No.

In the Supreme Court of the United States

MURCO WALL PRODUCTS, INC.,

Petitioner,

v.

MICHAEL D. GALIER,

Respondent.

On Petition for a Writ of Certiorari to the Oklahoma Court of Civil Appeals

PETITION FOR A WRIT OF CERTIORARI

EVAN M. TAGER
Counsel of Record
PAUL W. HUGHES
MATTHEW A. WARING
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
etager@mayerbrown.com

Counsel for Petitioner

QUESTION PRESENTED

This Court has held that, except in an "exceptional case," *general* personal jurisdiction over a corporate defendant exists only in the defendant's State of incorporation and principal place of business. See *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 760-61 & n.19 (2014). The Court has likewise held that a state court may exercise *specific* personal jurisdiction over an out-of-State corporation only when there is "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State" and that, "[w]hen there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Bristol-Myers Squibb Co.* v. *Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017) (quotation marks and brackets omitted).

In this case, rather than adhering to the limitations on general and specific jurisdiction recognized by this Court, the Oklahoma Court of Civil Appeals analyzed petitioner's challenge to the trial court's exercise of personal jurisdiction by inquiring whether "the totality of [petitioner's] contacts [with Oklahoma] makes an exercise of jurisdiction proper."

The question presented is:

Whether the "totality of contacts" standard applied by the Oklahoma Court of Civil Appeals comports with the Due Process Clause of the Fourteenth Amendment and this Court's precedents.

RULE 14.1(b) STATEMENT

Petitioner Murco Wall Products, Inc., was defendant/appellant before the Oklahoma Court of Civil Appeals.

Welco Manufacturing Company was also a defendant/appellant below.

Respondent Michael D. Galier was plaintiff/appellee before the Oklahoma Court of Civil Appeals.

RULE 29.6 STATEMENT

Petitioner Murco Wall Products, Inc., has no parent corporation. No publicly traded company owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF CONTENTS—continued

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

TABLE OF AUTHORITIES—continued

Page(s)

PETITION FOR A WRIT OF CERTIORARI

Petitioner Murco Wall Products, Inc., respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Civil Appeals in this case.

OPINIONS BELOW

The decisions of the Oklahoma Court of Civil Appeals (App., *infra*, 2a-25a) and the District Court of Oklahoma County (*id.* at 26a) are unpublished.

JURISDICTION

The judgment of the Oklahoma Court of Civil Appeals was entered on February 3, 2017. App., *infra*, 2a. The Oklahoma Supreme Court denied review on June 19, 2017. *Id.* at 1a. On August 30, 2017, Justice Sotomayor extended the time for filing a petition for a writ of certiorari in this Court to and including November 16, 2017. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

STATEMENT

In this product-liability action, the Oklahoma courts exercised personal jurisdiction over petitioner, an out-of-state corporation, based on a novel personal-jurisdiction test that looked to the "totality" of petitioner's Oklahoma contacts. The state appellate court that applied this test relied, apparently, on petitioner's having sold products in Oklahoma more than 40 years ago, but it never analyzed, or even posed the question, whether there was any connection between petitioner's Oklahoma sales and respondent's injuries.

That reasoning is flatly inconsistent with this Court's precedents. In numerous decisions, including

several just in the last few years, this Court has articulated clear rules governing when state courts' exercise of personal jurisdiction comports with due process. But the Oklahoma court failed to apply those rules, violating petitioner's due process rights.

This is not the first case in which the Oklahoma courts have ignored this Court's case law governing personal jurisdiction. This pattern of defiance does significant harm to businesses, like petitioner, that are haled into inhospitable out-of-state courts—as evidenced by the trial below, in which the jury rendered a verdict that assigned petitioner a facially implausible degree of fault for respondent's injuries. The Court accordingly should either summarily reverse the decision below or grant, vacate, and remand for further consideration in light of *Bristol-Myers Squibb Co.* v. *Superior Court of California*, 137 S. Ct. 1773 (2017), an approach it has taken in other cases in which lower courts have failed to apply the proper personal-jurisdiction standards.

