

No. 07-3813

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ESTATE OF DOROTHY THOMSON, By and through as Co-Personal Representatives of the
Estate Vicky Rakestraw and Darcy Horvat, and COLLEEN MILLER,
Plaintiffs -Appellants,

v.

TOYOTA MOTOR CORPORATION WORLDWIDE and
THRIFTY RENT-A-CAR SYSTEMS, INC.,
Defendants-Appellees.

On Appeal from the United States District Court for
the Northern District of Ohio at Cleveland

**FINAL BRIEF OF THE ALLIANCE OF AUTOMOBILE MANUFACTURERS,
INC., AND THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE
MANUFACTURERS, INC., AS *AMICI CURIAE* IN SUPPORT OF
DEFENDANT-APPELLEE TOYOTA MOTOR CORPORATION AND
AFFIRMANCE**

John T. Whatley
Nancy Elizabeth Bell
ALLIANCE OF AUTOMOBILE
MANUFACTURERS, INC.
1401 Eye Street, N.W., Suite 900
Washington, DC 20005
(202) 326-5500

Erika Z. Jones
Adam C. Sloane
MAYER BROWN LLP
1909 K Street, N.W.
Washington, DC 20006
(202) 263-3000

Ellen Gleberman
ASSOCIATION OF INTERNATIONAL
AUTOMOBILE MANUFACTURERS, INC.
2111 Wilson Blvd., Suite 1150
Arlington, VA 22201
(703) 247-2119

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

ESTATE OF DOROTHY THOMSON, By and through as Co-Personal Representatives of
the Estate Vicky Rakestraw and Darcy Horvat, and COLLEEN MILLER,
Plaintiffs -Appellants,

v.

TOYOTA MOTOR CORPORATION WORLDWIDE and
THRIFTY RENT-A-CAR SYSTEMS, INC.,
Defendants-Appellees.

On Appeal from the United States District Court for
the Northern District of Ohio at Cleveland

CORPORATE DISCLOSURE STATEMENT

Pursuant to 6th Circuit Rule 26.1(a), *amici curiae* the Alliance of
Automobile Manufacturers, Inc., and the Association of International Automobile
Manufacturers, Inc. make the following disclosure:

Alliance of Automobile Manufacturers, Inc.:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

No.

2. Is there a publicly owned corporation, not a party to the appeal, that
has a financial interest in the outcome?

**Not to the knowledge of *amicus curiae* Alliance of Automobile
Manufacturers, Inc.**

Association of International Automobile Manufacturers, Inc.

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome?

Not to the knowledge of *amicus curiae* Association of International Automobile Manufacturers, Inc.

Counsel for *Amici Curiae*

December 12, 2007

Date

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iv
INTEREST OF THE <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	4
ARGUMENT	5
I. THE PRINCIPLES OF PERSONAL JURISDICTION.....	5
II. A TEST FOR GENERAL JURISDICTION	16
CONCLUSION	22
CERTIFICATE OF COMPLIANCE WITH RULE 32(a)	23
CERTIFICATE OF SERVICE	24

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Asahi Metal Indus. Co. v. Superior Court</i> , 480 U.S. 102 (1987)	16
<i>Calder v. Jones</i> , 465 U.S. 783 (1984).....	20
<i>Dean v. Motel 6 Operating L.P.</i> , 134 F.3d 1269 (6th Cir. 1998)	16, 19-20
<i>Dickson Marine, Inc. v. Panalpina</i> , 179 F.3d 331 (5th Cir. 1999)	10, 13-14, 15
<i>Hanson v. Deneckla</i> , 357 U.S. 235 (1958)	7, 8-9, 20
<i>Helicopteros Nacionales de Columbia, S.A. v. Hall</i> , 406 U.S. 408 (1984).....	8, 14
<i>International Shoe Co. v. Washington</i> , 326 U.S. 310 (1945)	8, 10, 15, 21
<i>Keeton v. Hustler Magazine, Inc.</i> , 465 U.S. 770 (1984).....	14, 21
<i>Kulko v. Superior Court</i> , 436 U.S. 84 (1978).....	7
<i>Milliken v. Meyer</i> , 311 U.S. 457 (1945)	8
<i>Shaffer v. Heitner</i> , 433 U.S. 186 (1977)	21-22
<i>Tobin v. Astra Pharmaceutical Prods., Inc.</i> , 993 F.2d 528 (6th Cir. 1993)	20
CONSTITUTIONAL PROVISION AND RULES	
U.S. Const., art. IV, § 1.....	7
Fed. R. Civ. P. 4(k)(1)(A).....	8

