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Division I  
State of Washington

No. 74225-6

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I**

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LINDA M. HOFFERBER,

Appellant,

v.

GEORGIA PACIFIC, LLC. et al.,

Respondents.

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REVIEW FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE JUDITH H. RAMSEYER

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**BRIEF OF RESPONDENT GEORGIA-PACIFIC, LLC**

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	STATEMENT OF THE ISSUES.....	2
III.	STATEMENT OF THE CASE.....	3
IV.	ARGUMENT .....	6
A.	Standard and Scope of Review: This Court Reviews the Trial Court Record <i>De Novo</i> to Determine Whether Plaintiff Satisfied Her Burden of Establishing Personal Jurisdiction. This Court Does Not Consider Arguments That Were Not Raised In The Trial Court. ....	6
B.	Georgia-Pacific Is Not “At Home” And Therefore Not Subject To General Jurisdiction In Washington. ....	9
C.	Georgia-Pacific Is Not Subject to Specific Jurisdiction Because Ms. Hofferber’s Injuries Are Not Connected With Any of Georgia-Pacific’s Washington Activities.....	18
1.	Georgia-Pacific’s Activities in Washington Are Not A “But For” Cause of Ms. Hofferber’s Alleged Injuries. ....	20
2.	The Fact That Georgia-Pacific Sold The Same Product in Washington Does Not Establish Specific Jurisdiction. ....	21
a)	The “Stream of Commerce” Theory Does Not Support the Exercise of Personal Jurisdiction Over Georgia-Pacific. ....	22
b)	Even Under a More Relaxed Standard for Relatedness, Ms. Hofferber’s Claims Do Not Arise From or Relate to Georgia-Pacific’s Contacts with Washington. ....	26

D.	Additional Jurisdictional Discovery Would Be Futile And Would Not Change The Result. ....	34
V.	CONCLUSION.....	37

## TABLE OF AUTHORITIES

	Page(s)
<b>Federal Cases</b>	
<i>Brown v. Lockheed Martin Corp.</i> , 814 F.3d 619 (2d Cir. 2016).....	14-16
<i>Chan v. Society Expeditions, Inc.</i> , 39 F.3d 1398 (9th Cir. 1994), <i>cert. denied</i> , 514 U.S. 1004 (1995).....	7
<i>Chew v. Dietrich</i> , 143 F.3d 24 (2d Cir. 1998), <i>cert. denied</i> , 525 U.S. 948 (1998).....	27-29, 32
<i>Daimler AG v. Bauman</i> , 571 U.S. ___, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014).....	<i>passim</i>
<i>Del Ponte v. Universal City Development Partners, Ltd.</i> , 2008 WL 169358 (S.D.N.Y. Jan. 16, 2008) .....	28-29
<i>Denton v. Air &amp; Liquid Sys. Corps.</i> , 2015 WL 682158 (S.D. Ill. Feb. 17, 2015).....	17
<i>Doe v. Unocal Corp.</i> , 248 F.3d 915 (9th Cir. 2001) .....	7
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 564 U.S. 915, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011).....	8-10, 15-16, 33
<i>Harbor Cold Storage, LLC v. Strawberry Hill, LLC</i> , 2009 WL 3765361 (W.D. Wash. Nov. 9, 2009).....	20
<i>Hertz Corp. v. Friend</i> , 559 U.S. 77, 130 S. Ct. 1181, 175 L. Ed. 2d 1029 (2010).....	10
<i>HID Global Corp. v. Isonas, Inc.</i> , 2014 WL 10988340 (C.D. Cal. Apr. 21, 2014) .....	15