A. Factual background.

Petitioner Murco Wall Products, Inc., is a family owned and operated company that has been a supplier of drywall materials (including joint compound), tools, and other supplies since 1971. It is incorporated in Texas and maintains its principal place of business in Fort Worth, Texas. App., *infra*, 22a. Murco's product line included joint compound products, some of which contained asbestos from 1971 until 1978, when the sale of such products was prohibited by the Consumer Product Safety Commission. Tr. of Proceedings, Afternoon Session at 53-54, 164, *Galier* v. *Murco Wall Products, Inc.*, No. CJ-2012-6920 (Okla. Dist. Ct. May 5, 2015).

Respondent Michael Galier, a citizen of Oklahoma, injured himself at work and was diagnosed with a hernia in April 2011. Tr. of Proceedings, Afternoon Session at 124-25, *Galier* v. *Murco* (May 11, 2015). After he underwent hernia surgery in March 2012, the excised hernia sac was sent for routine pathology, where it tested positive for mesothelioma. *Id.* at 125. Respondent has never exhibited any symptom of mesothelioma. *Id.* at 141. In November 2012, he nonetheless brought a personal-injury suit in the District Court for Oklahoma County against petitioner and 17 other manufacturers of asbestos-containing products. Pet. at 1, *Galier* v. *Borg-Warner Morse Tec Inc. et al.*, No. CJ-2012-6920 (Okla. Dist. Ct. Nov. 1, 2012). Respondent was tested for mesothelioma several additional times before and after he filed his complaint; all of the tests were negative. Tr. of Proceedings, Afternoon Session at 126-39, *Galier* v. *Murco* (May 11, 2015). More recently, against medical advice, respondent has declined to take subsequent tests or seek any treatment for mesothelioma. *Id.* at 138-39.

Respondent's theory is that he contracted mesothelioma due to asbestos exposure as a child. Respondent's father was a general contractor and real estate agent. Tr. of Proceedings, Afternoon Session at 31, *Galier* v. *Murco* (May 11, 2015). Respondent asserts that between 1969 and 1979, he visited his father's jobsites in Oklahoma, where he was exposed to joint compounds that contained asbestos. *Id.* at 151.

B. Proceedings below.

1. In the trial court, petitioner moved to dismiss the claims against it for lack of personal jurisdiction. App., *infra*, 26a. Respondent opposed the motion, arguing that petitioner was subject to specific personal

jurisdiction in Oklahoma. Notwithstanding respondent's choice to argue only that the trial court had *specific* jurisdiction, the court denied the motion to dismiss in a summary order that stated—in its entirety—that the court "has general jurisdiction over" petitioner. *Ibid.* Petitioner sought a writ of prohibition or mandamus from the Oklahoma Supreme Court, to no avail.

By the time of trial, only three of the original defendants remained, with the others having settled or been dismissed from the case. At trial, the evidence indicated that, during a portion of the relevant period, petitioner sold different kinds of joint compounds—some of which contained asbestos and some of which did not. of Proceedings, Afternoon Session at 53-56, *Galier* v. *Murco* (May 5, 2015).

Respondent did not provide details as to what Murco products allegedly caused his injury. During his deposition, respondent named four *other* manufacturers of joint compounds. Tr. of Proceedings, Afternoon Session at 98, *Galier* v. *Murco* (May 11, 2015). Following a recess, respondent altered his testimony and stated that he recalled seeing Murco products at job sites. *Ibid.* Respondent admitted that his "lawyer took me out to the hallway and refreshed my memory." *Id.* at 99. Respondent did not testify, however, whether any of the Murco products he recalled seeing contained asbestos. *Id.* at 109; Tr. of Proceedings, Afternoon Session at 152, *Galier* v. *Murco* (May 12, 2015).

Ultimately, the jury entered a $6 million award. App., *infra*, 4a. Although respondent sued at least 18 companies, and although respondent testified that he recalled several different products being present at job sites, the jury assigned 40% of the liability to pe-

titioner—and 60% to petitioner's co-defendant. *Ibid.* Inexplicably, the jury did not assign *any* liability to the several other manufacturers that respondent specifically identified during his testimony. *Id.* at 4a-5a.