MISCELLANEOUS	Page(s)
16 James Wm. Moore, <i>Moore’s Federal Practice</i> (3d ed. 1997).....	5-7, 9, 10, 11, 13, 15, 20, 21
Scott Plous, <i>The Psychology of Judgment and Decision Making</i> (1993).....	17
Restatement (Second) of Conflict of Laws (1971)	6-8, 13, 15
Charles W. “Rocky” Rhodes, <i>Clarifying General Jurisdiction</i> , 34 Seton Hall L. Rev. 807 (2004).....	11-12, 18
Eugene F. Scoles, <i>et al.</i> , <i>Conflict of Laws</i> 4th ed. 2004)	6, 8, 10, 11, 14, 15-16
Mary F. Twitchell, <i>Why We keep Doing Business with Doing-Business</i> <i>Jurisdiction</i> , 2001 U. Chi. Legal F. 171 (2001).....	11, 13, 14, 15, 17-18, 21

BRIEF OF *AMICI CURIAE*
IN SUPPORT OF DEFENDANT-APPELLEE TOYOTA MOTOR
CORPORATION WORLDWIDE AND AFFIRMANCE

INTEREST OF THE *AMICI CURIAE*¹

The Alliance of Automobile Manufacturers, Inc. (“Alliance”) is a nonprofit trade organization formed in 1999. Its mission is to improve the environment and motor vehicle safety through the development of global standards and the establishment of market-based, cost-effective solutions to emerging challenges associated with the manufacture of new automobiles. The members of the Alliance are BMW Group; Chrysler LLC; Ford Motor Company; General Motors Corporation; Mazda North American Operations; Mercedes-Benz USA; Mitsubishi Motors North America, Inc.; Porsche Cars North America, Inc.; Toyota Motor North America, Inc; and Volkswagen of America, Inc. The Alliance frequently participates as *amicus curiae* or as an intervenor in cases addressing product liability issues and Federal regulation of motor vehicles. In doing so, the Alliance presents the broad perspective of vehicle manufacturers.

The Association of International Automobile Manufacturers, Inc. (“AIAM”) is a nonprofit trade association that represents international motor vehicle

¹ Pursuant to Federal Rule of Appellate Procedure 29(b), this brief is accompanied by a motion for leave to file the brief. Plaintiffs have not consented to the filing of this brief.

manufacturers, certain original equipment suppliers, and other automotive-related trade associations. AIAM's mission is to protect and promote the unique interests of international automakers and their suppliers in the United States. AIAM is dedicated to the promotion of free trade and to policies that enhance motor vehicle safety and the protection of the environment. The *members* of AIAM are Aston Martin Lagonda of North America, Inc.; Ferrari North America, Inc.; Maserati North America, Inc.; American Honda Motor Co., Inc.; Hyundai Motor America; Isuzu Motors America, Inc.; Kia Motors America, Inc.; Mitsubishi Motors North America, Inc.; Nissan North America, Inc.; Peugeot Motors of America, Inc.; Renault SA; Subaru of America, Inc.; American Suzuki Motor Corporation; and Toyota Motor Sales, U.S.A., Inc. The *associate members* of AIAM are ADVICS North America, Inc.; Robert Bosch GmbH; Delphi Corporation; Denso International America, Inc.; and the Japan Automobile Manufacturers Association, Inc.

This case, which concerns the doctrine of general jurisdiction, raises issues of considerable importance to the Alliance, AIAM, and their respective members. Motor vehicles manufactured by the automobile company members of the *amici* are sold and operated throughout the world. Often those vehicles are distributed by entities other than the manufacturers themselves. Unfortunately, some of the vehicles manufactured by members of the *amici* are involved in accidents, and

these accidents sometimes give rise to litigation in which – as here – plaintiffs name a foreign vehicle manufacturer as a defendant despite the fact that the manufacturer has no contacts with the forum related to the plaintiff’s cause of action. In such cases, plaintiffs, like the Plaintiffs in the instant case, invoke the doctrine of general jurisdiction in an attempt to establish personal jurisdiction over the defendant manufacturer. Because general jurisdiction does not depend on a connection between the defendant’s conduct within the forum state and the specific cause of action in the suit, the successful invocation of general jurisdiction would have sweeping and highly problematic consequences for manufacturers of motor vehicles (and other products). Plaintiffs’ theory would render the manufacturer subject to claims of all kinds within the forum merely because the manufacturer’s products are sold in the forum. As a result, a manufacturer would be subject to suit in a forum state with which the manufacturer had little or no contact on claims that have nothing whatever to do with any contacts with the forum that the manufacturer may have. Thus, the scope of the doctrine of general jurisdiction is of great importance to the members of the Alliance and AIAM.

The scope of general jurisdiction also is important to the courts in which such suits might be brought, the citizens who fund these courts through their tax dollars, the manufacturers of other products, and to consumers, more generally. All of these interested entities benefit from the certainty and efficiency that comes

with the rational development and application of the doctrine of general jurisdiction.

