

**RECONCILING THE EXERCISE OF  
GENERAL PERSONAL JURISDICTION OVER  
NONRESIDENT CORPORATE DEFENDANTS  
IN LOUISIANA COURTS IN THE WAKE OF  
*DAIMLER***

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## I. INTRODUCTION

One of the first topics that law students learn in their federal civil procedure course is “*in personam* jurisdiction” or “personal jurisdiction”—i.e., the basis for which courts may render a judgment against a person. This topic is rightfully at the forefront of legal curricula. Practically speaking, it is imperative that law students appreciate this limitation placed on the authority of the court, which is rooted in the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution. Essentially, the authority of a court to render judgment against a person boils down to that person’s expectations of litigating in that court.<sup>1</sup>

Traditionally, there are several bases for a state’s judicial power over persons: (1) personal service on the individual defendant or their agent for service of process; (2) substituted service upon a court-appointed attorney to defend an action for an absent or incompetent domiciliary of the state; and (3) the individual defendant’s consent, either explicitly or through waiver of objection, to jurisdiction in the state.<sup>2</sup> These three bases are generally consistent with an individual’s expectations of litigating in a particular state—especially for people who are domiciled in that particular state, or who could otherwise be found in that state.

Over time, however, courts began recognizing that individuals’ expectations of litigating in particular states were constantly evolving.<sup>3</sup> With technological advances in transportation and communications came an increase in out-of-

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1. If this limitation did not exist, people’s expectations would become meaningless, thus undermining the notion of Due Process.

2. FRANK L. MARAIST, CIVIL PROCEDURE § 2:3, *in* 1 LOUISIANA CIVIL LAW TREATISE 13-14 (2d ed. 2015). Louisiana recognizes these bases for jurisdiction in Subsection A to Article 6 of the Code of Civil Procedure. *See* LA. CODE CIV. PROC. art. 6(A)(1)-(3) (2019).

3. The Supreme Court first recognized the evolving trend of expanding jurisdiction over nonresidents in *McGee v. International Life Insurance Co.*, wherein the Court explained:

Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

*McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 222-23 (1957).

state activities.<sup>4</sup> As such, the greater the extent of a nonresident’s activities in a state, the greater the expectations of litigating in that state based on those activities become.<sup>5</sup> This principle is commonly known as “specific” personal jurisdiction.<sup>6</sup> Still, a court’s exercise of specific personal jurisdiction over a nonresident defendant is limited to causes of action arising out of that defendant’s activities in that state. For example, X is a Louisiana resident and causes an automobile accident in Mississippi with Y, an Alabama resident. Thereafter, Y files a lawsuit against X in Mississippi court, seeking damages arising out of the accident. X is subject to specific personal jurisdiction in the Mississippi court. X’s activities in Mississippi—i.e., causing the accident—subject X to defend a lawsuit in Mississippi *arising out of the accident*. X cannot sensibly contend that he did not expect to defend such a suit. Y’s cause of action is directly related to X’s activities in Mississippi and, therefore, X is subject to specific personal jurisdiction in Mississippi courts *based on his activities in the state*.

On the other hand, a court may, under certain circumstances, exercise personal jurisdiction over a defendant in a suit unrelated to the defendant’s activities in that state.<sup>7</sup> This principle is known as “general” personal jurisdiction.<sup>8</sup> A court’s exercise of general personal jurisdiction over an individual is often tied to the individual’s home state. Since the individual has such strong

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4. See *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957); see also *Hanson v. Denckla*, 357 U.S. 235, 250-51 (1958) (“As technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome.”). Correspondingly, the population’s expectations of litigating in states where such expectations would have unlikely existed under earlier precepts of personal jurisdiction increased. See *id.* at 2551.

5. See *International Shoe Co. v. Washington*, wherein the Court explained: [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. 326 U.S. 310, 319 (1945) (citations omitted).

6. See *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (“Adjudicatory authority of this order, in which the suit ‘aris[es] out of or relate[s] to the defendant’s contacts with the forum, is today called ‘specific jurisdiction.’”) (citations omitted).

7. See *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945) (noting that in some instances, a nonresident corporation’s operations within a state justify suit against it on causes of action arising from dealings entirely distinct from those activities).

8. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011) (“Adjudicatory authority so grounded is today called ‘general jurisdiction.’”).

connections to their home state, they can expect to defend a lawsuit in that state regardless of where the underlying cause of action arises. For instance, what if the accident example from the previous paragraph occurred in Alabama? Would there still be any basis for a Mississippi court to exercise personal jurisdiction over X? The answer is obviously no. X is a resident of Louisiana, who caused an accident in Alabama. There is no reason why X should expect to defend a lawsuit in *Mississippi* arising out of the accident. If, however, Y sued X in *Louisiana* based on the accident in *Alabama*, could the Louisiana court exercise personal jurisdiction over X? Yes. This is not based on the accident itself—it is based on the fact that Louisiana is X's home state. Thus, X should have no qualms about having to defend a lawsuit “in his own backyard” regardless of where the underlying accident occurred. Thus, Louisiana could exercise general jurisdiction over X.

Louisiana's jurisdictional statutes—including the “Long-Arm Statute”<sup>9</sup>—have been revised over time to encompass the notions of “specific” and “general” personal jurisdiction, to the extent permitted by the state and federal constitutions.<sup>10</sup> This effectively incorporates any United States Supreme Court ruling involving personal jurisdiction into Louisiana law where Louisiana jurisdictional statutes are silent.<sup>11</sup>

Not surprisingly, the issue of general personal jurisdiction over entity-defendants has been the topic of great debate—especially in the realm of large corporations with widespread contacts.<sup>12</sup> The Louisiana Supreme Court first addressed this

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9. See LA. STAT. ANN. § 13:3201 (2019) (providing for bases in which Louisiana courts may exercise jurisdiction over nonresident defendants).

10. In 1987, the Louisiana Legislature amended the “Long-Arm Statute” so as to “tap the full potential” of personal jurisdiction permitted by federal constitutional standards. FRANK L. MARAIST, CIVIL PROCEDURE § 2:3, *in* 1 LOUISIANA CIVIL LAW TREATISE 14 (2d ed. 2015) (citing LA. STAT. ANN. 13:3201 cmt. (b) (1964)). It was not for another ten years that the Legislature incorporated this “full potential” concept into the Code. See *id.* (citing LA. CODE CIV. PROC. art. 6(B) (1997) (“In addition to the provisions of Paragraph A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and with the Constitution of the United States.”)).

11. See *Cambre v. St. Paul Fire & Marine Ins. Co.*, 331 So.2d 585, 589 (La. Ct. App. 1 Cir. 1976) (“Application of La. R.S. 13:3201 must stand the test of the due process clause of the United States Constitution as interpreted by the United States Supreme Court.”). As such, if there is any question as to whether a party is subject to personal jurisdiction in Louisiana, one should look no further than applicable United States Supreme Court jurisprudence.