2. Petitioner appealed the judgment to the Oklahoma Court of Civil Appeals, where it argued (among other things) that the judgment was void because the trial court lacked personal jurisdiction over it. App., *infra*, 22a.

The appellate court held that the question whether the trial court had personal jurisdiction turned on "whether the totality of the contacts" between petitioner and Oklahoma "makes an exercise of jurisdiction proper." App., *infra*, 22a (citing *Guffey* v. *Ostonakulov*, 321 P.3d 971, 975 (Okla. 2014)). The court then surveyed the relevant contacts between petitioner and Oklahoma, observing that petitioner made "tens of thousands of sales" in a two-year period beginning in 1972 directed to Oklahoma; that it employed a salesperson during that time period whose territory, though centered on Fort Worth, extended into Oklahoma; and that it entered into an agreement with Flintkote Company in Oklahoma City under which Murco would affix Flintkote labels to Murco products for resale by Flintkote.[1] *Id.* at 22a-23a. Given these contacts, the court concluded, "[t]he totality of circumstances convinces us that Murco purposefully availed itself of the privilege of conducting activities within Oklahoma." *Id.* at 23a.

---

[1] Respondent did not sue Flintkote, and the record is devoid of any evidence that he was ever exposed to a product labeled "Flintkote."

Petitioner sought a writ of certiorari from the Oklahoma Supreme Court, which denied review. App., *infra*, 1a. Of the nine-member court, one justice dissented, one justice recused, and one justice did not participate. *Ibid*.

REASONS FOR GRANTING THE PETITION

Daimler, *Walden* v. *Fiore*, 134 S. Ct. 1115 (2014), and *Bristol-Myers-Squibb* articulate clear limitations on state courts' exercise of personal jurisdiction over out-of-state defendants. The decision below cannot be squared with those decisions; indeed, the lower court made no effort to apply the legal tests announced by this Court. That decision is emblematic of a trend among Oklahoma state courts that have disregarded this Court's personal-jurisdiction jurisprudence. This Court should put an end to that obduracy by either summarily reversing or remanding for further consideration in light of *Bristol-Myers Squibb*.

A. The Oklahoma courts have persistently disregarded this Court's articulation of the limits on personal jurisdiction.

This Court has identified clear limitations that the Fourteenth Amendment's Due Process Clause imposes on the exercise of personal jurisdiction by state courts. The decision below—like other decisions from Oklahoma courts—failed to apply those limitations.

1. The Court has identified clear rules governing personal jurisdiction.

The Court's personal-jurisdiction cases distinguish between two kinds of personal jurisdiction: general and specific. General jurisdiction permits a court to adjudicate "any and all claims" against a de-

fendant that is "at home in the forum State," wherever in the world the claims arose. *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011). Specific jurisdiction, by contrast, empowers a court to adjudicate particular claims related to "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Ibid.*

a. General jurisdiction following *Daimler*.

For many decades, lower courts applied an amalgamation-of-contacts approach to general jurisdiction. Under that approach, a defendant was deemed subject to general jurisdiction in a forum if its contacts as a whole could be deemed "'substantial' or 'continuous and systematic.'" *Bauman* v. *Daimler-Chrysler Corp.*, 644 F.3d 909, 920 (9th Cir. 2011).