In this brief, the Alliance and AIAM seek to assist the Court by providing a general overview of the issues pertinent to analyses of general jurisdiction issues and by setting forth a test or heuristic that can be applied to analyze general jurisdiction problems. The Alliance and AIAM believe that this test confirms the conclusion reached by the district court below that it does not have general jurisdiction over Toyota Motor Corporation (“TMC”).

INTRODUCTION AND SUMMARY OF ARGUMENT

This case arises from an automobile accident in South Africa involving a Toyota model vehicle that is not sold in the United States. Plaintiffs allege that the crash resulted from a defect in the South African vehicle and seek to bring an action for damages in the Northern District of Ohio against Toyota Motor Corporation, a Japanese automobile manufacturer headquartered in Japan that does not do business in Ohio and has no Ohio contacts. *See* TMC Br. 2, 4-5.

In its brief, TMC has set forth the factual background of the case, which we herein adopt by reference, and has fully rebutted the specific challenges of Plaintiffs to the district court’s decision that it does not have general jurisdiction over TMC. Rather than repeat TMC’s arguments, *amici* will provide an overview of the personal jurisdiction doctrine – focusing particularly on the doctrine of

general jurisdiction – and then set forth a test that may serve as a helpful device for resolving general jurisdiction issues. That test posits a claim wholly unrelated to the defendant’s forum-related activities and asks whether the court would assert jurisdiction over such a claim. As we show, when that test is applied here, the correctness of the district court’s decision dismissing Plaintiffs’ claims becomes manifest.

ARGUMENT

I. THE PRINCIPLES OF PERSONAL JURISDICTION

As the parties have made clear, this case raises the question whether TMC is subject to the general jurisdiction of the district court below. General jurisdiction is a species of personal jurisdiction, which, in turn, is a category of judicial jurisdiction.

Starting from the broadest of these categories, *judicial jurisdiction* “refers to power of the courts to hear a dispute and to render a valid judgment, one that will be recognized by other courts. Judicial jurisdiction is effective only with respect to certain persons or property. Before a person or property may be subjected to the court’s jurisdiction, the person or property must have the adequate territorial connection with the state *and* certain prescribed steps must be taken to subject that person or property to the court’s authority.” 16 James Wm. Moore, *Moore’s Federal Practice* § 108-01[1] (3d ed. 1997) (footnotes omitted).

Personal jurisdiction refers to the authority of a court over the defendant. “Personal jurisdiction is necessary to enable a court to render a judgment in personam. A judgment *in personam* is a judgment that determines whether the defendant must do or refrain from doing some specific act, or pay the plaintiff a sum of money. Personal jurisdiction is required when a personal money judgment or an injunction is sought against a defendant.” *Id.* at § 108.02[1] (footnote omitted).²

² *Subject matter jurisdiction* relates to the authority of a court to hear certain sorts of disputes. *See id.* at § 108.04[1]. There is no issue as to subject matter jurisdiction of which *amici* are aware in this case.

Another concept that is distinct from both subject-matter and personal jurisdiction is venue. “Although both venue and personal jurisdiction rules are concerned with the convenience of the parties and witnesses, venue differs from personal and subject matter jurisdiction. Rules of venue give the defendant a privilege not to be sued in a forum other than one designated as proper; they do not affect the court’s power over the particular person or property in question or the court’s competence.” *Id.* at § 108.04[3], at 108-20 (citation and footnotes omitted).

Yet another distinct doctrine is that of *forum non conveniens*, which is “the major doctrinal limitation on the exercise of jurisdiction which may otherwise exist.” Eugene F. Scoles, *et al.*, *Conflict of Laws* § 11.8, at 492 (4th ed. 2004). “A state will not exercise jurisdiction if it is a seriously inconvenient forum for the trial of the action provided that a more appropriate forum is available to the plaintiff.” Restatement (Second) of Conflict of Laws § 84 (1971) (hereinafter “Restatement (Second) of Conflicts”) Thus, even when a court might otherwise have general jurisdiction, it may dismiss a case on the ground that another forum is far better suited to adjudicate the controversy. As TMC has persuasively argued, Plaintiffs’ claims against it would be barred under the doctrine of *forum non conveniens* even if it was subject to the general jurisdiction of the Northern District of Ohio, which clearly it was not.

