plaintiffs contended that the defendants (Simek and Everett) had subverted their thoroughbred horse for the defendants’ own use without the knowledge or consent of the plaintiffs.¹¹² Defendant Simek contended that she was a resident of New York, had never been to Indiana, knew no one in Indiana, possessed neither assets nor real property in Indiana, had never conducted business in Indiana, had never communicated with any business or individual located in Indiana, and had no intention—other than as necessary for the purposes of the current litigation—of entering Indiana.¹¹³ In support of her motion, Simek produced an affidavit averring that she had no knowledge of the horse until it was in New York.¹¹⁴ In other words, she did not know the horse was originally from Indiana and had been brought to New York through the alleged actions of her co-defendant.¹¹⁵

In evaluating Simek’s contacts with Indiana, the Indiana Court of Appeals first noted that “the only possible basis for the trial court to exercise jurisdiction over Simek would be specific jurisdiction.”¹¹⁶ “Without question,” the court determined “that Simek ha[d] proved the trial court’s lack of

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at *6 (internal quotations omitted).

¹⁰⁹ *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773, 1781 (2017)).

¹¹⁰ 64 N.E.3d 1237 (Ind. Ct. App. 2016).

¹¹¹ *Id.* at 1239.

¹¹² *Id.* at 1240.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 1242.

personal jurisdiction by a preponderance of the evidence.”¹¹⁷ Not only was the contact insufficient to form the basis for specific jurisdiction, but Simek “had no contact with Indiana whatsoever.”¹¹⁸ In fact, “Simek’s sole relationship with this litigation is the fact that she appears to have a current business arrangement with Everett regarding the ownership of [the horse].”¹¹⁹ There were “no facts to indicate that she personally initiated, expected, or encouraged contacts with Indiana such that she could have reasonably foreseen being haled into court.”¹²⁰ The court further noted that Simek’s case was “a prime example of when a defendant cannot be haled into a jurisdiction solely as a result of the unilateral activity of another party and/or a third person.”¹²¹ Because Simek did “not have a substantial connection to Indiana,” she could not be said to have purposefully availed herself of an Indiana trial court’s jurisdiction.¹²²

IV. MOVING TO DISMISS FOR LACK OF PERSONAL JURISDICTION IN INDIANA: PROCEDURE AND PRACTICAL CONSIDERATIONS FOR FOREIGN DEFENDANTS

A. INDIANA’S LONG-ARM STATUTE

Indiana’s long-arm statute provides personal jurisdiction to both state and federal courts only to the extent permitted by the Due Process Clause of the Fourteenth Amendment. Indiana’s long-arm statute is found in Indiana Trial Rule 4.4(A), which provides that “[a] court of this state may exercise jurisdiction on any basis not inconsistent with the Constitutions of this state or the United States.”¹²³ According to the Indiana Supreme Court, “[t]he 2003 amendment to Indiana Trial Rule 4.4(A) was intended to, and does, reduce analysis of personal jurisdiction to the issue of whether the exercise of personal jurisdiction is consistent with the Federal Due Process Clause.”¹²⁴ “Retention of the enumerated acts found in Rule 4.4(A) serves as a handy checklist of activities that usually support personal jurisdiction but does not serve as a limitation on the exercise of personal jurisdiction by a court of this state.”¹²⁵ Thus, whether moving to dismiss for lack of personal jurisdiction in Indiana state court or in federal court, foreign defendants

¹¹⁷ *Id.* at 1243.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ IND. R. TRIAL P. 4.4(A).

¹²⁴ *LinkAmerica Corp. v. Cox*, 857 N.E.2d 961, 967 (Ind. 2006).

¹²⁵ *Id.*

may rely on the United States Supreme Court's recent case law and jurisprudence.¹²⁶

B. BURDEN OF ESTABLISHING JURISDICTION

In federal court, “[a] determination of personal jurisdiction involves two steps. First, the Court must determine whether the state’s ‘long-arm jurisdiction’ statute allows jurisdiction and, second, decide whether the exercise of jurisdiction comports with due process.”¹²⁷ Because Indiana’s long-arm statute permits jurisdiction to the extent permitted by the Fourteenth Amendment Due Process Clause, the question in federal court becomes whether the court may assert general or specific jurisdiction under the principles enumerated above. Then, “once the defendant moves to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating the existence of jurisdiction.”¹²⁸