12. For a detailed discussion of the competing arguments regarding the scope of general jurisdiction over nonresident corporations, see Mary Twitchell, *The Myth of*

issue in 1991 in *de Reyes v. Marine Management and Consulting, Ltd.* The court held that the Due Process Clause of the Fourteenth Amendment permitted a Louisiana court to exercise personal jurisdiction over a nonresident corporation in a suit indirectly related to but not arising out of its activities in the state.<sup>13</sup> In reaching its decision, the Court employed the test for determining *specific* personal jurisdiction, based on a lack of U.S. Supreme Court precedent directly on point.<sup>14</sup>

Since *de Reyes*, however, the U.S. Supreme Court has issued the landmark decisions of *Goodyear Dunlop Tires Operations, S.A. v. Brown*,<sup>15</sup> *Daimler AG v. Bauman*,<sup>16</sup> and most recently *BNSF v. Tyrell*,<sup>17</sup> all of which completely refined the framework for determining *general* jurisdiction over nonresident corporations. Consequently, the Due Process limitations embedded in Louisiana's Long-Arm Statute were inherently modified to reflect the Court's rulings. This result leaves Louisiana courts with quite the conundrum. *de Reyes* is still on the books as "good law," despite being at odds with *Daimler, et al.*, and, therefore, the Long-Arm Statute. This Article brings this issue into focus and calls for Louisiana courts to reconcile the Due Process conflicts brought about by *de Reyes* and to recognize the binding authority of *Daimler*. Ultimately, the goal of this Article is to help courts in Louisiana to understand: (1) that the *Daimler* standard is the proper test for evaluating general jurisdiction over nonresident corporations, and (2) how to correctly apply that test.

Section II provides a brief narrative of the seminal United States Supreme Court decisions that shaped the modern-day framework for personal jurisdiction over nonresident defendants. Section III explains how Louisiana's Long-Arm Statute incorporates the decisions of the United States Supreme Court regarding personal jurisdiction. Section IV discusses the *de Reyes* decision and its precedential effect. Section V addresses *Daimler* and the other recent United States Supreme Court decisions on general personal jurisdiction and illustrates their effect on *de Reyes*. Section VI brings the conflict into focus and calls for Louisiana courts to recognize the *Daimler* standard when

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*General Jurisdiction*, 101 HARV. L. REV. 610 (1988).

13. See generally *de Reyes v. Marine Mgmt. & Consulting, Ltd.*, 586 So. 2d 103 (La. 1991).

14. See *id.* at 109.

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

16. *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

17. *BNSF v. Tyrell*, 137 S. Ct. 1549 (2017).

determining general personal jurisdiction over nonresident corporations.

## II. PERSONAL JURISDICTION OVER NONRESIDENT DEFENDANTS

Under modern concepts, the extent to which a Louisiana court may exercise personal jurisdiction over a nonresident defendant is limited by the Due Process and Full Faith and Credit Clauses of the United States Constitution.<sup>18</sup> When the exercise of jurisdiction by a Louisiana court does not afford due process to the defendant, any judgment rendered by the Louisiana court is not entitled to full faith and credit in any other state.<sup>19</sup> In the watershed case of *International Shoe Co. v. Washington*, the United States Supreme Court expanded the basis on which courts may constitutionally exercise jurisdiction over a nonresident defendant.<sup>20</sup> This case sparked a continuing trend toward expanding the permissible scope of personal jurisdiction over nonresidents, which was, in part, “attributable to the fundamental transformation of our national economy over the years.”<sup>21</sup>

In *International Shoe*, the Court held that a state’s exercise of jurisdiction over a nonresident corporation comported with due process in a suit arising from the corporation’s activities in that state (i.e., specific jurisdiction).<sup>22</sup> Seven years later, in *Perkins v. Benguet Consolidated Mining Co.*, the Court held that a state properly exercised jurisdiction over a nonresident corporation in a suit unrelated to its in-state activities (i.e., general jurisdiction).<sup>23</sup> These decisions provided the basic framework for evaluating personal jurisdiction over nonresident corporations under the Due Process Clause and remain a crucial part of the modern day jurisdictional analysis. Yet, over time, specific jurisdiction has become the focal point of this analysis, while general jurisdiction has taken a back seat.<sup>24</sup> As a result, the test for specific jurisdiction has been conflated with general jurisdiction. This confusion led to

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18. FRANK L. MARAIST, CIVIL PROCEDURE § 2:3, *in* 1 LOUISIANA CIVIL LAW TREATISE 14 (2d ed. 2015).

19. *Id.*

20. *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945).

21. *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 222 (1957).

22. *Int’l Shoe Co.*, 326 U.S. at 320.

23. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

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

the Court's recent jurisdictional renaissance in the *Goodyear*, *Daimler*, and *Tyrell* opinions.

#### A. EARLY RUMBLINGS: *INTERNATIONAL SHOE*

In *International Shoe*, a Delaware corporation with its principal place of business in Missouri disputed the State of Washington's exercise of jurisdiction over it to recover unpaid contributions to the state unemployment compensation fund based on wages payable by the corporation for its salesmen's services in Washington.<sup>25</sup> The issue before the Supreme Court was whether the nonresident corporation's sales activities in Washington rendered it amenable to suit in that state for collection of unpaid taxes based on those activities.<sup>26</sup> The Court explained that, historically, a nonresident's "presence" within a forum was a prerequisite for exercising jurisdiction over them.<sup>27</sup> However, the Court noted that over time, this concept had given way to "notice," and thus, if a nonresident is not "present" within the forum, due process only requires that there be "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"<sup>28</sup>

The Court explained that the presence of nonresident corporations, "unlike an individual[s] 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it."<sup>29</sup> The Court acknowledged that "[p]resence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given."<sup>30</sup> However, the Court clarified that the "casual presence of

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25. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 311-12 (1945). Service of process was made upon one of the corporation's salesmen, who resided in Washington. *Id.* at 312.

26. *See id.* at 315-16.

27. *Id.* at 316 (citing *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877)).

28. *Id.* (citations omitted).

29. *Id.* The Court further explained that "the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process" and "[t]hose demands may be met by such contacts of the corporation with the state of the forum as make it reasonable . . . to require the corporation to defend the particular suit which is brought there." *Id.* at 316-17.

30. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945) (emphasis added) (citations omitted).

the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit *on causes of action unconnected with the activities there.*<sup>31</sup> In other words, the Court recognized a distinction between specific jurisdiction and general jurisdiction. The Court stated that:

While it has been held . . . that 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, there have been instances in which the continuous corporate operations within a state were thought *so substantial and of such a nature* as to justify suit against it *on causes of action arising from dealings entirely distinct from those activities.*<sup>32</sup>

Applying these principles to the case at hand, the Court determined that the corporation was subject to *specific* jurisdiction in Washington because the collection suit arose out of the corporate defendant's systematic and continuous sales activities in that state.<sup>33</sup> As such, the Court refrained from addressing whether the corporation was subject to *general* jurisdiction in Washington on suits unrelated to its systematic and continuous activities within the state.<sup>34</sup>

#### B. THE COURT SPEAKS ON GENERAL JURISDICTION: *PERKINS*

Seven years after *International Shoe*, the Court considered whether a nonresident corporation's activities in a forum were sufficiently "continuous and systematic" to justify the exercise of *general* jurisdiction over suits unrelated to those activities. In *Perkins*, the defendant was a Philippine mining corporation that temporarily ceased mining operations and relocated its office to Ohio during wartime.<sup>35</sup> The company contested the State of Ohio's exercise of jurisdiction over it in two suits that were unrelated to the corporation's activities in Ohio.<sup>36</sup> Notably, the corporation's president, who was also general manager and principal

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31. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945) (emphasis added) (citations omitted). The Court elaborated that "[t]o require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process." *Id.*

32. *Id.* at 318 (emphasis added) (citations omitted).