A court lacking personal jurisdiction over a defendant may not hear the dispute. However, if it does so, any judgment it renders will be invalid and not subject to full faith and credit or comity. *See* 16 James Wm. Moore, *supra*, at § 108.03[1]; *see also, e.g., Kulko*, 436 U.S. at 91 (“It has long been the rule that a valid judgment imposing a personal obligation or duty in favor of the plaintiff may be entered only by a court having jurisdiction over the person of the defendant.”); U.S. Const. art. IV, § 1; Restatement (Second) of Conflicts § 24 cmt. e. In

Finally, choice-of-law is yet another distinct doctrinal category that should not be confused with personal jurisdiction. “Choice-of-law concerns the principles that guide the selection of the law to apply to a dispute involving parties or events connected with more than one state or nation. Although choice-of-law and jurisdictional determinations both require assessment of the relationship between the forum and the litigation, they are separate inquiries.” 16 James Wm. Moore, *supra*, at § 108.04[4]. Thus, the fact that one state’s law might apply to a controversy does not give that state’s courts jurisdiction over non-resident defendants. *See Kulko v. Superior Court*, 436 U.S. 84, 98 (1978) (distinguishing choice-of-law from jurisdiction, noting that “the fact that California may be the “center of gravity” for choice-of-law purposes does not mean that California has personal jurisdiction over the defendant.”); *Hanson v. Denckla*, 357 U.S. 235, 254 (1958) (court “does not acquire . . . jurisdiction [over non-resident trustee] by being the ‘center of gravity’ of the controversy, or the most convenient location for litigation. The issue is personal jurisdiction, not choice of law”). By the same token, the conclusion that a court has personal jurisdiction over a defendant does not eliminate the need for an inquiry into the law that should be applied to the dispute or to specific issues. *See* 16 James Wm. Moore, *supra*, at § 108.04[4]; *see also* Restatement (Second) of Conflicts § 24 cmt. b (“In a given case, a state may have judicial jurisdiction, and yet may lack jurisdiction to apply its local law in the decision of the case, or the converse may be true.”) (citations omitted); Restatement (Second) of Conflicts § 145 cmt. d (“The courts have long recognized that they are not bound to decide all issues under the local law of a single state.”).

addition, the “rendition of a judgment by a federal court when the United States has no judicial jurisdiction is a violation of the Fifth Amendment to the Constitution; similar action on the part of a State court violates the due process clause of the Fourteenth Amendment.” *Id.* at ch. 3, Introductory Note, at 100; *accord id.* at § 24 cmt. e.

A district court generally is subject to the same limitations on personal jurisdiction as are the courts of general jurisdiction of the state in which the district court is located. *See* Fed. R. Civ. P. 4(k)(1)(A); *see also, e.g.*, Eugene F. Scoles, *et al.*, *supra*, at § 5.15, at 323 (“Thus, in most cases, federal courts have exactly the same jurisdictional reach as their home state’s courts”).

The rules of jurisdiction are determined by “[p]resent-day notions of fair play and substantial justice”; “the best-interests of the international and interstate systems”; and “usage or tradition.” Restatement (Second) of Conflicts § 24 cmt. b. “Due process requirements are satisfied when *in personam* jurisdiction is asserted over a nonresident corporate defendant that has ‘certain minimum contacts with [the forum] such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.’”” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (quoting *Int’l Shoe Co. v.*

Washington, 326 U.S. 310, 361 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1945)).³

Absent extraordinary circumstances, the contacts considered for purposes of assessing jurisdiction must be the defendant's own contacts, not the contacts of subsidiaries or affiliates. Thus, in the typical case, contacts between a *subsidiary* of the defendant and the forum cannot be used as a basis for asserting jurisdiction over a non-resident corporation:

Because a parent corporation and a subsidiary are separate legal entities, minimum contacts with the parent does not necessarily ensure personal jurisdiction over the subsidiary, nor does minimum contacts with the subsidiary ensure personal jurisdiction over the parent. The contacts of each individual entity ordinarily must be considered separately. Only when a parent corporation has sufficient control over the subsidiary, or when the appearance of separateness is actually a sham, may the contacts of one be imputed to the other. A parent corporation may be directly involved in the activities of its subsidiaries without subjecting itself to jurisdiction so long as its involvement includes monitoring the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies.

³ As the Supreme Court also has stated, restrictions on jurisdiction "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him." *Hanson*, 357 U.S. at 251.

16 James Wm. Moore, *supra*, at § 108.42[3][b], at 108-72 to 108-74.1 (footnotes omitted). As TMC has shown in its brief, this Circuit has recognized this principle in numerous cases (*see* TMC Br. 21-23), and Plaintiffs have failed to offer *any* evidence concerning TMC’s relationship with any U.S. affiliates, much less evidence that would override the strong presumption of corporate separateness (*see id.* at 22).

