STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 8, 2018)

ALISON N. MARTINS, Individually and as Co-Executrix of the ESTATE OF JOHN MARTINS, Plaintiff,	:	
v.	:	
BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC; BRIDGESTONE AMERICAS, INC.; BRIDGESTONE RETAIL OPERATIONS, LLC; PETERBILT OF CONNECTICUT, INC. d/b/a PETERBILT OF RHODE ISLAND, INC.; PETERBILT MOTORS, CO.; PACCAR, INC.; PATRIOT SALES AND SERVICE, INC.; MILLER INDUSTRIES TOWING EQUIPMENT, INC.; and ABC CORPORATION, Defendants.	:	**C.A. No. PC-2017-2420**

DECISION

STERN, J. Defendants Bridgestone Americas Tire Operations, LLC (BATO), Bridgestone Americas, Inc. (BSAM), and Bridgestone Retail Operations, LLC (Bridgestone Retail) (collectively, the Bridgestone Entities) and Defendants PACCAR, Inc. (PACCAR) and Peterbilt Motors, Co. (Peterbilt Motors) have filed motions to dismiss for lack of personal jurisdiction. Jurisdiction is pursuant to Super. R. Civ. P. 12(b)(2).

I

Facts and Travel

The decedent, John Martins (Decedent), was the owner of Sterry Street Towing located in Attleboro, Massachusetts (Sterry Street). Second Am. Compl. (Compl.) at 6. On or about

September 4, 2015, he drove a Sterry Street rotator truck from Attleboro, Massachusetts through Rhode Island into Connecticut to assist in the recovery of a school bus. *Id.* at 7. After this job was completed, and on his way back to his business, a Bridgestone M844 tire located on the left front rotator truck's cab suffered a belt and/or tread separation, rendering the vehicle uncontrollable. *Id.* This incident occurred in Connecticut, before Decedent could cross the Connecticut/Rhode Island border. *Id.* The truck veered off the highway, crashed into a tree, and caught fire. *Id.* Decedent suffered severe personal injuries and was airlifted from the accident scene in Connecticut to Rhode Island Hospital. *Id.*; Pl.'s Obj. to Bridgestone Entities' Mot. to Dismiss at 5; Pl.'s Obj. to PACCAR and Peterbilt Motors' Mot. to Dismiss at 3. He remained in the hospital for the next three weeks and subsequently died from his injuries. *Id.*

Decedent was a Pawtucket, Rhode Island resident. *Id.* at 1. After the Probate Court granted Decedent's heirs estate administration following his death, Alison N. Martins, in her individual capacity and as Co-Executrix of the Decedent's Estate (Plaintiff), filed this suit on behalf of Decedent against BATO; Peterbilt of Connecticut, Inc. d/b/a Peterbilt of Rhode Island, Inc. (Peterbilt of Rhode Island); Patriot Sales and Service, Inc. (Patriot); PACCAR; Miller Industries Towing Equipment, Inc. (Miller Industries); and ABC Corporation. Subsequently, Plaintiff filed two Amended Complaints which, in addition to these already named Defendants, added BSAM, Bridgestone Retail, and Peterbilt Motors as Defendants.[1]

Plaintiff states that on September 23, 2005, Sterry Street entered into negotiations with Patriot to purchase a new Peterbilt Model 379 rotator truck. Pl.'s Obj. to Bridgestone Entities' Mot. to Dismiss (Pl.'s Obj.), Ex. 4. Patriot—a Pawtucket, Rhode Island authorized dealer of tow trucks and related equipment—acted as the broker for Sterry Street to locate a proper supplier of

[1] This Court will refer to all of these Defendants collectively as Defendants.

the truck, and on September 26, 2005 completed a purchase order with Miller Industries to supply the rotator system portion of the rotator truck. *Id.* at Ex. 5. According to Plaintiff, this purchase order lists the "Ship To" address as Patriot's Rhode Island address. *Id.* There was also a further contract entered into between the parties on October 14, 2005; this contract also identified Patriot as a corporation located in Rhode Island. *Id.* at Ex. 6.

Then, on October 20, 2005, Patriot entered into a contract with Peterbilt of Rhode Island, located in Johnston, Rhode Island, to supply the cab and chassis of the rotator truck. *Id.* at Ex. 7. This contract also included a specific request for Bridgestone tires on the front axle. *Id.* This document had the Peterbilt logo in the header of every page and included references to PACCAR and its PACCAR Financial services. *See id.* It also included the shipping destination for the cab and chassis as the Miller Industries plant in Tennessee. *Id.*

On November 30, 2005, Peterbilt Motors issued a certificate of origin for the rotator truck to Peterbilt of Rhode Island of 11 Industrial Lane, Johnston, RI 02919. *Id.* at Ex. 8. According to Plaintiff, there was another invoice sent on or about March 15, 2006 between Miller Industries and Patriot that indicated that the delivery address was "Patriot Sales and Service, Inc., 531 Main Street, Pawtucket, RI 02860." *Id.* at Ex. 9.

On or about May 25, 2006, Sterry Street issued a check to Patriot for $108,801.55 as partial payment for the truck; this check indicated that Patriot's address was still 531 Main Street, Pawtucket, RI 02860. *Id.* at Ex. 10. On or about August 18, 2006, Patriot sold the rotator truck to Sterry Street, and at that time, the Bridgestone tire in question was mounted as original equipment on the front left cab of the rotator truck. *Id.* at Ex. 11. The Bridgestone Entities, PACCAR, and Peterbilt Motors filed motions to dismiss this matter for lack of personal

jurisdiction under Super. R. Civ. P. 12(b)(2).[2] Plaintiff timely objected to both motions to dismiss.

II

Standard of Review

"It is well established that to withstand a defendant's Rule 12(b)(2) motion to dismiss a complaint for lack of *in personam* jurisdiction, a plaintiff must allege sufficient facts to make out a *prima facie* case of jurisdiction." *Cerberus Partners, L.P. v. Gadsby & Hannah, LLP*, 836 A.2d 1113, 1118 (R.I. 2003) (citing *Ben's Marine Sales v. Sleek Craft Boats*, 502 A.2d 808, 809 (R.I. 1985)). "A *prima facie* case of jurisdiction is established when the requirements of Rhode Island's long-arm statute are satisfied." *Id.* (citing *Ben's Marine Sales*, 502 A.2d at 809). General Laws 1956 § 9-5-33(a) provides the following:

> "Every foreign corporation, every individual not a resident of this state . . . and every partnership or association, composed of any person or persons not such residents, that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island . . . in every case not contrary to the provisions of the constitution or laws of the United States." Sec. 9-5-33(a).

"As interpreted by [the Rhode Island Supreme Court], § 9-5-33(a) permits the exercise of jurisdiction over nonresident defendants to the fullest extent allowed by the United States Constitution." *Rose v. Firstar Bank*, 819 A.2d 1247, 1250 (R.I. 2003) (citing *McKenney v. Kenyon Piece Dye Works, Inc.*, 582 A.2d 107, 108 (R.I. 1990)). "Absent a finding that these minimum contacts exist, the due process clause of the Fourteenth Amendment prohibits a state court from rendering a valid personal judgment against the defendant." *Almeida v. Radovsky*, 506 A.2d 1373, 1375 (R.I. 1986) (citing *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)).