Under this "continuous and systematic" contacts approach, courts would aggregate the totality of a defendant's contacts with the forum state, considering factors such as employees located in the forum, property owned in the forum, corporate travel to the forum, and a host of other general factors. See, *e.g.*, *Pervasive Software, Inc.* v. *Lexware GmbH & Co. KG*, 688 F.3d 214, 231 (5th Cir. 2012); *Monge* v. *RG Petro-Mach. (Grp.) Co.*, 701 F.3d 598, 614-15, 620 (10th Cir. 2012); *Indah* v. *S.E.C.*, 661 F.3d 914, 923 (6th Cir. 2011); *KM Enters., Inc.* v. *Global Traffic Techs., Inc.*, 725 F.3d 718, 733 (7th Cir. 2013); *CollegeSource, Inc.* v. *AcademyOne, Inc.*, 653 F.3d 1066, 1074 (9th Cir. 2011).[2]

---

[2] Courts regularly found general jurisdiction to be present under this standard. See, *e.g.*, *Wells Fargo Bank, N.A.* v. *RLJ*

In *Daimler*, this Court displaced that amorphous approach with a more precise test governing when a corporate defendant is considered to be "at home" in a forum State and hence subject to general jurisdiction there. Under *Daimler*, a corporation is subject to general jurisdiction in its State of incorporation and its principal place of business, and general jurisdiction over the corporation will not exist elsewhere except in an "exceptional case," such as when a corporation's headquarters has temporarily relocated. 134 S. Ct. at 760, 761 n.19 (citing *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)). This straightforward rule "applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued." *BNSF Ry. Co.* v. *Tyrrell*, 137 S. Ct. 1549, 1559 (2017).

In adopting this rule, the Court expressly repudiated the aggregation-of-contacts test that previously governed. Indeed, the plaintiffs in *Daimler* argued—and the Ninth Circuit had held—that the defendant was subject to general jurisdiction in California because it engaged in "'a substantial,

---

Lodging Trust, 2013 WL 5753805, at *5 (N.D. Ill. 2013); *Neeley* v. *Wolters Kluwer Health, Inc.*, 2013 WL 3929059, at *6-7 (E.D. Mo. 2013); *United States ex rel. Barko* v. *Halliburton Co.*, 952 F. Supp. 2d 108, 116 (D.D.C. 2013); *Ruben* v. *United States*, 918 F. Supp. 2d 358, 360-61 (E.D. Pa. 2013); *Hess* v. *Bumbo Int'l Tr.*, 954 F. Supp. 2d 590, 595 (S.D. Tex. 2013); *ATI Indus. Automation, Inc.* v. *Applied Robotics, Inc.*, 2013 WL 1149174, at *3-5 (M.D.N.C. 2013); *Ashbury Int'l Grp., Inc.* v. *Cadex Def., Inc.*, 2012 WL 4325183, at *7-8 (W.D. Va. 2012); *McFadden* v. *Fuyao N. Am., Inc.*, 2012 WL 1230046, at *2-3 (E.D. Mich. 2012); *Genocide Victims of Krajina* v. *L-3 Servs., Inc.*, 804 F. Supp. 2d 814, 820-21 (N.D. Ill. 2011); *Hartford Cas. Ins. Co.* v. *Foxfire Printing & Packaging, Inc.*, 2011 WL 4345850, at *5 (N.D. Ill. 2011).

continuous, and systematic course of business'" there. *Daimler*, 134 S. Ct. at 761. But this Court rejected "[t]hat formulation" of the general-jurisdiction standard as "unacceptably grasping." *Ibid.*

Courts have broadly acknowledged that *Daimler* displaced prior law with a new, more restrictive standard governing the exercise of general jurisdiction. See, *e.g.*, *Brown* v. *Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016) ("*Daimler* established that, except in a truly 'exceptional' case, a corporate defendant may be treated as 'essentially at home' only where it is incorporated or maintains its principal place of business."); *Kipp* v. *Ski Enter. Corp. of Wis.*, 783 F.3d 695, 698 (7th Cir. 2015) (*Daimler*'s "stringent criteria" are more restrictive "than the 'substantial, continuous, and systematic course of business' that was once thought to suffice"); *Martinez* v. *Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) ("*Daimler* makes clear the demanding nature of the standard for general personal jurisdiction over a corporation."); *Gucci Am., Inc.* v. *Weixing Li*, 768 F.3d 122, 135 (2d Cir. 2014) (*Daimler* "expressly cast doubt on previous Supreme Court and New York Court of Appeals cases"); *Monkton Ins. Servs., Ltd.* v. *Ritter*, 768 F.3d 429, 432 (5th Cir. 2014).

b. Specific jurisdiction after *Walden* and *Bristol-Myers Squibb*.