There are two types of personal jurisdiction, “specific” and “general.” “[S]pecific jurisdiction is jurisdiction to adjudicate claims arising from the defendant’s contacts with the forum state.” 16 James Wm. Moore, *supra*, at § 108-40, at 108-43 (footnote omitted). Specific jurisdiction generally rests on the defendant’s purposeful contacts with the forum that are *related* to the cause of action. *See, e.g.*, Eugene F. Scoles, *et al.*, *supra*, at § 6.7, at 351 (“*International Shoe* clearly draws, therefore, a distinction between contacts that are unrelated to the dispute and those that are related. . . . [E]ven a single, purposeful contact with a state can give rise to jurisdiction if related to the cause of action. Such related-contact jurisdiction is specific jurisdiction, because (unlike general jurisdiction) it is dependent upon the character of the dispute.”).

As the Fifth Circuit has explained, “[u]nlike the specific jurisdiction analysis, which focuses on the cause of action, the defendant and the forum, a general jurisdiction inquiry is dispute blind, the sole focus being on whether there

are continuous and systematic contacts between the defendant and the forum.” *Dickson Marine, Inc. v. Panalpina, Inc.*, 179 F.3d 331, 339 (5th Cir. 1999). Plaintiffs here have acknowledged that their claim against TMC is based solely upon *general jurisdiction*. Plaintiffs’ Br. 9, 31.

“*General jurisdiction* refers to jurisdiction to adjudicate claims that do not arise from the defendant’s contacts with the forum state. Thus, if a defendant is amenable to general jurisdiction in a state, the state may exercise jurisdiction over the defendant based on any claim, including claims unrelated to the defendant’s contacts with the state.” 16 James Wm. Moore, *supra*, at § 108.40, at 108-43.

The relationship of the claim to the defendant’s contacts with the forum state, therefore, is irrelevant to general jurisdiction. *See, e.g.*, Eugene F. Scoles, *et al.*, *supra*, at § 6.7, at 351 (general jurisdiction is predicated upon unrelated contacts that are continuous and systematic); Mary Twitchell, *Why We Keep Doing Business with Doing-Business Jurisdiction*, 2001 U. Chi. Legal F. 171, 181 (2001) (“Since general jurisdiction rests wholly on the special relationship between the defendant and the state, the nature of the cause of action is immaterial for determining its presence or absence. Jurisdiction for any and all purposes necessarily means jurisdiction over any and all causes of action.”); *id.* at 179 (stating that the “very point of general jurisdiction is that the state’s authority

derives from the defendant's relationship with the state and not from the nature of the claim to be decided").

Thus, as one commentator has explained,

a more precise distinction between general and specific jurisdiction is whether the relationship of the defendant's contacts to the dispute impacts the court's analysis of the requisite constitutional connection for jurisdiction. If the relationship of the defendant's forum activities to the dispute influences the court's jurisdiction holding, the court is exercising specific jurisdiction, which grants only limited adjudicative power over the defendant. On the other hand, if the court does not rely upon any connection between the forum and the causes of action asserted, but instead bases its jurisdictional finding on the defendant's relationship with the forum, the court is exercising general adjudicative authority over any cause of action asserted against the defendant.

Charles W. "Rocky" Rhodes, *Clarifying General Jurisdiction*, 34 Seton Hall L. Rev. 807, 819 (2004). Because Plaintiffs have disavowed any claim that TMC is subject to *specific* jurisdiction, the facts that some Toyota models are sold in Ohio and that this case involves an accident (in South Africa) involving a Toyota model (one, it bears noting, that is not sold in Ohio, or anywhere else in the United States) should have no special significance in the jurisdictional analysis of this case. *See infra* at 19-20.⁴

⁴ Even if Plaintiffs were asserting specific jurisdiction over TMC, the facts – as persuasively shown by TMC – that TMC itself did not sell vehicles in the forum and did not have any purposeful contacts related to the cause of action would

Because general jurisdiction provides open-ended authority over a defendant for the resolution of all disputes, regardless of the connection of those disputes to the defendant’s conduct in the forum, the circumstances and relationships giving rise to general jurisdiction are narrow. With regard to *corporations*, general jurisdiction typically is permitted only when the corporation is incorporated in the forum state, has its principal place of business there, has consented to the state’s general jurisdiction (such as by appointing an agent for service of process or by waiving jurisdictional objections in the case), brought the action at issue as a plaintiff, entered an appearance as a defendant in the action at issue, *or* has done business in the state on a sufficiently *continuous and substantial* basis as to make the exercise of general jurisdiction fair and reasonable. *See, e.g.*, Restatement (Second) of Conflicts §§ 41, 43-47.⁵

With regard to the so-called “doing business” basis for jurisdiction, “[g]eneral jurisdiction ordinarily exists only when the defendant’s forum contacts

preclude a finding of jurisdiction. Here, however, Plaintiffs are asking the Court not to rely on any related contacts – that is, on any “connection between the forum and the causes of action asserted” (Charles W. “Rocky” Rhodes, *supra*, at 819), but rather to conclude that TMC’s overall relationship with the forum is sufficient to support general jurisdiction. There is no basis for such a conclusion.