<i>International Shoe Co. v. Washington</i> , 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945).....	7, 11-12, 23, 32
<i>Keeton v. Hustler Magazine, Inc.</i> , 465 U.S. 770, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984).....	11
<i>Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.</i> , 66 F. Supp. 3d 795 (E.D. Tex. 2014).....	14
<i>Miller Yacht Sales, Inc. v. Smith</i> , 384 F.3d 93 (7th Cir. 2004) .....	32
<i>O'Connor v. Sandy Lane Hotel Co., Ltd.</i> , 496 F.3d 312 (3d Cir. 2007).....	32
<i>Perkins v. Benguet Consolidated Mining Co.</i> , 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952).....	11
<i>Port Lynch, Inc. v. New England Int'l Surety of Am., Inc.</i> , 1990 WL 167126 (W.D. Wash. May 23, 1990).....	20
<i>Shute v. Carnival Cruise Lines</i> , 897 F.2d 377 (9th Cir. 1988), <i>rev'd on other grounds</i> , 499 U.S. 585, 111 S. Ct. 1522, 113 L.Ed.2d 622 (1991).....	32
<i>Waite v. All Acquisition Corp.</i> , 2016 WL 2346743 (S.D. Fla. May 4, 2016) .....	25, 33-34
<i>Walden v. Fiore</i> , ___ U.S. ___, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).....	25, 34
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).....	22-23, 28
<b>State Cases</b>	
<i>BNSF Ry. Co. v. Super. Ct.</i> , 235 Cal. App. 4th 591 (2015), <i>rev. granted and opinion</i> <i>superseded by</i> 352 P.3d 417, 189 Cal.Rptr.3d 854 (2015).....	16
<i>Brundridge v. Fluor Federal Services, Inc.</i> , 164 Wn.2d 432, 191 P.3d 879 (2008).....	8

<i>Crose v. Volkswagenwerk Aktiengesellschaft</i> , 88 Wn.2d 50, 558 P.2d 764 (1977).....	11-12
<i>CTVC of Hawaii, Co., Ltd. v. Shinawatra</i> , 82 Wn. App. 699, 919 P.2d 1243 (1996), <i>rev. denied</i> , 131 Wn.2d 1020 (1997).....	20
<i>Hewitt v. Hewitt</i> , 78 Wn. App. 447, 896 P.2d 1312 (1995).....	5
<i>Hinrichs v. Gen. Motors of Canada, Ltd.</i> , ___ So.3d ___, 2016 WL 3461177 (Ala. June 14, 2016).....	22
<i>Jankelson v. Cisel</i> , 3 Wn. App. 139, 473 P.2d 202 (1970).....	37
<i>Lewis v. Bell</i> , 45 Wn. App. 192, 724 P.2d 425 (1986).....	36-37
<i>Noll v. Am. Biltrite, Inc.</i> , 188 Wn. App. 572, 355 P.3d 279 (2015).....	7, 24
<i>Raymond v. Robinson</i> , 104 Wn. App. 627, 15 P.3d 697 (2001).....	6
<i>SeaHAVN, Ltd. v. Glitnir Bank</i> , 154 Wn. App. 550, 226 P.3d 141 (2010).....	6-7, 20-21
<i>Shute v. Carnival Cruise Lines</i> , 113 Wn.2d 763, 783 P.2d 78 (1989).....	19, 26-27, 32
<i>State v. LG Electronics, Inc.</i> , 185 Wn. App. 394, 341 P.3d 346 (2015), <i>rev. granted</i> , 183 Wn.2d 1002 (2015).....	23
<i>Sternoff Metals Corp. v. Vertecs Corp.</i> , 39 Wn. App. 333, 693 P.2d 175 (1984).....	36
<i>T.S. v. Boy Scouts of Am.</i> , 157 Wn.2d 416, 138 P.3d 1053 (2006).....	34
<i>Turner v. Kohler</i> , 54 Wn. App. 688, 775 P.2d 474 (1989).....	34, 36

<i>Vons Companies, Inc. v. Seabest Foods, Inc.</i> , 926 P.2d 1085, 14 Cal. 4th 434 (1996), <i>cert. denied</i> , 522 U.S. 808 (1997) (App. Br. at 23) .....	30-31
--	-------