This Court has also repeatedly examined the due process limits on specific jurisdiction—dating back to *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). Two recent decisions of the Court have been particularly important in this area.

First, in 2014, the Court explained that in order for the minimum-contacts requirement to be satisfied

and for "a State to exercise jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121 (emphasis added).

In *Walden*, the Court considered whether a Nevada court had personal jurisdiction over a federal agent in Georgia who had confiscated cash from the plaintiffs (residents of Nevada) while they were transiting through the Atlanta airport. It held that the exercise of specific jurisdiction was improper. *Ibid.*

In the unanimous majority opinion, the Court articulated two important principles that govern the "necessary relationship" between a plaintiff's claims and the defendant's forum activities. First, "the relationship must arise out of contacts that the defendant *himself* creates with the forum State" (*id.* at 1122 (quotation marks omitted); contacts created by plaintiffs or third parties are irrelevant to the specific-jurisdiction inquiry. And second, the analysis "looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Ibid.* While the defendant's contacts with the plaintiff may be relevant to the question whether he has sufficient minimum contacts with the forum, "the plaintiff cannot be the only link between the defendant and the forum." *Ibid.*

The Court again addressed the requirement of relatedness between a lawsuit and the defendant's forum contacts last Term, in *Bristol-Myers Squibb*.

There, a large group of plaintiffs who resided outside California joined together with a number of California-resident plaintiffs to sue a drug manufac-

turer in California, asserting various product-defect claims based on their use of one of the defendant's drugs. 137 S. Ct. at 1778. The defendant moved to quash service of summons as to the out-of-state plaintiffs for lack of personal jurisdiction, arguing that California lacked specific jurisdiction over these plaintiffs' claims because none of the events relevant to their claims occurred in California. But the California Supreme Court held that California courts could exercise specific jurisdiction over the out-of-state plaintiffs' claims, reasoning that specific jurisdiction does not require that each plaintiff's claims "arise directly from the defendant's forum contacts." See *Bristol-Myers Squibb Co.* v. *Superior Court*, 377 P.3d 874, 887 (Cal. 2016) (quotation omitted). Instead, the California court held, it was sufficient that the defendant had conducted a substantial amount of marketing activity in California as part of a "common nationwide course of distribution" that gave rise to both the in-state and out-of-state plaintiffs' claims. *Id.* at 888.

This Court reversed. Again, the Court emphasized that specific jurisdiction requires "an activity or an occurrence that takes place in the forum State." 137 S. Ct. at 1781 (alteration and quotation omitted). "When there is no such connection," the Court held, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Ibid.* In light of this rule, the Court concluded, the California court's approach to specific jurisdiction—which this Court deemed to be, in fact, "a loose and spurious form of general jurisdiction"—violated due process. *Ibid.* "What is needed," the Court explained, "is a connection between the forum and the *specific claims* at issue." *Ibid.* (emphasis added).

2. The decision below is emblematic of Oklahoma courts' failure to apply these limits.

a. The court below engaged in just the sort of "loose and spurious form of general jurisdiction" inquiry that the Court rejected in *Bristol-Myers Squibb*.

The court analyzed petitioner's personal-jurisdiction challenge under its own *sui generis* test, which looked to the "totality of circumstances" regarding petitioner's contacts with Oklahoma. App., *infra*, 23a. In particular, the court considered that petitioner generally made sales into Oklahoma, that petitioner employed a salesman in Fort Worth, Texas, whose territory extended to Oklahoma, and that petitioner entered into a contractual relationship with a company in Oklahoma. *Ibid*.

The court did not specify whether it relied on general or specific jurisdiction to affirm the trial court's judgment—but in either case, the court's holding would be erroneous, because it failed to acknowledge the clear and controlling tests laid out in *Daimler*, *Walden*, *Bristol-Myers Squibb*, and this Court's other personal-jurisdiction decisions.