33. *Id.* at 320.

34. *See id.*

35. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 438-40 (1952).

36. *Id.*

stockholder of the company, returned to his home in Ohio where he carried on “a continuous and systematic supervision of the necessarily limited wartime activities of the company.”<sup>37</sup> Moreover, the corporation’s files were kept in Ohio, several directors’ meetings were held there, substantial accounts were maintained in Ohio banks, and all key business decisions were made in that state. Under those circumstances,<sup>38</sup> Ohio was the corporation’s principal, if only temporary, place of business.<sup>39</sup> Accordingly, the Court held that Ohio courts could properly exercise jurisdiction over the nonresident corporation in suits unrelated to its activities in the state.<sup>40</sup>

After *Perkins*, the Court would not address the issue of general jurisdiction again for more than thirty years. But until then, the Court remained focused on shaping the constitutional boundaries of specific jurisdiction under the “minimum contacts” standard that it articulated in *International Shoe*.

### C. THE EVOLUTION OF THE “TWO-PRONG” TEST

Following *International Shoe* and *Perkins*, the Court repeatedly refined the framework for evaluating personal jurisdiction over nonresident corporations in a series of decisions examining specific jurisdiction. The result was a two-step approach requiring both (1) that the defendant establish minimum contacts with the forum State, and (2) that the assertion of

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37. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952).

38. In considering the nature and extent of the corporation’s forum contacts, the Court noted the following facts:

The company’s mining properties were in the Philippine Islands. Its operations there were completely halted during the occupation of the Islands by the Japanese. During that interim the president, who was also the general manager and principal stockholder of the company, returned to his home in Clermont County, Ohio. There he maintained an office in which he conducted his personal affairs and did many things on behalf of the company. He kept there office files of the company. He carried on there correspondence relating to the business of the company and to its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who worked there with him. He used and maintained in Clermont County, Ohio, two active bank accounts carrying substantial balances of company funds. A bank in Hamilton County, Ohio, acted as a transfer agent for the stock of the company. Several directors’ meetings were held at his office or home in Clermont County. From that office he supervised policies dealing with the rehabilitation of the corporation’s properties in the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation.

*Id.* at 447-48.

39. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-80 n.11 (1984) (citing *Perkins*, 342 U.S. at 448) (explaining the rationale of the *Perkins* Court).

40. *Perkins*, 342 U.S. at 447-49.

personal jurisdiction is reasonable and comports with fair play and substantial justice.<sup>41</sup>

The two-prong test operates as follows: when a defendant moves for dismissal for lack of personal jurisdiction, the burden falls on the plaintiff to establish jurisdiction.<sup>42</sup> If the plaintiff makes a *prima facie* showing of jurisdiction (the “minimum contacts” prong), the burden of defeating jurisdiction then shifts to the defendant.<sup>43</sup> The defendant then must demonstrate that—notwithstanding the defendant’s contacts with the state—the exercise of jurisdiction over that defendant would nevertheless be unreasonable (the “fairness” prong).<sup>44</sup>

The Court has explained that in order to establish the “minimum contacts” prong, “it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”<sup>45</sup> The “purposeful availment” element ensures that a defendant will not be haled into a court in a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or the unilateral activity of another person or third party.<sup>46</sup>

Once minimum contacts have been established through the application of the “purposeful availment” standard, courts may consider these contacts “in light of other factors to determine whether the assertion of personal jurisdiction would comport with ‘fair play and substantial justice’”—the second prong.<sup>47</sup> These factors include: (1) the forum state’s interest in adjudicating the dispute; (2) the plaintiff’s interest in obtaining convenient and effective relief; (3) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (4) the shared interest of the several states in furthering fundamental social policies.<sup>48</sup> The defendant has the burden to present a

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41. 4 WRIGHT & MILLER, FED. PRAC. & PROC. CIV. § 1067.2 (4th ed. & database updated Sept. 2018).

42. *See id.* § 1067.2 n.11.

43. *See id.* § 1067.2.

44. *See id.*

45. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

46. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

47. *Id.*; *see also* *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

48. *Burger King Corp.*, 471 U.S. at 476-77 (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 292).

“compelling case” that, in light of these four factors, the assertion of jurisdiction would be unreasonable even though the existence of sufficient minimum contacts had been shown by the plaintiff.<sup>49</sup>

The Court developed and refined this two-prong test in cases where *specific* jurisdiction was at issue—i.e., where the cause of action arose out of or related to the defendant’s contacts with the forum state.<sup>50</sup> But none of these cases involved the issue of *general* jurisdiction, which did not make its way back to the Court for more than thirty years after *Perkins*.<sup>51</sup> This resulted in uncertainty regarding whether the two-prong test also applied in cases where *general* jurisdiction was at issue.

In 1984, the Court finally addressed the issue of general jurisdiction again in *Helicopteros Nacionales de Colombia, S.A. v. Hall*.<sup>52</sup> Although the Court did not specifically hold that the two-prong test for determining specific jurisdiction likewise governed the general jurisdiction inquiry, the Court did recognize the distinction between the constitutional limitations imposed by the two doctrines.<sup>53</sup> Citing *Perkins*, the Court held that “when the cause of action does not arise out of or relate to the foreign corporation’s activities in the forum State, due process is not offended by a State’s subjecting the corporation to its in personam jurisdiction when there are sufficient contacts between the State and the foreign corporation.”<sup>54</sup> The Court further stated that such contacts must be “of a ‘continuous and systematic’ nature, as [in] *Perkins*” for general jurisdiction to exist.<sup>55</sup> The Court suggested that this was a substantially higher threshold than the “minimum contacts” requirement in specific jurisdiction cases.<sup>56</sup> But the Court did not address whether the “fair play and substantial justice” factors should be considered in this analysis because it had concluded that the foreign corporation defendant’s contacts with

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49. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985).

50. See 4 WRIGHT & MILLER, FED. PRAC. & PROC. CIV. § 1067.2 n.11 (4th ed. & database updated Sept. 2018).

51. See *generally* *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984).

52. *Id.* at 414.

53. See *id.* at 414-15.

54. *Id.* at 414 (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-80 (1984); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 446-47 (1952)).

55. *Id.* at 414-16.

56. See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-18 (1984).

the forum state were insufficient to establish general jurisdiction.<sup>57</sup> As a result, the appropriate test for evaluating general jurisdiction remained largely unsettled.

