No. 10-76

IN THE
Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA,
GOODYEAR LASTIKLERI T.A.S., AND
GOODYEAR DUNLOP TIRES FRANCE, SA,
Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN, CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF THE ESTATE OF MATTHEW M. HELMS,
Respondents.

On Petition for a Writ of Certiorari to the North Carolina Court of Appeals

REPLY BRIEF FOR PETITIONERS

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SEPTEMBER 8, 2010

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CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari, pursuant to Supreme Court Rule 29.6, remains accurate.

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REPLY BRIEF FOR PETITIONERS

The decision below subjected petitioner foreign manufacturers to general jurisdiction in North Carolina, on causes of action unrelated to any products distributed in the state, merely because some of their products reach North Carolina through the stream of commerce. As Respondents do not contest, this expansive application of general jurisdiction is contrary to the holdings of multiple federal courts of appeals and state supreme courts. It also goes far beyond the narrow limits this Court's cases have placed on general jurisdiction. And it gives rise to vast opportunities for forum shopping, deters interstate and international commerce, and jeopardizes important international relations interests of the United States.

Respondents do not seriously contest any of this. Instead, Respondents (1) argue that this Court should ignore the decision below and proceed as if reviewing the (purportedly more defensible) analysis of the trial court; (2) half-heartedly suggest that the stream of commerce analysis below was *dicta*; and (3) contend that a foreign manufacturer *should* be broadly subject to suit based on the distribution of products through the stream of commerce.

None of these arguments detracts from the pressing need for review by this Court. Indeed, Respondents' attempt to divert attention from the decision below is a telling concession that that decision departs drastically from the decisions of this Court and those of the other courts to address the issue. That decision unequivocally held that Petitioners—despite taking no "affirmative action to cause tires which they had manufactured to be

shipped into North Carolina," Pet. App. 22a—were subject to general jurisdiction in the state, on any cause of action whatsoever, based on the injection of their tires into the stream of commerce. *Id.* at 29a. Regardless of how the state trial court analyzed the issue—and it was not meaningfully different—the North Carolina Court of Appeals' unequivocal embrace of such a dangerously expansive rule of general jurisdiction, in conflict with multiple other courts, urgently requires this Court's intervention and correction.

A. Respondents' Failure To Defend The Decision Below Serves Only To Highlight The Need For Review And Correction Of That Decision

The North Carolina Court of Appeals held that general jurisdiction over Petitioners in North Carolina was proper—in a "dispute [that] is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina," Pet. App. 12a—based on Petitioners' "inject[ion of] their product into the stream of commerce." *Id.* at 29a. In contrast, the Third, Fifth, and Seventh Circuits, and the highest courts of Alabama, Kansas, and Texas, have uniformly held that mere injection of products into the stream of commerce cannot support an assertion of general jurisdiction. *See* Pet. at 9-11. Likewise, the expansive rule of general jurisdiction adopted below is inconsistent with both this Court's general jurisdiction precedents and its stream of commerce cases. *Id.* at 12-16.

Respondents do not seriously argue otherwise. They instead oppose certiorari on the ground that—regardless of the basis on which the North Carolina

Court of Appeals decided the case—"this case ultimately is an appeal of the trial court's order" and therefore "we should assess that order more closely." Opp. at 5. And they argue at length that "the *trial court* did not perform a stream of commerce analysis in concluding general personal jurisdiction was proper." *Id.* at 3 (emphasis added); *see also id.* at 6-15, 19.

This open refusal to defend the North Carolina Court of Appeals' stream of commerce holding speaks volumes about the magnitude of the error below and the decision's departure from the decisions of other courts. And Respondents' resort to the reasoning of the trial court does nothing to diminish the pressing need for this Court's review.

1. The relevant decision for purposes of this petition is, of course, the decision of the North Carolina Court of Appeals, not that of the trial court. This Court's exercise of its certiorari jurisdiction focuses on the conflict created by the decision from which certiorari is sought, not on the extent to which an underlying trial court decision creates such a conflict. *See* Sup. Ct. R. 10. This is as it should be, because it is the stream of commerce rule of general jurisdiction adopted by the Court of Appeals, not the trial court's analysis, that is now binding North Carolina law. *See, e.g.*, *State v. Adams*, 513 S.E.2d 588, 589 (N.C. Ct. App. 1999) (binding effect of North Carolina Court of Appeals decisions). The now-superseded opinion of the trial court does nothing to mitigate the problematic consequences of that ruling—including the conflict with other jurisdictions, opportunities for forum shopping, deterrence of interstate and international commerce,

and effects on foreign relations—and therefore nothing to mitigate the need for this Court's review.

2. In any event, even if the trial court order were relevant, Respondents' claim that "the trial court did not perform a stream of commerce analysis," Opp. at 3, is incorrect. The trial court may not have used the phrase "stream of commerce," but its analysis was wholly reliant on stream of commerce principles. "The stream of commerce refers . . . to the regular and anticipated flow of products from manufacture to distribution to retail sale," *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 117 (1987) (Brennan, J., concurring), which is precisely what the trial court referenced when reasoning that Petitioners "knew or should have known that some of [their] tires were distributed for sale to North Carolina residents." Pet. App. 33a; *see also id.* (stating that Petitioners "knew or should have known" that their tires "were shipped" into the U.S. market "and sold in North Carolina").