⁵ As noted above (*supra* at 9-10), absent extraordinary circumstances – for instance, cases in which a subsidiary’s separate legal existence is a mere sham – the contacts relevant to jurisdiction over a foreign corporation are the contacts of the defendant itself, rather than the contacts of a subsidiary with the forum.

are continuous, systematic, and substantial.” 16 James Wm. Moore, *supra*, at § 108-40, at 108-43 (citation omitted); *cf.* Mary Twitchell, *supra* at 173 (“doing-business” general jurisdiction is based on the conclusion that “the defendant business has such strong ties with the state that it may be sued there on any cause of action”) (footnote omitted). As the Fifth Circuit has stated “[d]ue process requires that ‘continuous and systematic’ contacts exist between the State and the foreign corporation to exercise general personal jurisdiction because the forum state does not have an interest in the cause of action.” *Dickson Marine*, 179 F.3d at 339; *see also Helicopteros Nacionales*, 466 U.S. at 415 (holding that defendant did not have “the kind of continuous and systematic general business contacts” with Texas to support assertion of general jurisdiction).

Nevertheless, there are questions about whether a defendant actually can be subject to general jurisdiction *solely* on the ground that it has done even fairly extensive business in the state. A number of commentators have suggested that, typically, a non-resident corporation would not be subject to general jurisdiction unless it has employees, an office, or some other physical presence in the forum state. *See* Eugene F. Scoles, *supra*, at § 5.13, at 319 (“An important factor in whether a corporation or other business entity will be subjected to jurisdiction is a continuing physical presence in the forum, usually in the form of an office or employees. Non-physical associations, such as sales, solicitations, or advertising,

are less likely to qualify as ‘continuous and systematic.’”) (footnotes omitted); *see also* Mary Twitchell, *supra*, at 185-186 (arguing that dicta in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), “supports the argument that general jurisdiction requires a very substantial contact with the forum”—that is, “something greater than continuous and systematic contacts is required for doing-business jurisdiction—perhaps a place of business, or even a principal place of business”).

In any event, it is clear that general doing-business jurisdiction over a non-resident defendant requires *at least* that the defendant have engaged in continuous and substantial business activities in the state. *See Dickson Marine*, 179 F.3d at 339; *see also* Mary Twitchell, *supra*, at 183 (general jurisdiction standard is appropriate if a defendant’s “‘continuous’ operations within the state . . . are ‘so substantial and of such a nature’ to justify dispute-blind jurisdiction”) (quoting *Int’l Shoe*, 326 U.S. at 317); Restatement (Second) of Conflicts § 47(2) & cmt. e.

In addition, “[e]ven if the defendant is engaged in ‘continuous and systematic’ activities within the forum state, due process requires that the exercise of general jurisdiction be reasonable, that is, it must meet the interest-balancing part of the minimum contacts test (*i.e.*, not be a denial of fair play and substantial justice).” 16 James Wm. Moore, § 108-41[1], at 108-47 (footnote and citation omitted).

Because of the extent of the contacts required to establish general jurisdiction, courts, understandably, have been reluctant to assert general jurisdiction over non-resident corporations. *Id.* at § 108-41[3], at 108-49; *see also* Eugene F. Scoles, *et al.*, *supra*, at § 5.13, at 318 (“In fact, cases finding jurisdiction solely on the basis of truly unrelated contacts are sufficiently rare that one commentator has concluded that the existence of such jurisdiction is essentially a ‘myth.’ Whether or not it qualifies as a myth, it is certainly true that courts usually have been reluctant to allow for jurisdiction based solely upon unrelated contacts”) (footnotes omitted).

Indeed, this Court has noted that foreign companies receive “deference” with regard to the similar specific jurisdiction requirement “that the acts of the defendant have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.” *Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269, 1275 (6th Cir. 1998). ““The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.”” *Id.* (quoting *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987)).⁶

⁶ There is no reason why the same solicitude for foreign corporations should not apply in the case of general jurisdiction.

II. A TEST FOR GENERAL JURISDICTION

As TMC's brief amply demonstrates, Plaintiffs have failed to establish the requisite degree and nature of TMC's activities, if any, in Ohio to establish that it would be reasonable to subject TMC to the general jurisdiction of Ohio courts. Indeed, TMC persuasively shows that it is a Japanese corporation headquartered in Japan. With respect to Ohio, TMC does not conduct business there, is not licensed to do business there, has no employees in Ohio, does not have a sales force in the state, does not own property there, does not advertise there, does not have bank accounts in the state, does not pay taxes in Ohio, and does not solicit sales in the state. *See* TMC Br. 5-6.⁷ In addition, as TMC also shows, the fact that Toyota vehicles are distributed in the U.S. – including in Ohio – by a TMC subsidiary, Toyota Motor Sales, U.S.A., Inc., provides no basis for an assertion of general jurisdiction over TMC. *See* TMC Br. 6-8, 21-23. These points compel the conclusion that the district court did not err in dismissing the claims against TMC.