Much like the thirty-year gap that preceded the *Helicopteros* case, the Court would not revisit the issue of general jurisdiction again for another twenty-seven years.<sup>58</sup> This led to even greater confusion among lower courts and resulted in differing approaches for determining general jurisdiction over foreign corporations.<sup>59</sup>

### III. LOUISIANA'S LONG-ARM STATUTE

In 1964, the Louisiana Legislature enacted Revised Statutes §§ 13:3201 through 13:3207 to permit Louisiana courts to tap into the full potential of jurisdiction in personam over nonresidents permitted by *International Shoe* and its progeny.<sup>60</sup> In doing so, the Legislature extended the jurisdiction of Louisiana courts to nonresidents on causes of action arising from certain types of activities that nonresidents direct to Louisiana.<sup>61</sup> Over time, the question arose as to whether Louisiana courts could exercise personal jurisdiction over nonresidents in actions stemming from

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57. See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-18 (1984).

58. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

59. For a discussion of the differing approaches employed by lower courts after *Helicopteros*, see Zoe Niesel, *Daimler and the Jurisdictional Triskelion*, 82 TENN. L. REV. 833, 838-56 (2015).

60. LA. STAT. ANN. § 13:3201 cmt. (a) (1964).

61. These originally included: (1) transacting any business in the state; (2) contracting to supply service or things in the state; (3) causing injury or damage in the state by an offense or quasi offense committed through an act or omission in the state; (4) causing injury or damage in the state by an offense or quasi offense committed through an act or omission outside the state, if the nonresident regularly does or solicits business in the state, engages in some other persistent course of conduct in the state, or derives substantial revenue from goods used or consumed, or services rendered in this state; or (5) having an interest in, using, or possessing a real right or immovable property in the state. LA. STAT. ANN. § 13:3201(A)(1)-(5) (2019).

Amendments to the Long-Arm Statute added additional bases for jurisdiction over causes of action arising from the nonresident's: (6) non-support of a Louisiana child, spouse, or parent with whom the nonresident formerly resided in the state, added by Acts 1977, No. 734, § 1; (7) parentage or support of a child who was conceived by the nonresident while he or she resided in or was in the state, added by Acts 1980, No. 764, § 2; and (8) manufacturing of a product which caused damages or injury in Louisiana, if the manufacturer, at the time of placing the product into the stream of commerce, could have foreseen, realized, expected, or anticipated that the product may eventually be found in Louisiana by reason of its nature and the manufacturer's marketing practices, added by Acts 1984, No. 398, § 1; LA. STAT. ANN. § 13:3201(A)(6)-(8) (2019).

other types of claims that were not identified in the Long-Arm Statute.<sup>62</sup>

Accordingly, in 1987, the Legislature added an additional paragraph to the Long-Arm Statute, which authorized Louisiana courts to “exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States.”<sup>63</sup> This ensured that the Long-Arm Statute was “coextensive with the limits of constitutional due process.”<sup>64</sup> Moreover, this provision effectively incorporated any United States Supreme Court ruling involving personal jurisdiction into Louisiana law where Louisiana jurisdictional statutes were silent.<sup>65</sup> This provision also effectively removed the requirement that the cause of action must arise out of one of the activities enumerated in the statute to give rise to personal jurisdiction.<sup>66</sup> As a result, Louisiana courts were authorized to exercise *specific* personal jurisdiction over nonresidents on claims arising out of their in-state activities (whether or not the activities were listed in the statute), as long as doing so would not violate Due Process.<sup>67</sup> Likewise, the 1987 amendment authorized Louisiana courts to exercise *general* personal jurisdiction over nonresidents on claims not arising out of their in-state activities, so long as doing so would not violate Due Process.<sup>68</sup>

Notably, however, at the time that the 1987 amendment was enacted, there had been only two Supreme Court decisions addressing general jurisdiction—*Perkins* and *Helicopteros*. Neither of these cases definitively addressed whether the two-prong test for specific jurisdiction was also applicable for general jurisdiction. Consequently, Louisiana courts faced with the issue of general jurisdiction over a foreign corporation had little guidance for determining the appropriate jurisdictional standard.

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62. See FRANK L. MARAIST, CIVIL PROCEDURE § 2:3, in 1 LOUISIANA CIVIL LAW TREATISE 19 (2d ed. 2015).

63. *Id.* at 20 (quoting LA. STAT. ANN. § 13:3201(B) (2019)).

64. *Id.* (citing *Petroleum Helicopters, Inc. v. Avco Corp.*, 513 So. 2d 1188, 1192 (La. 1987)).

65. See *Cambre v. St. Paul Fire & Marine Ins. Co.*, 331 So. 2d 585, 589 (La. Ct. App. 1976) (“Application of La. R.S. 13:3201 must stand the test of the due process clause of the United States Constitution as interpreted by the United States Supreme Court.”).

66. FRANK L. MARAIST, § 2:3, in 1 LOUISIANA CIVIL LAW TREATISE 20 (2d ed. 2008).

67. See *id.*

68. See *id.*; see also discussion regarding the limitations of Due Process, *supra* Section II.

**IV. DE REYES: THE LOUISIANA SUPREME COURT'S  
FIRST BRUSH WITH GENERAL JURISDICTION OVER A  
NONRESIDENT CORPORATE DEFENDANT**

In *de Reyes v. Marine Management and Consulting, Ltd.*,<sup>69</sup> the Louisiana Supreme Court had its first brush with the issue of general jurisdiction over a nonresident corporate defendant in the wake of the 1987 amendment to the Long-Arm Statute. The plaintiffs filed a wrongful death suit in Civil District Court for the Parish of Orleans on behalf of the decedent, a Honduran seaman, who asphyxiated while serving aboard the M/V BRASSIE in international waters off the coast of Oregon.<sup>70</sup> The plaintiffs named several defendants, including Wallem Shipmanagement, Ltd., a Hong Kong ship management corporation with its principal place of business in Hong Kong.<sup>71</sup>

Wallem's operations were worldwide; however, it maintained regional offices in New Orleans, London, Ravenna (Italy), and Singapore.<sup>72</sup> Its New Orleans regional office had four employees and was in charge of ship management needs in the Western Hemisphere.<sup>73</sup> Wallem contracted with the owner of the M/V BRASSIE to employ officers and a crew to perform maintenance, repairs, supplies, and personal services for the vessel.<sup>74</sup> Wallem hired the decedent as a member of the M/V BRASSIE crew through the services of Marine Management and Consulting, Ltd., a Louisiana corporation.<sup>75</sup>

Wallem filed a declinatory exception of lack of personal jurisdiction, which the district court overruled.<sup>76</sup> The Fourth Circuit Court of Appeal granted Wallem's application for supervisory writ and, after rehearing, reversed the district court's ruling and sustained Wallem's exception.<sup>77</sup> On writ of certiorari, the Louisiana Supreme Court reversed the Fourth Circuit's ruling and concluded that Wallem's activities in Louisiana were sufficient

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69. 586 So. 2d 103 (La. 1991).

70. *Id.* at 104.