[2] This Court notes that Defendant Miller Industries has also filed a motion to dismiss for lack of personal jurisdiction; however, this motion is not presently before this Court.

III

Analysis

A

Underlying Law of Personal Jurisdiction

"The Due Process clause of the United States Constitution limits the exercise of personal jurisdiction over nonresident defendants to those who 'have certain minimum contacts with [the forum] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Rose*, 819 A.2d at 1250 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). In applying this standard, this Court will analyze the "'quality and quantity of the potential defendant's contacts with the forum.'" *Id.* (quoting *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 288 (1st Cir. 1999)). "The minimum contacts requirement protects defendants from the burden of having to litigate in an inconvenient forum and it ensures that states 'do not reach out beyond [their] limits . . . as coequal sovereigns in a federal system.'" *Cerberus Partners*, 836 A.2d at 1118 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

Determining minimum contacts that will satisfy the requirements of due process will depend upon the facts of each particular case. *Ben's Marine Sales*, 502 A.2d at 810. The fundamental question is whether "'the defendant's conduct and connection with the forum State are such that [it] should reasonably anticipate being haled into court there.'" *Bendick v. Picillo*, 525 A.2d 1310, 1312 (R.I. 1987) (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

This Court has personal jurisdiction over a nonresident defendant when a plaintiff can prove either general or specific jurisdiction. *Cassidy v. Lonquist Mgmt. Co., LLC*, 920 A.2d 228, 232 (R.I. 2007) (quoting *Cerberus Partners*, 836 A.2d at 1118). "When its contacts with a state

are continuous, purposeful, and systematic, a nonresident defendant will subject itself to the general jurisdiction of that forum's courts with respect to all claims, regardless of whether they relate to or arise out of the nonresident's contacts with the forum." *Rose*, 819 A.2d at 1250 (citing *Int'l Shoe*, 326 U.S. at 318). If a nonresident's contacts with this forum are sufficient to amount to general personal jurisdiction, then they may be sued in this forum for claims entirely distinct from those activities. *Id.* at 1251 (quoting *Int'l Shoe*, 326 U.S. at 318); *see also Casey v. Treasure Island at Mirage*, 745 A.2d 743, 744 (R.I. 2000) (*per curiam*). When a defendant's contacts with this forum are not sufficient to exercise general jurisdiction, this Court may nonetheless exercise specific personal jurisdiction if the claim "'sufficiently relates to or arises from any of a defendant's purposeful contacts with the forum.'" *Cerberus Partners*, 836 A.2d at 1119 (quoting *Rose*, 819 A.2d at 1251).

Moreover, the "gestalt factors" help determine whether the exercise of personal jurisdiction is reasonable. *Id.* at 1121. "These factors include the burden on the defendant, the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining the most effective resolution of the controversy, and the shared interest of the several states in furthering fundamental substantive social policies." *Id.* (citing *World-Wide Volkswagen*, 444 U.S. at 292 and *State of Md. Cent. Collection Unit v. Bd. of Regents for Educ. of Univ. of R.I.*, 529 A.2d 144, 151 (R.I. 1987)). These considerations can be used to establish that jurisdiction is reasonable over the defendant when there are fewer minimum contacts than necessary. *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)). However,

> "[t]hese factors do not even come into play . . . until it has been shown that a defendant has purposefully established minimum contacts with the forum state. Due process requires at least some act by which a defendant purposefully avails itself of the privilege of conducting activities within the forum state; it is the *sine qua non* of personal jurisdiction. Until such an act is established, the

> reasonableness of exercising jurisdiction is not even an issue." *Id.* at 1121-22.

1

General Jurisdiction

This Court may not exercise general jurisdiction over a nonresident defendant unless the defendant's "contacts with a state are continuous, purposeful, and systematic." *Rose*, 819 A.2d at 1250 (citing *Int'l Shoe*, 326 U.S. at 317). Because Rhode Island's long arm statute provides for the exercise of jurisdiction over nonresident defendants to the greatest extent as allowed by constitutional due process limits, this Court looks to the Due Process Clause of the Fourteenth Amendment to determine such jurisdiction. *See Almeida*, 506 A.2d at 1374-75.

General jurisdiction is appropriate when—despite the cause of action not arising from any specific contact with the state—the defendant is "at home" in the forum state. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Specifically,

> "*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 as at home.'" *Id.* at 760 (quoting *Goodyear*, 564 U.S. at 924).

"With respect to a corporation, the place of incorporation and principal place of business are paradig[m] . . . bases for general jurisdiction." *Id.* (internal citations omitted). The Supreme Court has noted, however, that outside these two restrictions, general jurisdiction—in an exceptional case—can also be found if "a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 761 n.19. The Court did stress,

however, that considering general jurisdiction "in every State in which a corporation engages in a substantial, continuous, and systematic course of business" is "unacceptably grasping." *Id.* at 761. Instead, the Supreme Court elaborated that the inquiry is not whether a foreign corporation's in-forum contacts are continuous and systematic, but whether that corporation's "'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State.'" *Id.* (quoting *Goodyear*, 564 U.S. at 919).

2

Specific Jurisdiction

"For specific personal jurisdiction to exist . . . the defendant must have performed 'some act by which [it] purposefully [availed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" *Cerberus Partners*, 836 A.2d at 1119 (quoting *Rose*, 819 A.2d at 1251). Factors determining whether specific jurisdiction exists include "the relationship among the defendant, the forum, and the litigation." *State of Md. Cent. Collection Unit*, 529 A.2d at 151 (citing *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). Establishing "specific jurisdiction is a far less onerous burden for the plaintiff to carry than that of general jurisdiction." *Cerberus Partners*, 819 A.2d at 1119 (citing *Ben's Marine Sales*, 502 A.2d at 812).

Additionally, "the 'cornerstones upon which the concept of purposeful availment rest are voluntariness and foreseeability.'" *Id.* at 1121 (quoting *Sawtelle v. Farrell*, 70 F.3d 1381, 1391 (1st Cir. 1995)). As mentioned above, "'the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum [s]tate are such that he should reasonably anticipate being haled into court there.'" *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 297). "Jurisdiction is proper when the contacts proximately result from actions that

create a 'substantial connection' with the forum state." *Id.* (quoting *McGee*, 355 U.S. at 223). For example,

> "'where the defendant 'deliberately' . . . has created 'continuing obligations' between [itself] and residents of the forum, . . . [it] manifestly has availed [itself] of the privilege of conducting business there, and because [its] activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require [it] to submit to the burdens of litigation in that forum as well.'" *Id.* (quoting *Burger King*, 471 U.S. at 475-76).