**Statutes**

28 U.S.C. § 1332.....	10
RCW 4.28.185 .....	2, 7, 18

**Rules and Regulations**

CR 30 .....	35-36
CR 56 .....	6
RAP 2.5.....	8

**Other Authorities**

Wright & Miller, 4 Fed. Prac. & Proc. Civ. § 1067.4 (4th ed.) .....	23
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## I. INTRODUCTION

In a lawsuit filed in King County Superior Court, Appellant Linda Hofferber alleged that she was exposed to asbestos-containing joint compound manufactured by Georgia-Pacific, LLC (“Georgia-Pacific”) while she and her former husband were finishing the basement of their home in Fort Pierre, South Dakota in 1976-1977. The trial court correctly granted Georgia-Pacific’s motion for summary judgment and dismissed Ms. Hofferber’s claim for lack of personal jurisdiction.

Georgia-Pacific is not subject to specific jurisdiction in Washington because Ms. Hofferber’s claims have no connection to the state of Washington. The joint compound was not manufactured or purchased in the state of Washington, and Ms. Hofferber’s claims arise solely from Georgia-Pacific’s contacts with South Dakota.

As a Delaware limited liability company with its principal place of business in Georgia, Georgia-Pacific is not subject to general jurisdiction in Washington because (a) it is not incorporated or formed in Washington, (b) does not have its principal place of business in this state, and (c) this is not an “exceptional case” where the defendant is uniquely at home in Washington, as compared to its overall national and global operations. *Daimler AG v. Bauman*, 571 U.S. \_\_\_, 134 S. Ct. 746, 760–61 & n.19, 187 L. Ed. 2d 624 (2014). This Court should affirm the trial court’s grant of

summary judgment because extending personal jurisdiction to this Georgia company for acts occurring entirely outside the state of Washington is beyond the limits imposed by the Due Process Clause and by RCW 4.28.185.

## II. STATEMENT OF THE ISSUES

1. Whether the trial court correctly concluded that Georgia-Pacific is not subject to general jurisdiction in Washington, where Georgia-Pacific is not incorporated in Washington, does not have its principal place of business in Washington, and is not uniquely “at home” in Washington as compared to the many other jurisdictions where Georgia-Pacific also transacts business.

2. Whether the trial court correctly concluded that it could not exercise specific jurisdiction over Georgia-Pacific in Washington with respect to the claims of a plaintiff whose only alleged exposure to asbestos-containing products manufactured by Georgia-Pacific occurred in South Dakota, with no evidence that any of the events in the causal chain that allegedly led to the plaintiff’s injury took place in Washington.

3. Whether the trial court properly exercised its discretion by denying Ms. Hofferber’s request for additional jurisdictional discovery, when Georgia-Pacific had already produced documents reflecting facts necessary to ascertain whether it is subject to personal jurisdiction, and

when additional jurisdictional discovery would not change the trial court's conclusion that Georgia-Pacific is not subject to personal jurisdiction.

### III. STATEMENT OF THE CASE

Ms. Hofferber's complaint alleged that she developed mesothelioma as a result of her exposure to asbestos-containing products during construction and home remodeling projects that took place from 1976 to 1980 in Fort Pierre, South Dakota and Bainbridge Island, Washington. (CP 2, 52-54) The report and deposition of Dr. Carl Brodtkin, Ms. Hofferber's expert witness, however, establish that Ms. Hofferber was not actually exposed to any asbestos-containing materials during the construction of her home in Washington. (CP 55) That work was performed by contractors when Ms. Hofferber was not present, and Ms. Hofferber did not personally do any drywall finishing work on this project. (CP 55) Moreover, Dr. Brodtkin's expert report notes that the Hofferbers' Washington home was built between 1979 and 1980, a period during which contractors were "unlikely to utilize" construction materials that contained asbestos.<sup>1</sup> (CP 55) Accordingly, the only evidence in the trial court showed that Ms. Hofferber's exposure to asbestos-containing joint compound manufactured by Georgia-Pacific occurred, if at all, in South Dakota, not Washington.