71. *Id.*

72. *Id.*

73. *Id.*

74. *De Reyes v. Marine Mgmt. & Consulting, Ltd.*, 586 So. 2d 103, 104 (La. 1991).

75. *Id.* at 104-05.

76. *Id.* at 105.

77. *Id.*; *see also* *de Reyes v. Marine Mgmt. & Consulting, Ltd.*, 568 So. 2d 128, 131-32 (La. Ct. App. 4 Cir. 1990) (on reh'g).

to give rise to personal jurisdiction in the state in a suit that did not arise out of or relate to those activities.<sup>78</sup>

In reaching its decision, the court held that the test for evaluating *specific* jurisdiction should also be applied to evaluate *general* jurisdiction.<sup>79</sup> The court recognized that “[t]he Supreme Court did not expressly apply fairness considerations in either of its general jurisdiction cases,” but determined that “this fact [wa]s not truly significant.”<sup>80</sup> The court noted that *Perkins*—which analyzed general jurisdiction and did not contemplate fairness considerations—“was decided long before [the Supreme Court]’s recent attempts to more fully articulate and channel the fairness considerations.”<sup>81</sup> The court further noted that because the Court in *Helicopteros* “concluded that the plaintiffs had failed to meet their initial burden of showing that the defendant’s forum contacts were continuous and systematic . . . the Court did not reach the stage of the case in which a fairness analysis otherwise might have been called for.”<sup>82</sup> As such, the court reasoned that “[w]hile the distinction between ‘general’ and ‘specific’ jurisdiction provides a useful analytic device, the use of these categories does not eliminate the need to evaluate each assertion of personal jurisdiction in light of traditional notions of fair play and substantial justice.”<sup>83</sup> Therefore, the court concluded that “the two-part minimum contacts/fairness analysis which evolved in specific jurisdiction cases should also be applied to evaluate the assertion of general jurisdiction in the present case.”<sup>84</sup>

Significantly, however, the court expressly acknowledged that “adjustments and modifications [to its conclusion] may be necessary, as in any instance in which precepts developed for one type of case are applied by analogy to a similar category . . . .”<sup>85</sup> In other words, the court acknowledged that subsequent United States Supreme Court decisions may change its conclusion in *de Reyes* regarding the appropriate test for general jurisdiction over

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78. *See de Reyes v. Marine Mgmt. & Consulting, Ltd.*, 586 So. 2d 103, 109-15 (La. 1991).

79. *See id.* at 109.

80. *Id.* at 108.

81. *Id.* at 108-09 (citing *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952)).

82. *Id.* at 109 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984)).

83. *De Reyes v. Marine Mgmt. & Consulting, Ltd.*, 586 So. 2d 103, 109 (La. 1991).

84. *Id.*

85. *Id.*

foreign corporations—and that is precisely what happened twenty years later.

### V. *DAIMLER* REFINES THE TEST FOR GENERAL JURISDICTION OVER NONRESIDENT CORPORATE DEFENDANTS

In the groundbreaking 2014 case of *Daimler AG v. Bauman*, the United States Supreme Court formally hit the reset button on the test for general jurisdiction and issued an edict that significantly limited where “foreign (sister-state or foreign-country) corporations” could be sued for claims that did not relate to business conducted in a particular state.<sup>86</sup> A few years earlier in *Goodyear Dunlop Tires Operations, S.A. v. Brown*,<sup>87</sup> the United States Supreme Court had actually started the process of unraveling decades of lower court misinterpretations of *Perkins*<sup>88</sup> and its progeny, as well as the erroneous merger of the test for general jurisdiction with the two-prong test for specific jurisdiction by the lower courts.<sup>89</sup>

In *Goodyear*, the Court specifically addressed the distinction between general or all-purpose jurisdiction, and specific or case-linked jurisdiction,<sup>90</sup> and offered a revised formulation of the standard for general jurisdiction over foreign (sister-state or foreign country) corporations. Rather than rely on “continuous and systematic” contacts, the Court drew an analogy to an individual’s domicile and described the general jurisdiction standard in terms of whether a corporation was “essentially at home in the forum State.”<sup>91</sup> It explained:

*International Shoe* distinguished from cases that fit within the “specific jurisdiction” categories, “instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.” Adjudicatory authority so grounded is today called “general jurisdiction.” For an individual, the paradigm

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86. See *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) and *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, n.9 (1984)).

87. See generally *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. 915.

88. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

89. See *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. 915.

90. *Id.* at 919.

91. *Id.*

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.<sup>92</sup>

A few years later in *Daimler*, the Court was again confronted with another misinterpretation<sup>93</sup> of the standard for general "all purpose" jurisdiction over corporations and sought to explicitly re-articulate the rule and differentiate it from the test for specific jurisdiction. First, the *Daimler* Court recognized that specific jurisdiction had become the centerpiece of modern jurisdiction theory while general jurisdiction had come to occupy a less dominant place in the contemporary scheme.<sup>94</sup> Indeed, the Court noted that it had declined to stretch general jurisdiction beyond limits traditionally recognized<sup>95</sup> in *Perkins*,<sup>96</sup> *Helicopteros*,<sup>97</sup> and *Goodyear*.<sup>98</sup>

The Court next explained that it had previously attempted in *Goodyear* to clarify the correct standard for general jurisdiction and distinguish it from specific jurisdiction when it held that "[a] court may assert general jurisdiction over foreign (sister-state or foreign country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State."<sup>99</sup> It reflected:

*Goodyear* made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. "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 at home." With respect to a corporation, the place of incorporation and principal place of

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92. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011) (citations omitted).

93. In *Daimler*, the United States Ninth Circuit Court of Appeals sought to impute a subsidiary's contacts to a parent corporation, based on agency principles, for purposes of asserting general jurisdiction. The issue before the Court was whether an agency relationship could confer citizenship on a corporation or render the corporation "at home" through the agent, a notion that was steadfastly rejected by the Court. *Daimler AG v. Bauman*, 571 U.S. 117, 134-39 (2014).

94. *Id.* at 132-33.

95. *Id.*

96. *See Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

97. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984).

98. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

99. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).

business are “paradig[m] . . . bases for general jurisdiction.” Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.<sup>100</sup>

Yet, to eliminate any remaining doubt concerning the proper standard for general jurisdiction in the modern framework, the *Daimler* Court then explicitly declared that “general jurisdiction requires affiliations so ‘continuous and systematic’ as to render [the corporation] essentially at home in the forum State . . . *i.e.*, comparable to a domestic enterprise in that State.”<sup>101</sup>

The Court further distinguished general jurisdiction from specific jurisdiction by rejecting the notion that general jurisdiction can exist in every state in which a corporation engages in a substantial, continuous, and systematic course of business:

[T]he words “continuous and systematic” were used in *International Shoe* to describe instances in which the exercise of *specific* jurisdiction would be appropriate. Turning to all-purpose jurisdiction, in contrast, *International Shoe* speaks of “instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit . . . *on causes of action arising from dealings entirely distinct from those activities.*” Accordingly, the inquiry under *Goodyear* is not whether a foreign corporation’s in-forum contacts can be said to be in some sense “continuous and systematic,” it is whether that corporation’s “affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.”<sup>102</sup>

The Court also instructed that the existence of local offices in a forum “should not attract heavy reliance” in the modern analysis, which had moved away from territorial thinking.<sup>103</sup> Elaborating on this point, the Court explained:

[T]he general jurisdiction inquiry does not “focu[s] solely on

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100. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (internal citations omitted).