To the extent that the Oklahoma court held that petitioner is subject to *general* jurisdiction in Oklahoma, its decision clearly conflicts with *Daimler*. Under *Daimler*, because the Oklahoma Court of Civil Appeals did not—and could not—find that this is an "exceptional case" warranting a deviation from the general rule, petitioner is subject to general jurisdiction only in its State of incorporation as well as its principal place of business. *Daimler*, 134 S. Ct. at 761 n.19. Although the Court of Civil Appeals noted

that petitioner was incorporated and based in Texas (App., *infra*, 22a), it never acknowledged the significance of those facts to the question of general jurisdiction. Nor did it ask whether this case was an "exceptional case" of the kind contemplated in *Daimler*.[3]

The Court of Civil Appeals' reasoning likewise cannot be squared with the standard for specific jurisdiction articulated by this Court. In the lower court's view, the critical question was whether the "totality of circumstances" established that petitioner had "purposefully availed itself of the privilege of conducting activities within Oklahoma." App., *infra*, 23a. This language appears to hearken back to decisions of this Court holding that, when a plaintiff's suit is based on a product made and sold by the defendant in a particular State, the defendant may be deemed to have "purposefully availed" itself of the privilege of conducting business there and thereby subjected itself to the State's jurisdiction. See, *e.g.*, *Asahi Metal Indus. Co.* v. *Superior Court of California*, 480 U.S. 102 (1987); *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980).

But the Court's more recent decisions—particularly *Walden* and *Bristol-Myers Squibb*—have made clear that purposeful availment is not the only or even most important requirement for specific jurisdiction. On the contrary, the *sine qua non* of specific jurisdiction is that the defendant's "*suit-related*

---

[3] In any event, this clearly is *not* the sort of case that would qualify for the exception to *Daimler*'s general rule. In *Perkins*, a company temporarily moved its principal place of business as a result of war; those are the circumstances that "exemplified" when *Daimler*'s exception might apply. *BNSF*, 137 S. Ct. at 1558. There are no remotely comparable circumstances here.

conduct" must create a "substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121 (emphasis added).

The Court of Civil Appeals altogether omitted this critical requirement from its analysis, holding simply that "the totality of [petitioner's] contacts makes an exercise of jurisdiction proper." App., *infra*, 22a. That conclusory statement is no substitute for finding a "substantial connection" (*Walden*, 134 S. Ct. at 1121) between the defendant's forum activities and the "very controversy" raised in the lawsuit (*Goodyear*, 564 U.S. at 919).

b. The error committed below is emblematic of a troubling trend: The Oklahoma courts misapply—or outright ignore—this Court's guidance on the permissible scope of personal jurisdiction. Indeed, here, the *sole* personal-jurisdiction authority on which the Court of Civil Appeals relied (App., *infra*, 22a) was *Guffey* v. *Ostonakulov*, 321 P.3d 971, 977 (Okla. 2014).

In *Guffey*, the Oklahoma Supreme Court elided the distinction between general and specific jurisdiction. Citing to boilerplate in *International Shoe*, the court concluded that "when a non-resident deliberately engages in significant activities in a forum state or creates continuing obligations between the non-resident and the residents of the forum, the non-resident submits to the jurisdiction of the state." 321 P.3d at 976. The court underscored that "[t]he focus is on whether there is 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." *Ibid.* And it concluded that "[a] single act can support jurisdiction so long as it creates a substantial connec-

tion with the forum state." *Ibid*. The court ultimately instructed Oklahoma courts to consider "the totality of contacts between the non-resident defendants and Oklahoma." *Id*. at 978.

This standard—which conflates general and specific jurisdiction and fails to apply the correct standard for either—is unquestionably wrong. It ignores *Daimler*'s limitation that general jurisdiction is confined, absent "exceptional" circumstances, to a defendant's principal place of business and place of incorporation. And it disregards the necessity of identifying in-forum "suit-related conduct" as a prerequisite for the exercise of specific jurisdiction. *Walden*, 134 S. Ct. at 1121.[4]

c. The Oklahoma courts' indifference to (or defiance of) this Court's personal-jurisdiction precedents is of paramount concern to civil litigants.