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<sup>1</sup> Georgia-Pacific ceased manufacturing asbestos-containing joint compound in May 1977. (CP 108)

Ms. Hofferber does not contend otherwise in this appeal, admitting that her “only identified asbestos exposure occurred in 1976 and 1977 in Fort Pierre, South Dakota.” (App. Br. 4) Shortly after this alleged exposure, in 1977, Ms. Hofferber moved to Washington. (CP 55) Notably, however, she does not allege that she was exposed in Washington to any asbestos-containing products manufactured by Georgia-Pacific.

Georgia-Pacific is a Delaware limited liability company with its principal place of business in Atlanta, Georgia. (CP 108, 111-12) Georgia-Pacific is registered to do business in the State of Washington and employs approximately 694 individuals in Washington, comprising approximately two percent of Georgia-Pacific’s employees worldwide. (CP 109) Georgia-Pacific’s 2014 net sales in Washington were approximately 2.4 percent of Georgia-Pacific’s worldwide sales. (CP 109) Although Georgia-Pacific owns or leases several facilities in Washington, Georgia-Pacific has never manufactured asbestos-containing joint compound in Washington. (CP 109)

Ms. Hofferber filed suit against Georgia-Pacific and several other defendants in the King County Superior Court, asserting various claims arising out of Ms. Hofferber’s alleged exposure to asbestos in South Dakota. (CP 1-4) Because Ms. Hofferber asserts that she was exposed to asbestos-containing products manufactured and sold by Georgia-Pacific only in

South Dakota, Georgia-Pacific filed a motion for summary judgment for lack of personal jurisdiction.<sup>2</sup>

On October 16, 2015, the Honorable Judith H. Ramseyer held a hearing on Georgia-Pacific's motion for summary judgment. Recognizing that *Daimler* "change[d] the landscape" on personal jurisdiction (RP 19), the court granted Georgia-Pacific's motion, explaining that plaintiff could establish neither general nor specific jurisdiction:

I don't think there's any question based on what is before the court that under *Daimler [v.] Bauman* and its progeny that the plaintiff cannot establish specific jurisdiction in this case or general jurisdiction. It just doesn't rise to the level of those activities that were rejected in *Daimler*, and based on the information Georgia-Pacific has produced it doesn't appear that any specific jurisdiction could be established either.

(RP 25–26) The court also denied Ms. Hofferber's request to conduct additional jurisdictional discovery, stating, "I don't believe that further discovery, based on Georgia-Pacific's earlier production [of documents

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<sup>2</sup> Georgia-Pacific filed a motion for summary judgment instead of a motion to dismiss because the factual basis for Georgia-Pacific's personal jurisdiction defense was not confirmed until after Ms. Hofferber had produced Dr. Brodtkin's report and his deposition was taken. Although motions to dismiss for lack of personal jurisdiction are more common, a defendant may raise a personal jurisdiction defense in a motion for summary judgment where the circumstances so warrant. *See, e.g., Hewitt v. Hewitt*, 78 Wn. App. 447, 455, 896 P.2d 1312 (1995) (affirming order granting summary judgment on the grounds of lack of personal jurisdiction).

reflecting its business activities in Washington] is going to change [the result].” (RP 26)

Ms. Hofferber appeals the trial court’s order, contending that (1) Georgia-Pacific is subject to personal jurisdiction in Washington with respect to her claims,<sup>3</sup> and (2) the trial court abused its discretion in denying her request to conduct additional jurisdictional discovery. The trial court’s decision was a faithful application of U.S. Supreme Court precedent and Washington law and should be affirmed.