B

Analysis of Bridgestone Entities' Motion to Dismiss

1

General and Specific Jurisdiction

BATO is a Delaware limited liability company with its corporate headquarters and principal place of business in Nashville, Tennessee. Brian Queiser Aff. (Queiser Aff.) at ¶¶ 9-10. BATO's tires are designed predominantly at its facilities in Akron, Ohio and have never been designed in Rhode Island. *Id.* at ¶ 12. It is the Bridgestone entity that designs, manufactures, and distributes original Bridgestone tires generally, as well as original equipment tires on cars and/or trucks manufactured by various entities which select and install the Bridgestone tires. *Id.* at ¶¶ 12-14, 19, 23. BATO does not have any tire manufacturing plants or distribution centers in Rhode Island. *Id.* at ¶¶ 13-14. It owns and operates more than 160 commercial truck and tire servicing facilities in more than thirty states, but does not own and operate such facilities in Rhode Island. *Id.* at ¶ 15. According to the 2016 company data, BATO had one employee in Rhode Island: a local area sales person who worked from his home, as contrasted with over 12,000 BATO employees nationwide. *Id.* at ¶ 17. BATO's 2016 revenues from sales in Rhode Island were less than $35 million, as contrasted with nearly $6 billion in

total revenue; Rhode Island sales constituted less than one percent of BATO's total U.S. sales. *Id.*

BATO's parent company is BSAM, a Nevada corporation that maintains its corporate headquarters and principal place of business in Nashville, Tennessee. *Id.* at ¶ 18. BSAM is a holding company for different subsidiaries in North and South America; it does not design, manufacture, or distribute tires, nor does it own any property, employ any persons, or operate any stores in Rhode Island. *Id.* at ¶¶ 18-20. BSAM has other subsidiaries that do business in Rhode Island, such as Bridgestone Retail; Bridgestone Retail, BATO, and BSAM are separate and distinct corporations. *Id.* at ¶ 21. Bridgestone Retail is a Delaware limited liability company where, for decades, its corporate headquarters and principal place of business have been in Illinois. *Id.* at ¶ 21. Bridgestone Retail operates tire and automotive service centers throughout the United States and offers retail products and services for passenger cars and light trucks. *Id.* at ¶ 22. It does not design or manufacture tires, and it is not involved in the sale of original equipment tires to manufacturers of vehicles. *Id.* at ¶ 23. As of 2016, Bridgestone Retail operated five tire and automotive service centers in Rhode Island and had fewer than seventy-five employees either living or working in Rhode Island. *Id.* at ¶ 24. These statistics contrast with nearly 2200 retail stores and 22,000 employees nationwide. *Id.* Bridgestone Retail's 2016 sales revenues from Rhode Island constituted less than 0.3 percent of Bridgestone Retail's total U.S. sales. *Id.* at ¶ 25.

In sum, the Bridgestone Entities assert that there are critical facts that confirm that personal jurisdiction is lacking against them. Specifically, the Plaintiff admits that the accident at issue took place entirely within Connecticut, and not Rhode Island; the tire at issue was an original equipment tire to the tow truck at issue and therefore not purchased from a retail store in

Rhode Island; no Bridgestone entity sold the alleged original equipment tire at issue to any person or entity in Rhode Island; the alleged original equipment tire at issue was designed and manufactured entirely in Tennessee; the alleged original equipment tire at issue was sold to PACCAR/Peterbilt Motors in Tennessee; the tow truck in issue was manufactured in Tennessee, and not Rhode Island; and when the tow truck was manufactured in Tennessee, it was fitted with original equipment tires. Lastly, when the tow truck was complete, Sterry Street picked it up in Tennessee.

In response, Plaintiff alleges that the Bridgestone Entities are subject to personal jurisdiction because the subject failed tire was destined for Rhode Island as original equipment on a rotator truck as part of the initial manufacture and sale, complete with a Certificate of Origin identifying Rhode Island. Additionally, on the date of the accident, the subject tire traveled on Rhode Island highways, and Decedent was flown via medivac helicopter from the accident scene (just over the Rhode Island border in Connecticut) to Rhode Island Hospital, where he was treated for his injuries for several weeks following the accident. Decedent was also a resident of Rhode Island on the date of the accident as well as on the date of his death, and he died in Rhode Island at Rhode Island Hospital on September 27, 2015. Moreover, Plaintiff contends that the Bridgestone Entities fully availed themselves of the privilege of conducting business in Rhode Island, and this wrongful death arises from the Bridgestone Entities' connections with Rhode Island. Specifically, according to Plaintiff, these connections are the $35 million in revenue that BATO generated in Rhode Island alone; the fact that there was one BATO salesperson in Rhode Island to promote its business; that Bridgestone Retail operates, advertises, and sells products at six Firestone Complete Auto Care centers in Rhode Island; that all three Bridgestone Entities are registered to conduct business in Rhode Island; and that the Bridgestone Entities operate a

website directing customers to where they can purchase Bridgestone tires in Rhode Island. This last factor, according to Plaintiff, also supports general jurisdiction over the Bridgestone Entities in Rhode Island. Lastly, Plaintiff argues the mere fact that Sterry Street drove down to Tennessee to pick up the tow truck is irrelevant when compared to all of these facts supporting personal jurisdiction here in Rhode Island.

Furthermore, Plaintiff asserts that the Bridgestone Entities have ignored decades of valid United States Supreme Court precedent which supports specific jurisdiction in Rhode Island under the stream of commerce theory. Specifically, Plaintiff cites to *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102 (1987) for the stream of commerce theory, and notes that *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773 (2017)—on which the Bridgestone Entities rely—did not overturn *Asahi* and actually supports jurisdiction in this case. According to Plaintiff, *Bristol-Myers Squibb* did not stand for the strict interpretation that the Bridgestone Entities assert—namely, that specific jurisdiction only exists over the Bridgestone Entities in the forum that it sold the subject tire, *i.e.*, in Tennessee. Instead, *Bristol-Myers Squibb* stands for the proposition that there must simply and loosely be a connection between the forum and the specific claims at issue, which, according to Plaintiff, easily exists under the facts of this case.

Moreover, Plaintiff asserts that the Bridgestone Entities' claim of an excessive burden to litigate in Rhode Island is "ridiculous" because the Bridgestone Entities proclaim themselves as the world's largest manufacturer of tire and rubber products and generated net sales of $28 billion and income of $3.8 billion in 2016. Lastly, Plaintiff argues that if this Court were to question the personal jurisdiction in this case, Plaintiff should be entitled to limited discovery because (1) Defendants relied on three affidavits filed by the Bridgestone Entities outside of the

Complaint and thus converted a Super. R. Civ. P. 12(b)(6) motion to dismiss into a motion for summary judgment, and (2) the affidavits were self-serving because two of the three affidavits rely on a review of documentation that was unavailable to Plaintiff.

This Court finds that there is no general jurisdiction over the Bridgestone Entities. As indicated above, the United States Supreme Court has recently clarified the narrow parameters of general jurisdiction. *See BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Daimler*, 134 S. Ct. at 754. A corporation is "at home" for purposes of general jurisdiction where the corporation is incorporated and where it has its principal place of business. *Daimler*, 134 S. Ct. at 760 (quoting *Goodyear*, 564 U.S. at 924). Here, BATO is a Delaware limited liability company with its corporate headquarters and principal place of business in Tennessee. Queiser Aff. ¶¶ 9-10. BSAM is a Nevada corporation that maintains its corporate headquarters and principal place of business in Tennessee. *Id.* at ¶ 18. Bridgestone Retail is a Delaware limited liability company where, for decades, its corporate headquarters and principal place of business has been in Illinois. *Id.* at ¶ 21. Thus, because no Bridgestone entity is incorporated or has its principal place of business in Rhode Island, they are not subject to general jurisdiction in Rhode Island under the basic standard set forth in *Daimler*.