The application of a helpful heuristic suggested by Professor Twitchell further confirms this conclusion. A “heuristic” is a “general rule of thumb” used for making complicated decisions. *See* Scott Plous, *The Psychology of Judgment*

⁷ In setting forth these indicia of TMC's *lack* of contacts with Ohio, we do not mean to imply that, if TMC *did* have such contacts with Ohio, they would suffice for general jurisdiction. Our point is that the absence of these contacts clearly precludes a finding of general jurisdiction.

and Decision Making 107, 109 (1993). For instance, the old saying, “Leaves of three, let them be!” is a heuristic for avoiding poison ivy.

Heuristics can be especially helpful in cases in which the issue under consideration does not lend itself to bright-line rules. The question whether a defendant’s contacts with a forum state are sufficiently continuous and substantial to justify the exercise of general jurisdiction is just such a case.

Thus, Professor Twitchell suggests the consideration of hypothetical cases to illuminate the nature of the court’s authority over a given defendant. She suggests that, in considering whether a defendant should be subject to a court’s general jurisdiction, the court should first consider

one or more hypothetical cases against the same defendant involving geographically distant disputes, wholly unrelated to the defendant’s forum contacts. A court should specifically consider whether it would have trouble asserting jurisdiction over such unrelated cases. If it sensed that it would generally dismiss such suits for lack of substantial contacts, or on reasonableness or forum non conveniens grounds, the court should recognize that a finding of jurisdiction in the case before it would be based not on principles of general, but of specific, jurisdiction. In other words, it would not have a regulatory relationship with the defendant to justify jurisdiction over any and all claims, but only of claims with some relationship to the defendant’s forum activities.”

Mary Twitchell, *supra*, at 205.⁸

Now, in this case, it may be unnecessary actually to engage in the heuristic thought-experiment that Professor Twitchell advocates – because the factual dispute here is itself so clearly and “wholly unrelated to the defendant’s forum contacts” (*id.*) But if there were any doubt about that, a consideration of a hypothetical along the lines suggested by Professor Twitchell will clearly show that the district court’s dismissal of Plaintiffs’ claims against TMC is unassailable.

Thus, consider a suit brought in the Northern District of Ohio against TMC by a South African office supply company that alleges that TMC breached a contract executed in South Africa to purchase paper clips, staplers, and staples – goods that are similar (but not identical) to goods sold in Ohio – for TMC’s Japan-based headquarters. It is indisputable that the Ohio district court would not have jurisdiction over TMC for such a suit and that it would be patently unreasonable to hale TMC into the Northern District of Ohio to answer such a suit. It follows from this conclusion that the district court’s decision was correct.

Our hypothetical cannot be challenged on the ground that it concerns activities of TMC that relate solely to events in foreign countries, whereas

⁸ Professor Rhodes has endorsed this test, as well, noting that it “would assist in restoring doctrinal purity to adjudicatory jurisdiction.” Charles W. “Rocky” Rhodes, *supra*, at 820.

Plaintiffs here raise a claim relating to a Toyota vehicle, and different Toyota vehicles are sold in Ohio by a different Toyota company, thereby allegedly giving Ohio a connection to the cause of action. Such considerations might be relevant if Plaintiffs were relying on *specific* jurisdiction. But as noted above, they are not, and for good reason: their claimed injury does not remotely relate to TMC's significant and purposeful activities – if any – that occurred in or were directed at Ohio. *See Dean*, 134 F.3d at 1273 (to establish specific jurisdiction, “[f]irst, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing the consequence in the forum state. Second, the cause of action must arise from the defendant’s activities there. Finally, the acts of the defendant or consequences must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable”) (quoting *Tobin v. Astra Pharmaceutical Prods., Inc.*, 993 F.2d 528 542-43 (6th Cir. 1993)); *see also* 16 James Wm. Moore, *supra*, § 108-42[2][c], at 108-58 (Supreme Court has held that, for purposes of establishing specific jurisdiction, the cause of action must relate to significant purposeful contacts with the forum that are “not ‘random,’ ‘fortuitous,’ or attenuated”); *id.* at § 108-42[3][a], at 108-59 to 108-60 (“In addition to the requirement that the cause of action derive from the contact with the forum state, it must also be shown that the contact is properly attributable to the defendant. In *Hanson v. Denckla*, [357 U.S. 235, 254 (1958),] the Supreme Court

announced that ‘it is essential in each case that there be some act by which the defendant purposefully availed itself of the privilege of conducting activities within the forum State, thus invoking the benefits of the protections of its laws.’”) (footnote omitted); *id.* at § 108-42[3][a], at 108-64 (stating that, in *Calder v. Jones*, 465 U.S. 783 (1984), the Supreme Court ruled that “personal jurisdiction could be based on a defendant’s (1) intentional actions (2) expressly aimed at the forum state (3) causing harm, the brunt of which is suffered, and which defendants knows is likely to be suffered, in the forum state”). Plaintiffs clearly, and correctly, recognize that they could not establish these bases for the exercise of specific jurisdiction.