101. *Id.* at 132-33 n.11.

102. *Id.* at 138-39 (internal citations omitted) (emphasis added).

103. *Id.* at 125-26 n.18; *see also* *Amiri v. DynCorp Int’l, Inc.*, 2015 WL 166910, \*5 (N.D. Cal. Jan. 13, 2015) (district court found that a defendant corporation’s ownership and operation of two aircraft maintenance facilities in California were insufficient to create general jurisdiction under *Daimler*).

the magnitude of the defendant's in-state contacts." General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. *A corporation that operates in many places can scarcely be deemed at home in all of them.* Otherwise, "at home" would be synonymous with "doing business" tests framed before specific jurisdiction evolved in the United States . . . . Nothing in *International Shoe* and its progeny suggests that "a particular quantum of local activity" should give a State authority over a "far larger quantum of . . . activity" having no connection to any in-state activity.<sup>104</sup>

Thus, under *Daimler*, the essential inquiry is "not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic'[,] it is whether that corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State."<sup>105</sup> In determining where a foreign corporation is "essentially at home," the corporation's place of incorporation and principal place of business are its paradigm all-purpose forums,<sup>106</sup> absent an *exceptional case*.<sup>107</sup>

While the *Daimler* Court did not establish what constitutes an "exceptional case," it cited its prior decision in *Perkins*—the only modern case in which it approved general jurisdiction over a corporation in a state that did not house the corporation's principal place of business or its place of incorporation—as the example.<sup>108</sup> In *Perkins*, the defendant was a Philippine corporation that temporarily ran its business from Ohio while operations in the Philippines were shut down during wartime.<sup>109</sup> The Court found that the defendant was essentially at home in Ohio, despite its permanent home abroad, because the corporation's president maintained his office there, kept the company's files in that office, and supervised and directed the limited wartime activities of the company from that location.<sup>110</sup> Because "Ohio was the corporation's principal, if temporary, place of business," the Court

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104. *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.20 (2014) (emphasis added).

105. *Id.* at 138-39 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

106. *Id.* at 137.

107. *Id.* at 138-39 n.19.

108. *Id.*

109. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447-49 (1952).

110. *Id.*

deemed Ohio's exercise of general jurisdiction over it permissible.<sup>111</sup>

Since *Daimler*, several federal courts, including the United States Fifth Circuit Court of Appeals, have correctly observed that “[i]t is incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business.”<sup>112</sup> In these cases, courts have found that because the paradigm forum for general jurisdiction is “the place of incorporation and the principal place of business . . . even a company’s ‘engage[ment] in a substantial continuous, and systematic course of business’ is alone insufficient to render it at home in [another] forum.”<sup>113</sup>

Additionally, the Court in *Daimler* finally addressed whether the “fair play and substantial justice” factors should be considered in the context of general jurisdiction. The Court rejected the idea that a separate “reasonableness” analysis could defeat jurisdiction in a place where a defendant’s contacts would subject it to general jurisdiction.<sup>114</sup> The Court explained that the “reasonableness check . . . was to be essayed when specific jurisdiction is at issue . . . . When a corporation is genuinely at home in the forum State, however, any second-step inquiry would be superfluous.”<sup>115</sup>

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111. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 928 (2011) (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-80 n.11 (1984) (Ohio’s exercise of general jurisdiction was permissible in *Perkins* because “Ohio was the corporation’s principal, if temporary, place of business.”). Recently, in *Amiri v. DynCorp Int’l, Inc.*, the United States District Court for the Northern District of California found that the *Daimler* Court’s “treatment of *Perkins* indicates that the bar for . . . finding [an exceptional case] is very high,” since the *Perkins* Court held that exercising general jurisdiction over the defendant corporation was appropriate as the forum state was its principal, if temporary, place of business. 2015 WL 166910, at \*2-3 (N.D. Cal. Jan. 13, 2015). It explained: “[t]his presumably is the type of situation that [Daimler] envisioned as the ‘exceptional case’ in which a defendant’s affiliations with the forum are ‘comparable’ to those of a domestic company.” *Id.* at \*3. Yet, the court also noted that “‘in the overwhelming majority of cases there will be no occasion to explore whether a *Perkins*-type exception might apply’ because the . . . Court’s analysis in *Daimler* focused almost exclusively on the paradigmatic bases for general jurisdiction—the corporation’s place of incorporation and principal place of business.” *Id.* (citing *Daimler AG v. Bauman*, 571 U.S. 117, 138-39 (2014)).

112. *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014); *see also* *Whitener v. Pliva, Inc.*, 606 F. App’x 762, 764-65 (5th Cir. 2015).

113. *Sonera Holding V. V. v. Cukurova Holding A.S.*, 750 F.3d 221, 226 (2d Cir. 2014); *see also* *Amiri v. DynCorp Int’l, Inc.*, 2015 WL 166910, at \*2-3 (N.D. Cal. Jan. 13, 2015).

114. 4 WRIGHT & MILLER, FED. PRAC. & PROC. CIV. § 1067.5 (4th ed. & database updated Aug. 2019).

115. *Daimler AG*, 571 U.S. at 140 n.20.

The *Daimler* standard was recently reaffirmed by the Court in *BNSF v. Tyrell*, where the Court held that Montana was not a valid “all-purpose” forum for a Delaware corporation with its principal place of business in Texas, even though the corporation had over 2000 miles of railroad track and more than 2000 employees in Montana.<sup>116</sup>

In short, *Daimler* dictates that the test for establishing general jurisdiction is distinct from the two-prong test for specific jurisdiction, and that a foreign corporation’s “contacts,” for purposes of general jurisdiction, derive from its paradigm “all-purpose” forums, absent an “exceptional case.”

## VI. MOVING FORWARD: RECOGNITION OF *DAIMLER* IN LOUISIANA STATE COURTS

On its face, the Louisiana Supreme Court’s holding in *de Reyes* is squarely at odds with *Daimler*. In fact, under *Daimler*, Wallem (the foreign corporation in the *de Reyes* case) would more than likely *not* have been subject to general jurisdiction in Louisiana. As a Hong Kong corporation with its principal place of business in Hong Kong,<sup>117</sup> Wallem’s paradigm “all-purpose” forum would be Hong Kong, unless an exceptional circumstance existed. And although the court in *de Reyes* opined that Wallem’s contacts with Louisiana were “more like those in *Perkins* than in *Helicopteros*,”<sup>118</sup> those Louisiana contacts still did not rise to the level of a temporary corporate headquarters, as was the case in *Perkins*. As *Daimler* instructs, the mere fact that Wallem had an office in Louisiana did not deem it “essentially at home” in Louisiana. Thus, there would unlikely have been an “exceptional circumstance” warranting general jurisdiction over Wallem in Louisiana.