There is an exception, however, for "exceptional case[s]" where "a corporate defendant's operations in another forum 'may be so substantial and of such a nature as to render the corporation at home in that state'" and therefore satisfy the requirements of general jurisdiction. *BNSF*, 137 S. Ct at 1558 (quoting *Daimler*, 134 S. Ct. at 761 n.19); *see Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 72 S. Ct. 413, 96 L.Ed. 485 (1952) (holding that the exception applied when war forced the defendant corporation to relocate from the Philippines to Ohio where the state became the center of the corporation's "wartime activities").

However, recently, the Supreme Court restricted this "exceptional-circumstances" exception in a case wherein a railroad employee sued a Delaware railroad company in Montana for injuries allegedly sustained outside Montana. *BNSF*, 137 S. Ct. at 1562. The railroad company was not incorporated in Montana and did not have its principal place of business there. *Id.* at 1559. Nonetheless, the employee alleged that general jurisdiction existed because the railroad company had over 2000 miles of railroad track in Montana and more than 2000 employees in Montana, which was equivalent to less than five percent of its work force and about six percent of its total track mileage in the State. *Id.* at 1554. The railroad company also generated less than ten percent of its total revenue and maintained only one of its twenty-four automotive facilities in Montana. *Id.* The Supreme Court disagreed with the employee, stating that "'the general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts,'" and that "the inquiry 'calls for an appraisal of a corporation's activities in their entirety." *Id.* at 1559 (quoting *Daimler*, 134 S. Ct. at 762 n.20). The Court noted that the railroad company's contacts with Montana were unrelated to the claim and were insufficient to establish general jurisdiction. *Id.*

Here, this Court is satisfied that significantly less contact has been made between the Bridgestone Entities and Rhode Island, so the exception would not apply. The facts before this Court which Plaintiff alleges to assert general jurisdiction are that BATO produced $35 million in revenue in Rhode Island, which is equivalent to less than one percent of its total revenues; Bridgestone Retail operates five customer care centers in Rhode Island; Bridgestone's website directs customers where to buy its tires in Rhode Island; BATO employs at least one salesperson in Rhode Island out of 12,000 BATO employees nationwide; and there is a network of distributors to supply Rhode Island customers with its tires. It is clear that these facts, in the

aggregate, are not substantial or of the nature of those in *BNSF*—namely, where the railroad company employed less than five percent of its work force and about six percent of its total track mileage in Montana—where the Supreme Court still found such contacts did not suffice general jurisdiction under the exception. *See id.* As noted in *Daimler* and *Goodyear*, when requiring affiliations that are "so continuous and systematic" that a corporation is essentially at home, those contacts must be comparable to a domestic enterprise in that state. *See Daimler*, 134 S. Ct. at 758 n.11; *Goodyear*, 131 S. Ct. at 2851; *see also Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016) (explaining that *Daimler* makes it "incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business"). Furthermore, other courts have found that the exception is severely limited. *See Brown*, 814 F.3d at 622 (finding no general jurisdiction over a corporation registered to do business in the state, leasing space in four locations, having thirty to seventy workers at those spaces, and producing $160 million in gross revenues from its in-state activities); *Stisser v. SP Bancorp, Inc.*, 174 A.3d 405, 411-12 (Md. Ct. Spec. App. 2017) (holding "[c]onsistent with *Daimler* . . . a nonresident parent corporation is not subject to general jurisdiction in Maryland based solely on its incorporation of a subsidiary within Maryland"). Here, any contacts that the Bridgestone Entities have with Rhode Island are merely incidental, and not central, to its primary business as required under the law of *Daimler*. *See Daimler*, 134 S. Ct. at 762 n.20 (noting that the general jurisdiction inquiry does not just focus on the magnitude of the defendant's in-state contacts, but "instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide"). Thus, this Court finds that there is no general jurisdiction over the Bridgestone Entities here in Rhode Island.

Specific jurisdiction is also lacking over the Bridgestone Entities. The United States Supreme Court has emphasized that "[i]n order for a state court to exercise specific jurisdiction, 'the *suit*' must 'aris[e] out of or relat[e] to the defendant's contacts with the *forum*.'" *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *Daimler*, 134 S. Ct. at 754). Additionally, there must be "'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum state . . . .'" *Id.* (quoting *Goodyear*, 564 U.S. at 919); *see also Cerberus Partners*, 836 A.2d at 1119 (quoting *Rose*, 819 A.2d at 1251) ("For specific personal jurisdiction to exist . . . the defendant must have performed 'some act by which [it] purposefully [availed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'"). Adopting the United States Supreme Court's interpretation, the Rhode Island Supreme Court instructed: "In determining whether specific jurisdiction exists, the court focuses on 'the relationship among the defendant, the forum, and the litigation.'" *Id.* (quoting *Md. Cent. Collection Unit*, 529 A.2d at 151); *see also Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014).

Moreover, the relationship between the nonresident defendant and the forum state "must arise out of contacts that the 'defendant *himself*' creates with the forum state." *Walden*, 134 S. Ct. at 1122 (quoting *Burger King*, 471 U.S. at 475). This "minimum contacts" analysis also "looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id.* Lastly, "the plaintiff cannot be the only link between the defendant and the forum." *Id.*

In *Bristol-Myers Squibb*, a group of plaintiffs—consisting of eighty-six California residents and 592 residents from thirty-three other States—filed eight separate complaints in California Superior Court against Bristol-Myers Squibb (BMS). 137 S. Ct. at 1778. All of the

plaintiffs alleged that BMS's prescription drug, Plavix—which thins the blood and inhibits blood clotting—had damaged their health. *Id.* The nonresident plaintiffs did not allege that they obtained Plavix through California physicians or from any other California source; nor did they claim that they were injured by Plavix or were treated for their injuries in California. *Id.* Additionally, BMS did not develop Plavix in California, did not create a marketing strategy for Plavix in California, and did not manufacture, label, package, or work on the regulatory approval of the product in California. *Id.* BMS did, however, sell Plavix in California: between 2006 and 2012, it sold almost 187 million Plavix pills there and made more than $900 million in revenue, which equated to a little over one percent of the company's nationwide sales revenue. *Id.*

The United States Supreme Court found that jurisdiction could not be exercised against BMS with respect to the nonresident plaintiffs' claims, finding that what was missing "[was] a connection between the forum and the specific claims at issue." *Id.* at 1781. The Court compared the facts therein to *Walden*, where Nevada plaintiffs sued an out-of-state defendant for conducting an allegedly unlawful search of the plaintiffs while they were in Georgia preparing to board a plane bound for Nevada. *Id.* The Nevada courts lacked specific jurisdiction "even though the plaintiffs were Nevada residents and 'suffered foreseeable harm in Nevada.'" *Id.* (quoting *Walden*, 134 S. Ct. at 1124). Specifically, "[b]ecause the '*relevant* conduct occurred entirely in Georgi[a] . . . the mere fact that [this] conduct affected plaintiffs with connections to the forum State d[id] not suffice to authorize jurisdiction.'" *Id.* at 1781-82 (quoting *Walden*, 134 S. Ct. at 1126). The Court concluded that "the connection between the nonresidents' claims and the forum is even weaker" in *Bristol-Myers Squibb*, for the relevant plaintiffs were not California residents, they did not claim to have suffered harm in that State, and the conduct giving rise to

the nonresidents' claims occurred elsewhere. *Id.* at 1782 (citing *World-Wide Volkswagen*, 444 U.S. at 295).