Indiana state courts likewise “apply a two-part test to determine whether jurisdiction exists consistent with the Due Process Clause.”¹²⁹ “First, courts must look at the contacts between the defendant and the forum state to determine if they are sufficient to establish that the defendant could reasonably anticipate being haled into court there.”¹³⁰ In other words, courts examine whether specific or general jurisdiction exists.¹³¹ “If the contacts are sufficient, then the court must evaluate whether the exercise of personal jurisdiction offends traditional notions of fair play and substantial justice by weighing a variety of interests.”¹³² In Indiana, “[t]he party challenging the trial court’s personal jurisdiction bears ‘the burden of establishing the lack thereof by a preponderance of the evidence.’”¹³³

¹²⁶ See also *Honda Mfg. of Ind., LLC v. Custom Machs., Inc.*, No. 115CV00042LJMMPB, 2016 WL 7156081, at *3 (S.D. Ind. Dec. 7, 2016) (“A federal district court exercising diversity jurisdiction over the subject matter of an action has personal jurisdiction only if a court of the state in which it sits would have such jurisdiction.”).

¹²⁷ *Id.*

¹²⁸ *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003).

¹²⁹ *Saler v. Irick*, 800 N.E.2d 960, 966 (Ind. Ct. App. 2003).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 966-67. Indiana courts balance a number of factors in this determination: “(1) the burden on the defendant; (2) the forum state’s interest in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive policies.” *Id.* at 969.

¹³³ *Simek v. Nolan*, 64 N.E.3d 1237, 1241 (Ind. Ct. App. 2016) (quoting *JPMorgan Chase Bank, N.A. v. Desert Palace, Inc.*, 882 N.E.2d 743, 748 (Ind. Ct. App. 2008)).

C. DETERMINING WHETHER GENERAL OR SPECIFIC PERSONAL JURISDICTION EXISTS

As the above case law demonstrates, there are several factors to consider when discussing the possibility of moving to dismiss for lack of personal jurisdiction with a client. First, an attorney evaluating this issue must assess whether the client can be fairly said to be “at home” in Indiana. If the client is subject to the court’s general jurisdiction, then it can be sued in Indiana, even if the suit neither arises from nor relates to those contacts.¹³⁴ However, in order to establish general jurisdiction, the client must have continuous and systematic general business contacts necessary to render him at home there and susceptible to claims unrelated to anything connecting him with the state.¹³⁵ It is insufficient—as the Supreme Court noted in *Bauman*—for a foreign corporation to have contacts with the state through an in-state subsidiary.¹³⁶ Moreover, a plaintiff cannot establish general jurisdiction simply through the “stream of commerce” as the Supreme Court determined in *Goodyear*.¹³⁷

Assuming general jurisdiction is lacking, counsel should consider the foreign manufacturer’s contacts with the state to determine whether specific jurisdiction exists. Specific jurisdiction can arise only out of the defendant’s suit-related conduct with the forum state.¹³⁸ As the United States Supreme Court articulated in *Walden*, it is not enough for a defendant to have had contact with an individual or third parties who reside in Indiana.¹³⁹ Instead, the defendant himself must have contacts with Indiana, and—as reiterated in *Bristol-Myers Squibb*—it must be those contacts in Indiana that give rise to the suit.¹⁴⁰ If it appears that the plaintiff can establish neither general nor specific jurisdiction, the defendant should consider filing a motion to dismiss for lack of personal jurisdiction and be prepared to specify for the court the defendant’s contacts (or lack thereof) with Indiana.

V. CONCLUSION

The case law surrounding personal jurisdiction continues to evolve. The recent United States Supreme Court decisions offer attorneys with foreign clients fertile ground to challenge personal jurisdiction. Because Indiana’s long-arm statute mirrors the analysis under the Federal Due Process Clause, courts in Indiana have already proven willing to dismiss foreign manufacturers for lack of personal jurisdiction following the Supreme

¹³⁴ See *supra* Sections II-III.

¹³⁵ *Id.*

¹³⁶ See *supra* Section II(B)(1).

¹³⁷ See *supra* Section II(A).

¹³⁸ See *supra* Section II-III.

¹³⁹ See *supra* Section II(B)(2).

¹⁴⁰ See *supra* Section II(B)(3).

Court's recent jurisdictional decisions. Because jurisdictional arguments may be waived early in the litigation, practitioners should be prepared to quickly question and evaluate whether their clients are subject to jurisdiction based on their contacts with Indiana.