#### IV. ARGUMENT

**A. Standard and Scope of Review: This Court Reviews the Trial Court Record *De Novo* to Determine Whether Plaintiff Satisfied Her Burden of Establishing Personal Jurisdiction. This Court Does Not Consider Arguments That Were Not Raised In The Trial Court.**

Under Washington law, “[t]he plaintiff bears the burden of making a prima facie showing of jurisdiction.” *Raymond v. Robinson*, 104 Wn. App. 627, 633, 15 P.3d 697 (2001). If the plaintiff fails to carry that burden, the trial court must dismiss the plaintiff’s claims. *See, e.g., SeaHAVN, Ltd.*

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<sup>3</sup> In her opposition in the trial court, Ms. Hofferber did not argue that Georgia Pacific’s contacts authorized the exercise of general or specific jurisdiction, as she now argues on appeal. (*See Arg*, §IV.A, *infra*) Instead, she opposed Georgia-Pacific’s motion on the grounds that Georgia-Pacific had waived personal jurisdiction, and she sought a CR 56(f) continuance to conduct jurisdictional discovery. (CP 113—21; *see* RP 8, 14-16)

*v. Glitnir Bank*, 154 Wn. App. 550, 563–73, ¶¶ 27–57, 226 P.3d 141 (2010) (affirming dismissal for lack of personal jurisdiction). “Where, as here, the facts are undisputed, personal jurisdiction is a question of law [subject to] de novo” review on appeal. *SeaHAVN*, 154 Wn. App. at 563, ¶ 27.

Washington’s long-arm statute, RCW 4.28.185, allows the exercise of personal jurisdiction to the full extent of the Due Process Clause of the United States Constitution. *See Noll v. Am. Biltrite, Inc.*, 188 Wn. App. 572, 578, ¶ 11, 355 P.3d 279 (2015) (“Our long-arm statute is designed to be coextensive with federal due process.”). “[B]ecause [Washington’s] long-arm statute is coextensive with the outer limits of due process,” this Court “need analyze only” whether the exercise of personal jurisdiction over Georgia-Pacific in this case is consistent with the Due Process Clause. *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir. 1994), *cert. denied*, 514 U.S. 1004 (1995).

In the 70 years since the Supreme Court decided the landmark personal jurisdiction case of *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), the Court has now made clear that the Due Process Clause permits two types of personal jurisdiction: general and specific. *See Daimler*, 134 S. Ct. at 754 (explaining that “*International Shoe*[] . . . presaged the development of two categories of personal jurisdiction”—general jurisdiction and specific jurisdiction); *Doe*

*v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001). General jurisdiction (which is sometimes referred to as all-purpose jurisdiction) is available only if the defendant is “essentially at home in the forum state.” *See Daimler*, 134 S. Ct. at 754, *quoting Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011). A defendant subject to general jurisdiction may be sued in the forum even on matters unrelated to his or her contacts with the forum. *Id.* Specific jurisdiction, by contrast, is present if the suit “aris[es] out of or relate[s] to the defendant’s contacts with the forum.” *Id.* (alterations in original) (quoting other sources).

This Court does not consider allegations of error that were not presented to the trial court. RAP 2.5(a). Ms. Hofferber did not assert a basis for personal jurisdiction below other than arguing that Georgia Pacific waived its defense of lack of personal jurisdiction. She has now abandoned the waiver argument on appeal, focusing for the first time on the merits of the jurisdictional issue. (CP 113–21; *see* RP 8, 14–16 ) But her failure to argue the basis for specific and general jurisdiction in the trial court precludes Ms. Hofferber from now raising these issues for the first time on appeal. *See Brundridge v. Fluor Federal Services, Inc.*, 164 Wn.2d 432, 442–44, ¶¶ 14–16, 191 P.3d 879 (2008). Nonetheless, since Georgia-Pacific argued, and the Court ruled in Georgia-Pacific’s favor, on both

theories of personal jurisdiction, respondent addresses both specific and general jurisdiction in this brief.