Likewise, here, this Court cannot find specific jurisdiction over the Bridgestone Entities. The accident in this case took place entirely within Connecticut, not Rhode Island. Additionally, the tow truck was manufactured and assembled entirely outside Rhode Island. Decedent also did not purchase the Bridgestone tire at issue in Rhode Island; instead, the tire was "original equipment" on the truck that was manufactured outside of Rhode Island. It is also clear to this Court that the alleged original equipment tire at issue was designed and manufactured entirely in Tennessee, which was then sold to PACCAR/Peterbilt Motors in Tennessee to be installed on the tow truck, which was also manufactured entirely within Tennessee. When the tow truck was complete, Sterry Street drove down to Tennessee and picked it up there. Decedent did not suffer injury here and "all the conduct giving rise to [his] claims occurred elsewhere." *Bristol-Myers Squibb*, 137 S. Ct. at 1782.

Plaintiff argues that there should be specific jurisdiction against the Bridgestone Entities because Decedent was a resident of Rhode Island, he traveled through Rhode Island, he was transported from the accident site to Rhode Island Hospital where he received treatment, and he ultimately passed away in Rhode Island. However, these are contacts that Decedent—not the Bridgestone Entities—has made with Rhode Island. As stated above, the relationship between the nonresident defendant and the forum state "must arise out of contacts that the 'defendant *himself*' creates with the forum State." *Walden*, 134 S. Ct. at 1122 (quoting *Burger King*, 471 U.S. at 475). "[T]he plaintiff cannot be the only link between the defendant and the forum." *Id.* "Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* (citing *Burger King*, 471 U.S. at 478).

"[M]ere injury to a forum resident is not a sufficient connection to the forum." *Id.* at 1125. Therefore, Plaintiff's reliance on these contacts, under the law, do not establish specific jurisdiction over the Bridgestone Entities because they are not contacts that the Bridgestone Entities created.

Furthermore, Plaintiff's reliance on the sale of the truck to two Rhode Island companies as a means to hale the Bridgestone Entities into court here is also misplaced. Plaintiff argues that because Patriot and Peterbilt of Rhode Island—two Rhode Island based companies—entered into a contract for the sale of the truck with PACCAR and Peterbilt Motors, the Bridgestone Entities were therefore subject to jurisdiction in Rhode Island because their tires were on the truck. However, the United States Supreme Court, also in *Bristol-Myers Squibb*, specifically stated that "'a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction.'" 137 S. Ct. at 1781 (quoting *Walden*, 134 S. Ct. at 1123). The Bridgestone Entities were not a party in this contract. Plaintiff is therefore relying on connections to Rhode Island through contacts made by PACCAR and Peterbilt Motors—third parties—and not the Bridgestone Entities. Under *Bristol-Myers Squibb*, then, this argument fails and specific jurisdiction cannot be found.

Plaintiff, relying on *Asahi*, further argues that jurisdiction over the Bridgestone Entities should be found under a "stream of commerce" theory. 480 U.S. at 104. *Asahi* involved a Taiwanese tire tube manufacturer seeking indemnification against a Japanese tube valve assembly manufacturer in a products liability action arising from a motorcycle accident. *Id.* at 105-06. The four-member plurality opinion, written by Justice O'Connor, stated that the "substantial connection" between the defendant and the forum state must come about by "*an action of the defendant purposefully directed toward the forum State*." *Id.* at 112 (citing *Burger*

King, 471 U.S. at 476; *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)) (emphasis in original). The Court further noted that "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." *Id.* Rather, additional conduct by the defendant is needed, such as "designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." *Id.* The Court did note, however, that even if a defendant is aware that the stream of commerce may sweep the product into the forum State, this does not convert the act of placing the product into the stream into an act purposefully directed toward the forum State. *Id.*

However, in a four-member concurring opinion, Justice Brennan stated that by requiring conduct beyond placing goods in the stream of commerce, the plurality opinion "marked [a] retreat" from *World-Wide Volkswagen* and represented the minority view among the federal courts. *Id.* at 118 (Brennan, J., concurring). In *World-Wide Volkswagen*, the respondents sought to base jurisdiction on one isolated occurrence and any inferences that follow: "the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma." 444 U.S. at 295. The Court held that even though an accident occurring in Oklahoma was to some extent foreseeable because automobiles are mobile, such an accident was not enough to establish minimum contacts between the forum State and the retailer or distributor. *Id.* at 295-97 ("[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.").

The Court then contrasted the foreseeability of litigation regarding a consumer who incidentally transports a defendant's product with the foreseeability of litigation where the defendant's product was regularly sold:

> "Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Id.* at 297-98 (citing *Gray v. Am. Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961)).

Justice Brennan in *Asahi* thus concluded that due process is satisfied so long as "[t]he stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale." 480 U.S. at 117 (Brennan, J., concurring). Accordingly, "[a]s long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise." *Id.*

Then, in 2011, the Supreme Court again discussed the scope of the stream of commerce theory in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011). The Court was divided once again; a four-justice plurality opinion, led by Justice Kennedy, concluded that a British manufacturer of scrap metal machines was not subject to personal jurisdiction in New Jersey since it had no office, property, and never advertised in or sent any employees there. *Id.* at 886-87. In so doing, the plurality opinion also rejected Justice Brennan's broader interpretation of the stream of commerce analysis in *Asahi*. *Id.* at 883-84 ("This Court's precedents make clear

that it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment."). The plurality opinion stated that "[t]he question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." *Id.* at 884.

Justice Breyer's concurrence in *Nicastro* also found the facts to be insufficient to prove personal jurisdiction over the British manufacturer. *Id.* at 887-88 (Breyer, J., concurring). The facts in particular—that one machine was sold in New Jersey, that the manufacturer desired to have its American distributor sell to anyone in America, and that the manufacturer attended trade shows all throughout America—did not signify a regular flow of its product or regular course of sales in New Jersey. *Id.* at 888-89. The dissent in *Nicastro*, after citing to Justice Brennan's opinion in *Asahi* and *World-Wide Volkswagen*, concluded that the correct approach is to follow similar case law in federal and state courts that "rightly rejected the conclusion that a manufacturer selling its products across the USA may evade jurisdiction in any and all States, including the State where its defective product is distributed and causes injury." *Id.* at 906 (Ginsburg, J., dissenting).

Plaintiff contends that under the stream of commerce theory, the Bridgestone Entities are subject to jurisdiction in this State because Bridgestone Tire is a nationwide company with advertising reaching every state and particularly with its website that directs customers where to buy products. Additionally, Bridgestone Retail operates five customer care centers in Rhode Island that have the Bridgestone brand name, provide a physical location for meeting with customers and addressing customer requests, and sells Bridgestone brand products to customers. Pl.'s Obj., Ex. 12 at ¶ 24. Furthermore, BATO employs a sales agent in Rhode Island to promote

its products both to the end customer and to the distributor. *Id.* at Ex. 12 at ¶ 17. Plaintiff further argues that Bridgestone's advertising, use of sales agents, and use of Rhode Island based customer care centers establish that the Bridgestone Entities purposefully direct its products to Rhode Island.