The hypothetical that we have offered also is not vulnerable to the criticism that it involves a Japanese plaintiff, whereas the claim in this case was brought by Ohio plaintiffs. The domicile and residence of the *plaintiffs* is irrelevant to the general jurisdiction of a court over a *defendant* (unless, as is not the case here, the defendant originally was the plaintiff in the case and is defending against a counter- or cross-claim in the same case). See Mary Twitchell, *supra* at 181 (stating that “general jurisdiction rests wholly on the special relationship between the defendant and the state”); 16 James Wm. Moore, *supra*, at § 108.02[1] (3d ed. 1997) (“The type of connection or relationship between the *defendant* and the state determines the type of jurisdiction a court may exercise and the type of judgment it

may render. If the *defendant* personally has an appropriate connection with the state, the court may exercise personal jurisdiction over the *defendant*.”) (footnote omitted; emphasis added); 16 James Wm. Moore, *supra*, at § 108.31[1] (“In *International Shoe Co. v. Washington*, the Supreme Court established that personal jurisdiction rules must focus on the *defendant’s* contacts with the forum state.”) (footnote omitted; emphasis added); *cf. Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 (1984) (rejecting, in specific jurisdiction case, consideration of *plaintiff’s* residence with regard to jurisdiction and stating that “we have not to date required a plaintiff to have ‘minimum contacts’ with the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant”); *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977) (“Thus, the relationship among the *defendant*, the forum, and the litigation . . . became the central concern of the inquiry into personal jurisdiction.”) (footnote omitted; emphasis added).

There is, then, no basis for attacking the value of the heuristic hypothetical that we have offered, and that hypothetical makes it abundantly clear that the district court’s conclusion that it lacks general jurisdiction over TMC is correct.

CONCLUSION

For the foregoing reasons, as well as those elaborated upon in TMC’s brief, this Court should affirm the order of the district court.

Respectfully submitted,

John T. Whatley
Nancy Elizabeth Bell
ALLIANCE OF AUTOMOBILE
MANUFACTURERS, INC.
1401 Eye Street, N.W.
Washington, DC 20005
(202) 326-5500

Ellen Gleberman
ASSOCIATION OF INTERNATIONAL
AUTOMOBILE MANUFACTURERS, INC.
2111 Wilson Blvd., Suite 1150
Arlington, VA 22201
(703) 247-2119

Erika Z. Jones
Adam C. Sloane
MAYER BROWN LLP
1909 K Street, N.W.
Washington, DC 20006
(202) 263-3000

DECEMBER 12, 2007

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because

- this brief contains 5,592 words, according to the word-count facility in Microsoft Word, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or
- this brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. 32(a)(6) because:

- this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman, or
- this brief has been prepared in a monospaced typeface using _____ with _____.

Adam C. Sloane

Attorney for Amici Curiae Alliance of Automobile Manufacturers, Inc. and Association of International Automobile Manufacturers, Inc.

Dated: December 12, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2007, I served two bound copies of the foregoing brief, by overnight delivery on the parties herein, at the following addresses:

Douglas P. Desjardins, Esq.
CLAPP, DESJARDINS & ELY, PLLC
444 North Capitol Street, NW
Hall of the States, Suite 828
Washington, DC 20001

Attorneys for Plaintiffs/Appellants

Hilary S. Taylor, Esq.
Randy L. Taylor, Esq.
Jennifer A. Riester, Esq.
WESTON HURD
1900 Tower at Erieview
1301 East Ninth Street
Cleveland, OH 44114-1862

Attorneys for Defendant/Appellee
Thrifty Rent-A-Car System, Inc.

Edward A. Gray
Dennis P. Ziemba
ECKERT SEAMANS CHERIN &
MELLOTT, LLC
50 S. 16th Street
Two Liberty Place, 22nd Floor
Philadelphia, PA 19102

George D. Jonson, Esq.
Kelly C. Scandy, Esq.
MONTGOMERY, RENNIE, &
JONSON
36 E. Seventh Street
Suite 2100 Society Center
Cincinnati, OH 45202

Attorneys for Defendant/Appellee
Toyota Motor Corporation

Adam C. Sloane