In summary, if the Louisiana Supreme Court was presented the same facts of the *de Reyes* case today, the result should not be the same under the *Daimler* standard. Nevertheless, despite the United States Supreme Court’s clear guidance on the appropriate test for evaluating general jurisdiction, Louisiana courts have not yet called *de Reyes* into question.<sup>119</sup> Indeed, *de Reyes* is still on the

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116. *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017).

117. *De Reyes v. Marine Mgmt. & Consulting, Ltd.*, 586 So. 2d 103, 104 (La. 1991).

118. *Id.* at 110.

119. *Cf.* 8 GLENN G. MORRIS AND WENDELL H. HOLMES, LA. CIV. L. TREATISE, BUSINESS ORGANIZATIONS § 31:4 (database updated June 2018) (recognizing that standard for general jurisdiction set forth in *de Reyes* differs from standard originally

books as “good law.” Moreover, there are presently zero reported decisions in which Louisiana Courts of Appeal examined general jurisdiction over a foreign corporation using the *Daimler* standard.<sup>120</sup>

However, in an unreported opinion denying an application for supervisory writ, the Louisiana Fifth Circuit Court of Appeal appeared to recognize that the *Daimler* standard is the appropriate test for evaluating general jurisdiction over a foreign corporation. In *Meador v. Air & Liquid Systems, Inc.*, the plaintiff filed suit in the 29th Judicial District Court for the Parish of St. Charles against several defendants seeking damages for injuries that he suffered as a result of his exposure to asbestos.<sup>121</sup> Among the defendants was one of the plaintiff’s former employers, a Delaware corporation with its principal place of business located in Pennsylvania.<sup>122</sup> Although the company had facilities in several different states, including Louisiana, the plaintiff only ever worked at its Texas facility.<sup>123</sup>

The company filed a declinatory exception of lack of personal jurisdiction, arguing that neither specific nor general jurisdiction existed over it in Louisiana under *Daimler*.<sup>124</sup> The evidence presented by both parties established that the company’s place of incorporation, principal place of business, and the site that the plaintiff associated with the company were outside of Louisiana.<sup>125</sup> However, the district court overruled the company’s exception on the basis that *Daimler* only applied to foreign-country corporations (and not sister-state corporations), and that the company was subject to general jurisdiction in Louisiana because it was authorized to do business in and had a registered office in the state.<sup>126</sup>

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called for by the Supreme Court in *Goodyear*; although the authors do not explicitly address *Daimler* or *Tyrell*).

120. Of note, in *Crosstex Energy Services, LP v. Texas Brine Co., LLC*, the Louisiana First Circuit Court of Appeal recently tacitly endorsed the “at home” standard for general jurisdiction, although it cited *Goodyear*, rather than *Daimler* or *Tyrell*. 2017-1405, pp. 4-5 (La. App. 1 Cir. 4/25/18); 253 So. 3d 806, 811. However, the court did not speak any further on this because the issue before it was one of specific jurisdiction.

121. *Meador v. Air & Liquid Sys., Inc.*, No. 15-c-344, p. 1 (La. App. 5 Cir. 5/28/15) (unpublished opinion) (on file with author).

122. *Id.* at pp. 1-2.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Meador v. Air & Liquid Sys., Inc.*, No. 15-c-344, p. 2 (La. App. 5 Cir. 5/28/15) (unpublished opinion) (on file with author).

The company filed an application for supervisory writ to the Fifth Circuit Court of Appeal on the grounds that the trial court erred in overruling its declinatory exception of lack of personal jurisdiction.<sup>127</sup> The Fifth Circuit denied the company's writ application, finding that the trial court properly overruled the exception.<sup>128</sup> Notably, the Fifth Circuit found that the trial court erred when it concluded that *Daimler* only applied to foreign-country corporations, and, therefore, the Fifth Circuit recognized that *Daimler* was the applicable standard for evaluating general jurisdiction over the company.<sup>129</sup> However, the Fifth Circuit hung its decision on the *Daimler* Court's instruction that general jurisdiction "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide."<sup>130</sup> The Fifth Circuit determined that it was the company's burden to present evidence of its "activities in their entirety, nationwide and worldwide," but that such evidence was not presented.<sup>131</sup> Consequently, because there was no opportunity for a comparison of the company's activities in Louisiana to its "activities in their entirety, nationwide and worldwide" to be made, the Fifth Circuit found that the trial court properly denied the company's exception.<sup>132</sup> The company subsequently filed an application for supervisory writ to the Louisiana Supreme Court, which was denied without any further explanation.<sup>133</sup>

Although supervisory writ denials have no precedential value in Louisiana,<sup>134</sup> the Fifth Circuit's opinion in *Meador* is both encouraging and problematic. On one hand, the Fifth Circuit's recognition of *Daimler* as the proper standard for determining general jurisdiction over foreign corporations indicates that at least one appellate court in Louisiana is moving away from *de Reyes*. On the other hand, the Fifth Circuit's application of *Daimler* to the facts in *Meador* implicitly breathed life back into *de Reyes*.

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127. See generally *Meador v. Air & Liquid Sys., Inc.*, No. 15-c-344, p. 2 (La. App. 5 Cir. 5/28/15) (unpublished opinion) (on file with author).

128. See generally *id.*

129. See *id.* at p. 4.

130. *Id.* at p. 5 (quoting *Daimler AG*, 571 U.S. at. at 139 n.20).

131. See *id.* at p. 5.

132. *Meador v. Air & Liquid Sys., Inc.*, No. 15-c-344, p. 5 (La. App. 5 Cir. 5/28/15) (unpublished opinion) (on file with author).

133. See *Meador v. Air & Liquid Sys., Inc.*, 2015-1447 (La. 9/11/15); 176 So. 3d 1046.

134. See *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 2007-2371, p. 9 (La. 7/1/08); 998 So. 2d 16, 24 n.12.

In this regard, the Fifth Circuit acknowledged in *Meador* that the evidence presented showed that the company's paradigm "all-purpose" forums for general jurisdiction purposes under *Daimler* were Delaware and Pennsylvania.<sup>135</sup> But the Fifth Circuit still upheld the trial court's decision that general jurisdiction over the company existed in Louisiana based on the company's business activities in the state.<sup>136</sup> The Fifth Circuit found that the company's business activities in Louisiana supported general jurisdiction under *Daimler* when there was no evidence of the company's "activities in their entirety, nationwide and worldwide" to compare.<sup>137</sup> Yet, *Daimler* explicitly instructs that merely having offices<sup>138</sup> and engaging in systematic business activities<sup>139</sup> in a state does not create general jurisdiction over a corporation. Rather, *Daimler* clearly requires a corporation to have affiliations with the forum state, in the context of the corporation's activities in their entirety, and render it essentially "at home" there, such as directing the corporation's activities from the location, or maintaining a head office or principal business establishment in the forum.<sup>140</sup> Therefore, the lack of evidence showing the company's nationwide activities from which a comparison could be made to its activities in Louisiana should have *defeated* general jurisdiction over the company—*not supported it*.