This Court follows the First Circuit Court of Appeals' interpretation of the stream of commerce theory, which adopts Justice O'Connor's plurality opinion in *Asahi* and Justice Kennedy's plurality opinion in *J. McIntyre*. *See Adelson v. Hananel*, 652 F.3d 75, 82 (1st Cir. 2011) (quoting *J. McIntyre Machinery*, 564 U.S. at 884) ("'The question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct.'"); *Rodriguez v. Fullerton Tires Corp.*, 115 F.3d 81, 85 (1st Cir. 1997) (quoting *Asahi*, 480 U.S. at 107) ("[T]he Supreme Court held that the 'placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State,' and, thus, is insufficient to support a claim of personal jurisdiction . . . . *Asahi* is still good law . . . .").

Here, even if this Court were to apply the stream of commerce theory from *Asahi* and *J. McIntyre*, it would find personal jurisdiction lacking against the Bridgestone Entities. As the *Asahi* Court stated:

> "[I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States *if its allegedly defective merchandise has there been the source of injury to its owners or to others*." *Asahi*, 480 U.S. at 110 (quoting *World-Wide Volkswagen*, 444 U.S. at 297) (emphasis added).

In this case, the "allegedly defective merchandise"—the Bridgestone tire on the tow truck—was installed on the tow truck in Tennessee, and the accident—*i.e.*, the "source of injury"—occurred in Connecticut. Decedent was not injured in Rhode Island, and was only transported to Rhode Island Hospital after the accident in Connecticut had already happened. The mere fact that Decedent drove the truck through Rhode Island on the day of the accident is not enough to establish personal jurisdiction over the Bridgestone Entities. *See World-Wide Volkswagen*, 444 U.S. at 297 (citing *Kulko v. Cal. Superior Court*, 436 U.S. 84, 97-98 (1978); *Shaffer*, 433 U.S. at 216 (majority opinion), 217-19 (Stevens, J., concurring) ("[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.").

Plaintiff further contends that the additional conduct required by Justice O'Connor's concurrence in *Asahi* to establish purposeful availment against the Bridgestone Entities is met in this case. Justice O'Connor provided four examples of when a court may find purposeful availment against a defendant when that defendant places its product in the stream of commerce: "designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." *Asahi*, 480 U.S. at 112. Specifically, Plaintiff argues that the Bridgestone Entities meet all four of these examples, as Bridgestone is a nationwide company with advertising reaching every state, and particularly with its website that directs customers where to buy products. Additionally, Bridgestone—through Bridgestone Retail—operates five customer care centers in Rhode Island that are emblazoned with the Bridgestone brand name, provide a physical location

for meeting with customers and addressing customer requests, and sell Bridgestone brand products to customers. Pl.'s Obj., Ex. 12 at ¶ 24. Furthermore, BATO employs a sales agent in Rhode Island to promote its products both to the end customer and to the distributor. *Id.* at Ex. 12 at ¶ 17. Plaintiff also argues that Bridgestone's advertising, use of sales agents, and use of Rhode Island based customer care centers establish that Bridgestone purposefully directs its products to Rhode Island.

Even if these examples in *Asahi* are met through these facts, this Court recognizes that its decision must be consistent with the recent ruling of *Bristol-Myers Squibb*. The *Bristol-Myers Squibb* Court found that "[i]n order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.'" 137 S. Ct. at 1781 (quoting *Goodyear*, 564 U.S. at 919). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.*; *see also Goodyear*, 564 U.S. at 930 n.6 ("[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales."). Lastly, and most importantly, "[f]or specific jurisdiction, a defendant's general connections with the forum are not enough. As [the United States Supreme Court has] said, '[a] corporation's 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.'" *Bristol-Myers Squibb*, 137 S. Ct. at 1781 (quoting *Goodyear*, 564 U.S. at 927) (internal quotation marks omitted).

It is first important to note that the Bridgestone Entities are separate entities, and therefore the conduct performed by one entity is distinct from another. *See* Queiser Aff. ¶ 21 ("Bridgestone Retail, BATO, and BSAM are separate and distinct corporations."). Thus, the

mere fact that Bridgestone Retail operates five customer care centers in Rhode Island and sells Bridgestone products to Rhode Island customers is separate and distinct from any activities committed by BATO. Additionally, Bridgestone Retail did not sell the alleged defective tire to the Decedent in this case; rather, it was installed on the truck during the manufacturing process in Tennessee. Rod Curbo Aff. (Curbo Aff.) ¶ 7; Vince Tiano Aff. (Tiano Aff.) ¶¶ 4-5. Moreover, BSAM is merely a holding company for different subsidiary companies; does not own any property or employ any persons in Rhode Island; does not design, manufacture, or distribute tires; and did not design, manufacture, or distribute the alleged defective tire in this case. Queiser Aff. ¶¶ 18-20. Therefore, because BATO manufactured and installed the alleged defective tire on the tow truck in this case, only the activities committed by BATO in Rhode Island are relevant to this Decision. *See* Curbo Aff. ¶ 7; Tiano Aff. ¶¶ 4-5.

When comparing these facts to the facts set forth in *Bristol-Myers Squibb*, this Court finds BATO is not subject to personal jurisdiction before this Court. In *Bristol-Myers Squibb*, the nonresident plaintiffs were not prescribed Plavix in California; similarly, in this case, the alleged defective tire was not manufactured or installed on the tow truck in Rhode Island. 137 S. Ct. at 1781. The nonresident plaintiffs in *Bristol-Myers Squibb* also did not purchase Plavix in California; likewise, here, Decedent did not purchase the alleged defective tire in Rhode Island. *Id.* The *Bristol-Myers Squibb* plaintiffs did not ingest Plavix in California; here, the accident and the alleged blowout of the tire did not occur in Rhode Island. *Id.* Lastly, the nonresident plaintiffs in *Bristol-Myers Squibb* were not injured in California; here, Decedent was not injured in Rhode Island. *Id.*

Furthermore, the mere fact that BATO has made revenues of $35 million in Rhode Island, along with the fact that it has one employee in Rhode Island, is not enough to establish

purposeful availment against the entity. BATO's 2016 revenue from Rhode Island was less than $35 million, contrasted with nearly $6 billion in revenue in total sales across the United States. Queiser Aff. ¶ 17. Sales in Rhode Island therefore constituted less than one percent of total sales. *Id.* Additionally, BATO had one employee working from home located in Rhode Island, contrasted with over 12,000 BATO employees worldwide. *Id.* BATO owns no offices or property in Rhode Island; it also has no tire manufacturing plants in Rhode Island and designs its tires in Akron, Ohio. *Id.* at ¶¶ 11-13.

Again, in *Bristol-Myers Squibb*, the Supreme Court found that there was no purposeful availment against BMS, even though from 2006 to 2012, it sold almost 187 million Plavix pills in California and took in more than $900 million from those sales; amounting to a little over one percent of the company's nationwide sales revenue. 137 S. Ct. at 1778. Additionally, BMS held five of its research and laboratory facilities in California, which employed a total of around 160 employees. *Id.* It also employed about 250 sales representatives in California and maintained a small state-government advocacy office in Sacramento. *Id.* Here, the facts are very similar with regard to BATO: it has only one employee who works at home, revenues amount to less than one percent of its total revenue across the United States, and unlike BMS, BATO has no property, tire manufacturing plants, or offices located in Rhode Island. *See id.* Therefore, based on these facts, none of the Bridgestone Entities is subject to specific jurisdiction in Rhode Island.