The trial court correctly held that Georgia-Pacific is not “at home” in Washington, and this suit does not arise out of Georgia-Pacific’s contacts with Washington. This Court should affirm the trial court’s order granting Georgia-Pacific’s motion for summary judgment.

**B. Georgia-Pacific Is Not “At Home” And Therefore Not Subject To General Jurisdiction In Washington.**

Georgia-Pacific is a limited liability company formed under Delaware law that has its headquarters and principal place of business in Georgia. Under the tests for general jurisdiction prescribed by the United States Supreme Court in *Daimler* and *Goodyear*, Georgia-Pacific’s business activities are insufficient to make it amenable to suit in the state of Washington for claims that do not arise from and are not connected with its contacts with this state.

In *Daimler*, the United States Supreme Court clarified that “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose [or general] jurisdiction there.” *Daimler*, 134 S. Ct. at 760. The two “paradigm” bases for general jurisdiction are the defendant’s place of incorporation and its principal place of business. “Those affiliations have

the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable.” *Id.*

Georgia-Pacific is therefore “at home” and subject to general jurisdiction in both Delaware, where it was formed, and in Georgia, where it has its principal place of business. *Daimler*, 134 S. Ct. at 760 (place of incorporation and principal place of business are “paradigm” bases for general jurisdiction); *Goodyear*, 131 S. Ct. at 2853–54 (place of incorporation and principal place of business are “paradigm” forums for general jurisdiction—where “corporation is fairly regarded as at home”); *see also Hertz Corp. v. Friend*, 559 U.S. 77, 92–93, 130 S. Ct. 1181, 175 L. Ed. 2d 1029 (2010) (“principal place of business” under 28 U.S.C. § 1332 is corporate “nerve center”—normally corporate headquarters). Georgia-Pacific is not at home in Washington.

While *Daimler* did not hold that the place of incorporation and principal place of business are the only places where a corporate defendant may ever be subject to personal jurisdiction, the Court emphasized that subjecting a corporation to general jurisdiction outside of these exemplar places would require an “exceptional case.” *Daimler*, 134 S. Ct. at 761 n.19. In *Daimler*, the Court gave but one example of an “exceptional case” that would justify subjecting a corporate defendant to general jurisdiction in a state other than its place of incorporation or its principal place of

business. That example was *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952). See *Daimler*, 134 S. Ct. at 761 n.19 (citing *Perkins* as an “exceptional case”). In *Perkins*, the president of a Philippines-based mining company temporarily “moved to Ohio, where he kept an office, maintained the company’s files, and oversaw the company’s activities.” *Daimler*, 134 S. Ct. at 756 (citing *Perkins*, 342 U.S. at 448). The mining company was subject to general jurisdiction in Ohio because “Ohio was the corporation’s principal, if temporary, place of business.” *Daimler*, 134 S.Ct. at 756 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 n.11, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984)).

Ms. Hofferber does not allege any remotely similar facts here. Indeed, in arguing that the trial court could exercise general jurisdiction, she fails to discuss—or even cite—the Supreme Court’s controlling decision in *Daimler*, relying instead on two decisions that *pre-date Daimler*—*International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945) and *Crose v. Volkswagenwerk Aktiengesellschaft*, 88 Wn.2d 50, 558 P.2d 764 (1977). Her reliance on these two cases is misplaced. *International Shoe* involved *specific*, not general, jurisdiction. See *Daimler*, 134 S. Ct. at 754 (the type of personal jurisdiction discussed in *International Shoe* “is today called ‘specific jurisdiction’”); *International Shoe*, 326 U.S. at 320 (defendant carried on business activities in

Washington and “[t]he obligation which is here sued upon arose out of those very activities”). And *Croze*’s holding—that a product manufacturer’s substantial business transactions in Washington (albeit through distributors) subjected it to general jurisdiction in this state—has been squarely undermined by the Supreme Court’s recent decision in *Daimler*. *Croze*, 88 Wn.2d at 54–55.