Moreover, what little there is in the trial court's order (or Respondents' arguments below) that might support a narrower ground of decision did not survive review. In particular, whereas Respondents repeatedly suggest that this is not a stream of commerce case because Petitioners "deliberately" caused the shipment of their tires into North Carolina, Opp. at 4, 10, 17, 18; *see* Pet. App. 34a, 35a, the Court of Appeals rejected any finding that Petitioners "caused" the shipment of their tires to North Carolina. *Id.* at 22a. The court made clear that only stream of commerce reasoning was available, because the record was "devoid of evidence that Defendants took any affirmative action to cause

tires which they had manufactured to be shipped into North Carolina." *Id.*

B. The Court Of Appeals' Unequivocal Stream Of Commerce Holding Cannot Be Dismissed As Dicta.

Respondents' attempt to dismiss the Court of Appeals' stream of commerce holding as dicta (Opp. at 15) is equally unavailing. The Court of Appeals expressly based its holding solely on its stream of commerce reasoning:

> [W]e conclude that the appropriate question that must be answered in order to determine whether Defendants are subject to the jurisdiction of the courts of this state is *whether Defendants have purposefully injected their product into the stream of commerce* without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina.

Pet. App. 20a (internal quotation marks and alterations omitted) (emphasis added). And, having thus framed its analysis, the court phrased its holding in precisely the same terms: "Defendants *purposefully injected their product into the stream of commerce* without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina," and therefore "the exercise of general personal jurisdiction over [them] was appropriate." *Id.* at 29a (internal quotation marks and alterations omitted) (emphasis added).

Moreover, as noted above, the court—by expressly rejecting the trial court's finding that Petitioners "caused" the shipment of their tires into North

Carolina, *id.* at 22a—made clear that Petitioners' contacts with North Carolina existed *solely* through the stream of commerce. In the face of this and similar language, including the Court of Appeals' extensive (if misguided) discussion of the stream of commerce doctrine, *id.* at 14a-20a, Respondents' claim that the stream of commerce reasoning below was dicta is untenable.

Particularly puzzling is Respondents' reliance on the court's holding that it refused to "adopt[] a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction." Opp. at 16 (quoting Pet. App. 28a) (emphasis added). Far from indicating that the court below did *not* rely on stream of commerce principles, the quoted language actually expresses its *insistence* on "the use of stream of commerce analysis to support a finding of general personal jurisdiction"—the precise point on which the decision below conflicts with the holdings of other jurisdictions and with this Court's cases. *Id.*

Likewise, the court's suggestion that it might find no general jurisdiction "had only a small number of tires been sold in North Carolina," Opp. at 16, does not support Respondents' argument the court "was not applying a stream of commerce theory," *id.* Quite the contrary: This statement expressly indicates that the existence of general jurisdiction turns on the extent of the products reaching North Carolina through the stream of commerce.

Finally, Respondents imply that the decision below was not based on general jurisdiction, because general jurisdiction involves a claim "completely unrelated to the source of the contacts." Opp. at 11.

Petitioners suggest that the claim here—arising from a tire that was sold in France by a "happenstance of distribution," *id.* at 14—was properly deemed "related" to Petitioners' tires that reached North Carolina through the stream of commerce. *See id.* at 11 (there "is a very significant nexus between the contacts with North Carolina and the cause of action"). The short answer to this recharacterization of the decision below is that the Court of Appeals expressly disclaimed it. The court explicitly stated that "[t]he present dispute is *not related to*, nor did it arise from, Defendants' contacts with North Carolina," Pet. App. 12a (emphasis added), and it repeatedly stated that it *was* applying general jurisdiction. *E.g.*, *id.* at 13a ("[T]he issue raised in this case involves general rather than specific jurisdiction."), 27a, 28a, 29a.

In sum, the decision below unequivocally held, in conflict with multiple other courts, that Petitioners' placement of their products in the stream of commerce was sufficient to subject them to general jurisdiction in North Carolina. There is a pressing need for this Court to review and correct that erroneous holding.

C. The Court Of Appeals' Decision Is Wrong And Should Be Reversed.

The holding below, that a manufacturer's mere placement of its products in the stream of commerce can support a downstream state's assertion of general jurisdiction over that manufacturer, is insupportable under this Court's decisions. *See* Pet. at 12-16. Respondents make no attempt to defend this holding. Instead, they offer a novel theory of quasi-general jurisdiction, arguing that because Petitioners

allegedly could "reasonably anticipate being haled into court in North Carolina for the sale of one of their tires" that reached the state through the stream of commerce, they likewise must reasonably anticipate being haled into North Carolina for the sale of any tire, anywhere in the world, that *could have been* (but was not) distributed in North Carolina. Opp. at 14; *see also id.* at 17.

Leaving aside that this is not what the court below held—the court addressed general jurisdiction over *any* cause of action, not just those related to tires—it is contrary to longstanding and well-established case law. As demonstrated in the Petition (at 15-16), under this Court's stream of commerce cases, a manufacturer's placement of products in the stream of commerce can justify jurisdiction in a downstream state only over claims *resulting from the distribution of the product in that state*. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (downstream state's assertion of jurisdiction is "not unreasonable" if the "allegedly defective merchandise *has there been the source of injury*") (emphasis added).

In short, neither this Court's general jurisdiction cases nor the stream of commerce doctrine countenance either the unprecedented decision below or Respondents' equally unprecedented variation.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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