Because this Court cannot exercise neither specific nor general jurisdiction over the Bridgestone Entities, this Court need not address the gestalt factors mentioned previously in this Decision. *See Cerberus Partners*, 836 A.2d at 1121-22 ("[The gestalt] factors do not even come into play . . . until it has been shown that a defendant has purposefully established minimum

contacts with the forum state . . . . Until such [contacts] [are] established, the reasonableness of exercising jurisdiction is not even an issue.").

2

Plaintiff's Request for Jurisdictional Discovery

Lastly, Plaintiff notes if the Court is inclined to grant the Bridgestone Entities' motion to dismiss, it should have the authority to order limited discovery on the personal jurisdiction question. Specifically, the grounds Plaintiff seeks for limited discovery is that Defendants rely on three self-serving affidavits that are supported by documentation that was unavailable to Plaintiff. Plaintiff maintains that by relying on facts outside of the Complaint, Defendants have converted their Super. R. Civ. P. 12(b)(6) (Rule 12(b)) motion to dismiss into a Super. R. Civ. P. 56 motion for summary judgment.

The motions before this Court are not under Rule 12(b)(6), but under Rule 12(b)(2). Moreover, our Supreme Court has expressly overruled the principle that a Rule 12(b)(2) motion to dismiss is transformed into one for summary judgment when facts outside of the complaint are considered. *See Almeida*, 506 A.2d at 1376 ("A Rule 12(b) motion to dismiss is not transformed into a Rule 56 motion for summary judgment when the basis of the Rule 12(b) motion is a lack of personal jurisdiction."); *Coia v. Stephano*, 511 A.2d 980, 981 n.3 (R.I. 1986) ("This court in *Ben's Marine Sales v. Sleek Craft Boats*, 502 A.2d 808 (R.I. 1985), overruled *Ewing* [*v. Frank*, 103 R.I. 96, 97-98, 234 A.2d 840, 841 (1967)] insofar as it stands for the proposition that when extraneous matters are considered in ruling on a motion to dismiss based on a lack of jurisdiction the motion is automatically transformed into one for summary judgment.").

Additionally, jurisdictional discovery is unnecessary to determine whether this Court can exercise jurisdiction over the Bridgestone Entities. "[A] court may properly allow discovery to

aid in determining whether it has in personam or subject-matter jurisdiction." *Smith v. Johns-Manville Corp.*, 489 A.2d 336, 338 (R.I. 1985). However, "[our Supreme Court] has been reluctant to allow litigants to engage in a discovery 'fishing expedition' merely to establish personal jurisdiction." *Martin v. Howard*, 784 A.2d 291, 297 (R.I. 2001) (citing *Coia*, 511 A.2d at 984; *Smith*, 489 A.2d at 340). Rather,

> "under Rule 11, it is the duty of the plaintiff's attorney to conduct a good-faith investigation before filing a complaint that is sufficient to support allegations showing (1) the jurisdiction of the court, (2) the timeliness of the claims asserted therein, and (3), assuming the truth of the factual averments, the plaintiff's entitlement to relief as a matter of law—all without having to conduct discovery to do so." *Id.*

The facts before this Court regarding the Bridgestone Entities' contacts are distinguishable from those of *Smith*. In that case, jurisdictional fact discovery was appropriate because there was "significant controversy surrounding the pertinent facts bearing on the question of minimum contacts." *Smith*, 489 A.2d at 339. Specifically, the defendant's affidavit in *Smith* did nothing to rebut an allegation, and plaintiff's counsel stated in an affidavit that defendant's product had been distributed throughout Rhode Island. *Id.*

In *Coia*, however, our Supreme Court distinguished *Smith*. 511 A.2d at 984. In that case, a dog buyer brought a breach of contract action against the sellers, who filed a motion to dismiss for lack of personal jurisdiction, which the trial justice granted. *Id.* The Rhode Island Supreme Court found the trial justice's decision to deny jurisdictional discovery was not substantially prejudicial. *Id.* Specifically, the Court found that there was not a great deal of controversy surrounding the question of minimum contacts, for the plaintiff made general allegations that, even if true, were inadequate to establish personal jurisdiction. *Id.* Additionally, the defendants in that case not only denied the general allegations, but refuted each allegation in

counteraffidavits to which the plaintiff did not respond. *Id.* Moreover, the statute of limitations period did not run on the plaintiff's cause of action, so he still had time to bring the action in the appropriate jurisdiction. *Id.* Importantly, the *Coia* Court stated that "[i]n this case there is an absence of any specific allegations that would support a finding of personal jurisdiction. [The Court] would be issuing a fishing license to the plaintiff if [the Court] allowed jurisdictional fact discovery on this record." *Id.*

As the Court did in *Coia*, this Court denies jurisdictional fact discovery here with respect to the Bridgestone Entities. Here, there is no "great deal of controversy surrounding the question of minimum contacts" against the Bridgestone Entities. *Smith*, 489 A.2d at 339 n.2. The Bridgestone tire was manufactured in Tennessee, the accident occurred in Connecticut, and Decedent was injured in Connecticut. Furthermore, Decedent did not purchase the tire in Rhode Island, and Decedent's business was located in Massachusetts. Lastly, the tow truck—with the Bridgestone tire attached—was picked up in Tennessee by Decedent's company and driven back to Massachusetts. This Court has determined that these facts by themselves stand alone to establish a lack of personal jurisdiction over the Bridgestone Entities. Furthermore, even if Plaintiff wished to pursue jurisdictional discovery regarding the Bridgestone Entities' general contacts with Rhode Island, such discovery would be futile based on the most recent United States Supreme Court decision in *BNSF* and the restrictions placed on general jurisdiction in *Daimler*. *See BNSF*, 137 S. Ct. at 1559; *Daimler*, 134 S. Ct. at 760, 762 n.20.

Therefore, this Court finds that it cannot exercise personal jurisdiction over the Bridgestone Entities. Accordingly, the Bridgestone Entities' motion to dismiss for lack of

personal jurisdiction is granted. Additionally, Plaintiff's request for jurisdictional fact discovery regarding the Bridgestone Entities' contacts with Rhode Island is denied.[3]

C

Analysis of PACCAR and Peterbilt Motors' Motion to Dismiss

In addition to the Bridgestone Entities, PACCAR and Peterbilt Motors also filed a motion to dismiss the claims against them for lack of personal jurisdiction. PACCAR is incorporated in Delaware with its principal place of business in Washington. Curbo Aff. ¶ 2. Peterbilt Motors is an unincorporated division of PACCAR with its principal place of business in Texas. *Id.* at ¶ 3. The tow truck's chassis was assembled at Peterbilt's plant in Madison, Tennessee in November 2005. *Id.* at ¶ 6. The records of the truck reflect that the chassis was assembled with two Bridgestone tires on the front axle wheel ends, and eight Bridgestone tires on the rear axle wheel ends. *Id.* These Bridgestone tires were delivered to Peterbilt's plant in Madison, Tennessee prior to being installed on the chassis. *Id.* Upon completed assembly of the chassis, the chassis was shipped, with the Bridgestone tires attached, to Miller Industries in Ooltewah, Tennessee for up-fitting. *Id.* at ¶ 7. Records of Miller Industries indicate that in or