Moreover, the Fifth Circuit in *Meador* essentially placed the burden on the company to provide evidence *disproving* the "exceptional case" for jurisdiction under *Daimler*. However, because the "exceptional case" involves a showing of the foreign corporation's contacts with the forum state, the plaintiff has the burden of establishing the basis for jurisdiction.<sup>141</sup> In fact, *Daimler*

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135. *Meador v. Air & Liquid Sys., Inc.*, No. 15-c-344, p. 2 (La. App. 5 Cir. 5/28/15) (unpublished opinion) (on file with author).

136. *See id.* at p. 5.

137. *Id.*

138. *Daimler AG v. Bauman*, 571 U.S. 117, 138 n.18 (2014) (general jurisdiction was not warranted over the corporation even though it and its subsidiary had multiple facilities in the forum state).

139. *Id.* at 137-39.

140. *Id.* at 129-131 n.8, 138-39 n.19.

141. *See Amiri v. DynCorp Int'l.*, 2015 WL 166910, at \*3 (N.D. Cal. 2015) (citing *Daimler AG*, 571 U.S. at 138-39 n.19) ("None of the paradigmatic bases for general jurisdiction are present in this case. Defendants are not incorporated in California, and none have their principal place of business here. Accordingly, Plaintiffs must show that this is the kind of 'exceptional case' in which Defendants' operations in California are 'so substantial and of such a nature as to render [Defendants] at home in' California."); *see also Long v. Patton Hospitality Mgmt., LLC*, No. 15-2213, 2016 U.S. Dist. LEXIS 23825, at \*16-17 (E.D. La. Feb. 26, 2016) (recognizing that the plaintiff

established that in order to find general jurisdiction outside of a foreign corporation's place of incorporation or principal place of business, the plaintiff must demonstrate that there is something "exceptional" about the corporation's activities in the forum.<sup>142</sup> The Fifth Circuit did not cite any legal authority for shifting the burden to the defendant company to *disprove* the exceptional case for general jurisdiction. But even if the Fifth Circuit's basis for shifting the burden to the company was because it had "continuous and systematic" contacts with Louisiana (as in *de Reyes*), such contacts are no longer enough for general jurisdiction under *Daimler*. Thus, while the Fifth Circuit in *Meador* appreciated that *Daimler* is the appropriate standard for evaluating general jurisdiction over foreign corporations, it nevertheless misapplied that standard. In doing so, the Fifth Circuit indirectly and paradoxically reinvigorated the "continuous and systematic" approach employed in *de Reyes* and later rejected in *Daimler*.

Admittedly, this issue has not been heavily litigated in Louisiana's state court system, as evidenced by the lack of any reported decisions issued by Louisiana Courts of Appeal. But, state court judges faced with resolving issues of general personal jurisdiction over nonresident corporations should look no further than their counterparts in Louisiana's federal judiciary for guidance.<sup>143</sup> Indeed, Louisiana federal district courts have consistently and correctly applied the *Daimler* standard in the time since the case was decided by the United States Supreme Court.<sup>144</sup>

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bears the burden of establishing an "exceptional case" exists for general jurisdiction over a nonresident corporation in a forum other than the place of incorporation or principal place of business).

142. *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014).

143. *Pervasive Software Inc. v. Lexware GmbH & Co. Kg*, 688 F.3d 214, 220 (5th Cir. 2012) (citing *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 335 (5th Cir. 1999)) ("A federal court sitting in diversity must satisfy two requirements to exercise personal jurisdiction over a nonresident defendant. First, the forum state's long-arm statute must confer personal jurisdiction. Second, the exercise of jurisdiction must not exceed the boundaries of the Due Process Clause of the Fourteenth Amendment."). Because the limits of the Louisiana Long-Arm Statute are coextensive with constitutional due process limitations, the inquiry is whether jurisdiction comports with federal constitutional guarantees. *Jackson v. Tanfoglio Giuseppe, SRL*, 615 F.3d 579, 584 (5th Cir. 2010). As such, the analysis for evaluating personal jurisdiction over nonresidents in Louisiana's federal district courts is the same as it is in Louisiana's state court system.

144. See, e.g., *Stewart v. Marathon Petroleum Co. LP*, 326 F. Supp. 3d 284, 288-89, 293-295 (E.D. La. 2018); *Drake v. Mercedes Benz USA*, No. 6:16-cv-1228, 2018 WL 540874, at \*4-5 (W.D. La. Jan. 4, 2018); *Mercury Rents, Inc. v. Crenshaw Enters., LLC*, Civil Action No. 6:16-cv-1741, 2017 WL 2380642, at \*4-6; *Long v. Patton Hospitality*

The outcome of the *Meador* case illustrates the problems that can arise when trial courts do not recognize the proper standard for evaluating general jurisdiction over foreign corporations. Reverting back to *de Reyes* would conflict with the United States Supreme Court's latest interpretation of the Due Process Clause in *Daimler* and, in turn, the Louisiana Long-Arm Statute. The goal of this Article is to help courts in Louisiana to understand: (1) that the *Daimler* standard is the proper test for evaluating general jurisdiction over nonresident corporations, and (2) how to correctly apply that test. Only time will tell.

## VII. CONCLUSION

In conclusion, when the Louisiana Supreme Court first tackled the issue of general personal jurisdiction over entity-defendants in *de Reyes*, there were only two United States Supreme Court decisions offering any guidance: *Perkins* and *Helicopteros*. In the thirty-plus years between these two cases, and for almost another thirty years thereafter, the Court continued to develop and refine the framework for evaluating personal jurisdiction over nonresident corporations in a series of decisions examining specific jurisdiction. As a result, the Louisiana Supreme Court in *de Reyes* permitted jurisdiction over a nonresident corporation in a suit that did not arise out of its activities in the state by employing the test for determining *specific* jurisdiction.<sup>145</sup>

After *de Reyes*, the United States Supreme Court decisions of *Goodyear*, *Daimler*, and *Tyrell* made it clear that the framework for determining *general* jurisdiction over nonresident corporations was entirely distinct from the test for *specific* jurisdiction. Therefore, the Due Process limitations entrenched in Louisiana's Long-Arm Statute were implicitly modified to capture the Court's rulings. Consequently, *de Reyes* is still on the books as "good law," despite being at odds with *Daimler, et al.*, and, in turn, the Long-Arm Statute. Louisiana courts must identify this issue when presented, reconcile the Due Process conflicts brought about by *de Reyes*, and recognize the binding authority of *Daimler*.

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Mgmt., LLC, No. 15-2213, 2016 U.S. Dist. LEXIS 23825, at \*16-17 (E.D. La. Feb. 26, 2016); *Norman v. H&E Equip. Servs., Inc.*, No. 3:14-cv-367, 2015 WL 1281989, at \*4-5 (M.D. La. Mar. 20, 2015).

145. See *de Reyes v. Marine Mgmt. & Consulting, Ltd.*, 586 So. 2d 103, 109 (La. 1991).