The due process restrictions on personal jurisdiction "give[] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010).

---

[4] The "totality of contacts" test has been applied in numerous other Oklahoma decisions as well. See, *e.g.*, *Mastercraft Floor Covering, Inc.* v. *Charlotte Flooring, Inc.*, 313 P.3d 911, 916 (Okla. 2013); *Conoco, Inc.* v. *Agrico Chem. Co.*, 115 P.3d 829, 832 n.1 (Okla. 2004); *Hough* v. *Leonard*, 867 P.2d 438, 443 (Okla. 1993).

Jurisdictional approaches like the "totality" test applied by the Oklahoma courts are anything but predictable. Under that test, a company like petitioner cannot be sure which of its activities might expose it to personal jurisdiction in another State; the only way to control the company's legal risk is not to do business in another State at all. It is essential that this Court remedy this problem by curbing state courts' use of erroneous jurisdictional tests like the one applied below.

B. Summary reversal is warranted.

Given the "obvious" nature of the error below, summary reversal is warranted. See *Gonzales* v. *Thomas*, 547 U.S. 183, 185 (2006). Indeed, the Court has often summarily reversed when, as here, a state court has failed to apply the Court's governing precedent. See, *e.g.*, *Rippo* v. *Baker*, 137 S. Ct. 905, 907 (2017) ("We vacate the Nevada Supreme Court's judgment because it applied the wrong legal standard" and "did not ask the question our precedents require."); *Amgen Inc.* v. *Harris*, 136 S. Ct. 758, 759 (2016) (per curiam) (summarily reversing because "the Ninth Circuit failed to properly evaluate the complaint" under the framework of *Fifth Third Bancorp* v. *Dudenhoeffer*, 134 S. Ct. 2459 (2014)).

Indeed, only five years ago, this Court summarily reversed a decision of the Oklahoma Supreme Court, explaining that "[t]he Oklahoma Supreme Court's decision disregards this Court's precedents." *Nitro-Lift Techs., LLC* v. *Howard*, 568 U.S. 17, 20 (2012) (per curiam). The same is true here—and the same result is therefore warranted.

C. Alternatively, the Court should grant, vacate, and remand.

Alternatively, the Court should grant the petition, vacate the decision below, and remand for further proceedings in light of *Bristol-Myers Squibb*.

Bristol-Myers Squibb—which was decided after the decision below—made it crystal clear that if there is no "substantial" and direct connection between the defendant's forum activities and the plaintiff's lawsuit, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." 137 S. Ct. at 1781. Given an opportunity to evaluate the case in light of *Bristol-Myers Squibb*, the Oklahoma Court of Civil Appeals may—indeed, likely would—conclude that respondent failed to adduce evidence sufficient to support the exercise of specific jurisdiction with respect to his claim against petitioner.

Indeed, this Court recently granted, vacated, and remanded a case arising from Arkansas in light of *Bristol-Myers Squibb*. In that case, the state court had applied a specific-jurisdiction test that made the relationship between the defendant's forum contacts and the litigation only one of five factors to be considered. See *Lawson* v. *Simmons Sporting Goods, Inc.*, 511 S.W.3d 883, 887 (Ark. Ct. App. 2017), *cert. granted, vacated, and remanded*, 2017 WL 3136824 (U.S. Oct. 2, 2017). If this Court's intervention was warranted there—where the state court had at least taken the connection between the defendant's forum contacts and the lawsuit into account—*a fortiori* it is warranted here, where the Oklahoma Court of Civil Appeals failed altogether to determine whether such a connection existed.

CONCLUSION

The Court should summarily reverse or, in the alternative, grant, vacate, and remand for further consideration in light of *Bristol-Myers Squibb*.

Respectfully submitted.

EVAN M. TAGER
Counsel of Record
PAUL W. HUGHES
MATTHEW A. WARING
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000
etager@mayerbrown.com

Counsel for Petitioner

NOVEMBER 2017