[3] This Court also notes that although Rhode Island and Massachusetts do not have statutes of repose on products liability actions, both Connecticut and Tennessee do. *See* Conn. Gen. Stat. § 52-577a ("No product liability claim . . . may be brought against any party . . . later than ten years from the date that the party last parted with possession or control of the product."); Tenn. Code Ann. § 29-28-103 ("Any action against a manufacturer or seller of a product for injury to person or property caused by its defective or unreasonably dangerous condition . . . must be brought within ten (10) years from the date on which the product was first purchased for use or consumption, or within one (1) year after the expiration of the anticipated life of the product, whichever is the shorter . . . ."). Plaintiff did not raise in her papers that she would be substantially prejudiced if her jurisdictional discovery request was denied because the statutes of repose in those two states have expired. Even if she did, however, the argument lacks merit. The tow truck was sold on May 18, 2006 to Sterry Street, and Plaintiff filed this action on May 24, 2017. If she filed the Complaint in Connecticut or Tennessee instead of Rhode Island, the statute of repose would have still expired because more than ten years had passed before she filed this case.

around February 2006, Miller Industries received the truck at its plant in Ooltewah, Tennessee, with the Bridgestone tires and rims already installed. Tiano Aff. ¶¶ 4-5.

PACCAR and Peterbilt Motors' motion to dismiss essentially mirrors the arguments brought by the Bridgestone Entities: namely, that the accident at issue took place entirely within Connecticut, and not Rhode Island; that the tow truck was manufactured in Tennessee; and that when the tow truck was complete, Sterry Street picked it up in Tennessee. In addition to those arguments, however, PACCAR argues that Plaintiff's Amended Complaint incorrectly identifies Peterbilt Motors as a subsidiary of PACCAR, when Peterbilt Motors is an unincorporated division of PACCAR. Thus, according to PACCAR, it is not proper to bring suit against Peterbilt Motors because of its status as an unincorporated division.

In objection to PACCAR and Peterbilt Motors' motion to dismiss, Plaintiff asserts that PACCAR is registered to do business in Rhode Island and has been since 1990. Pl.'s Obj., Ex. 17. To show PACCAR and its Peterbilt Motors division's contacts with Rhode Island, Plaintiff points out that the rotator truck originated with PACCAR and Peterbilt Motors, and that they issued a certificate of origin for the rotator truck in November 2005—thus signifying that they had actual knowledge that the truck was bound for Rhode Island. *See id.* at Ex. 8. Furthermore, Plaintiff contends that PACCAR and Peterbilt Motors issued this certificate to Peterbilt of Rhode Island, which then worked with Miller Industries and Patriot to procure the eventual sale of the truck to Sterry Street.

As asserted against the Bridgestone Entities, Plaintiff also argues that the stream of commerce theory hales PACCAR and Peterbilt Motors into this jurisdiction because they had the expectation that their goods would serve the Rhode Island market, and that their product indeed caused injury to a Rhode Island resident. Plaintiff also contends that if Peterbilt Motors is an

unincorporated division of PACCAR, then any contacts of Peterbilt Motors with Rhode Island equate to PACCAR's contacts with Rhode Island. In the interim, Plaintiff also seeks additional fact discovery to determine whether Peterbilt Motors is truly an unincorporated division of PACCAR.

Plaintiff also argues that general jurisdiction is met here because PACCAR and Peterbilt Motors have had systematic and continuous contacts with Rhode Island over the past two decades through its manufacture, distribution, and sale of products directly or through Peterbilt of Rhode Island, its local authorized dealer. Lastly, Plaintiff argues that it is reasonable for Rhode Island to exercise jurisdiction over PACCAR and Peterbilt Motors because they intended to serve the Rhode Island market, and it is foreseeable that they would have to respond to complaints in Rhode Island for the failure of its products. As asserted against the Bridgestone Entities, Plaintiff requests jurisdictional discovery if this Court is hesitant about denying the motion.

This Court first acknowledges that Peterbilt Motors is an unincorporated division of PACCAR, and thus it is not a separate entity and cannot be sued in this case. *See* Curbo Aff. ¶ 3 ("Peterbilt Motors Company is an unincorporated division of PACCAR[,] Inc[.] with its principal place of business in the State of Texas."); *U.S. v. President and Fellows of Harvard Coll.*, 323 F. Supp. 2d 151, 168 (D. Ma. 2004) (quoting *United States v. ITT Blackburn Co.*, 824 F.2d 628, 631 (8th Cir. 1987)) ("'[A]n unincorporated division cannot be sued or indicted, as it is not a legal entity.'"); *Smartdoor Holdings, Inc. v. Edmit Indus., Inc.*, 78 F. Supp. 3d 275, 277 (D.D.C. 2015) (internal citations omitted) ("[U]nincorporated divisions of a corporation lack legal capacity to be sued."); *see also Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 770 (1984) (finding, in deciding that a corporation and its wholly owned subsidiary were incapable of

conspiring with each other under section one of the Sherman Act, that "the operations of a corporate enterprise organized into divisions must be judged as the conduct of a single actor"). Therefore, any conduct committed by Peterbilt Motors must be attributed to PACCAR. *See* Hr'g Tr. 14:1-3, Nov. 21, 2017 ("We [PACCAR] concede their [Peterbilt Motors] assets are our assets, their conduct is our conduct in terms of Paccar, so Peterbilt Motors Company should not be a named defendant.").

Based on the facts of this case, it is apparent that PACCAR has more connections to this State than the Bridgestone Entities. Nonetheless, more jurisdictional facts are needed in order to make a determination with respect to PACCAR's motion to dismiss. This Court remains mindful that "a court may properly allow discovery to aid in determining whether it has in personam or subject-matter jurisdiction." *Smith*, 489 A.2d at 338. Based on the facts listed above, there still appears to be "significant controversy surrounding the pertinent facts bearing on the question of minimum contacts" with respect to PACCAR and PACCAR via Peterbilt Motors. *Id.* at 339. For this reason, this Court grants Plaintiff's request for jurisdictional fact discovery to determine whether it can exercise personal jurisdiction over PACCAR.

IV

Conclusion

For the above reasons, this Court grants the Bridgestone Entities' motion to dismiss for lack of personal jurisdiction and reserves judgment on PACCAR's motion to dismiss for lack of personal jurisdiction until further briefing on the issue. In doing so, this Court denies Plaintiff's request for jurisdictional fact discovery with respect to the Bridgestone Entities, and grants Plaintiff's request for jurisdictional fact discovery with respect to PACCAR. Counsel shall present the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Alison N. Martins v. Bridgestone Americas Tire Operations, LLC, et al.**
CASE NO:	**PC-2017-2420**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 8, 2018**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Mark Decof, Esq.** **Douglas E. Chabot, Esq.** **Jeffrey Mega, Esq.**
For Defendant:	**Brian J. Lamoureux, Esq.** **William E. O'Gara, Esq.** **Amanda Prosek, Esq.** **Douglas L. Price, Esq.** **Warren D. Hutchison, Esq.** **Mark P. Dolan, Esq.** **John M. Boland, Esq.**