In fact, *Daimler* expressly *rejects* the suggestion that general jurisdiction may be based solely on the fact that the defendant transacts business in the forum state, holding that such a formulation of general jurisdiction would be “unacceptably grasping.” *Daimler*, 134 S. Ct. at 761. Thus, the defendant Daimler’s substantial connections with the forum state of California were insufficient to subject it to general jurisdiction because it was neither incorporated nor had its principal place of business in the forum state. *Id.* at 751, 760–62. Daimler was the largest supplier of luxury vehicles to California, operated multiple facilities there, and its California sales accounted for ten percent of U.S. new-vehicle sales and 2.4 percent of Daimler’s worldwide sales. *Id.* at 752. The annual sales in California amounted to some \$4.6 billion, and the defendant had its regional headquarters there. *Id.* at 766–67 (Sotomayor, J. concurring in judgment). But as the Court noted: “Nothing in *International Shoe* and its progeny suggests that ‘a particular quantum of local activity’ should give a State

authority over a ‘far larger quantum of ... activity’ having no connection to any in-state activity.” *Id.* at 762 n.20.

The trial court correctly held that Georgia-Pacific’s contacts with Washington do not subject it to general jurisdiction here. Georgia-Pacific is not incorporated in Washington, nor does it have its principal place of business here. (CP 108) And Georgia-Pacific’s contacts with Washington are no different in nature or magnitude than the contacts the Supreme Court held in *Daimler* to be insufficient to support general jurisdiction. For example, Georgia-Pacific’s workforce in Washington constitutes only approximately two percent of its worldwide workforce. (CP 109) Georgia-Pacific’s 2014 net sales in Washington constituted only about 2.4 percent of the company’s net sales worldwide. (CP 109) Although Georgia-Pacific transacts business in Washington, its operations are not focused in Washington such that it can be fairly regarded as “at home” here.

Moreover, none of the undisputed facts in this record could support a finding that this is an “exceptional case” that would subject Georgia-Pacific to general jurisdiction in a state other than its state of incorporation or principal place of business. Georgia-Pacific’s business activities in Washington are no different in nature or extent as compared to the many other jurisdictions where Georgia-Pacific also conducts business. Indeed, if Georgia-Pacific’s Washington activities “sufficed to allow adjudication

of [a South Dakota]-rooted case in [Washington], the same global reach would presumably be available in every other State in which [Georgia-Pacific's] sales are sizable.” *Daimler*, 134 S. Ct. at 761. But the Due Process Clause precludes such “exorbitant exercises of all-purpose jurisdiction.” *Id.* at 761–62.

Ms. Hofferber’s argument at the end of her brief that *Daimler*’s holding is limited to its multi-national context is unsupported by any authority. Further, virtually every court which has considered such a limited view of *Daimler* has rejected it.

For example, in *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016), the Second Circuit held that “the Court in *Daimler* simply did not limit its jurisdictional ruling as [the plaintiff] suggests: for example, it made explicit reference to ‘sister-state’ corporations and drew no distinction in its reasoning between those and foreign-country corporations.” 814 F.3d at 630; *see also Loyalty Conversion Sys. Corp. v. Am. Airlines, Inc.*, 66 F. Supp. 3d 795, 805 n.3 (E.D. Tex. 2014) (“[Plaintiff] attempts to distinguish *Daimler* on the ground that it dealt with a non-United States corporation. That distinction is not viable, as *Daimler* did not restrict its analysis to foreign country corporations. While the Court addressed the ‘transnational context’ of the case in the last section of its opinion, it is clear that the rest of the opinion . . . dealt with the issue of general jurisdiction as to corporations that

were either sister-state or foreign-country corporations, and that it used the term ‘foreign’ to refer to both of those categories.”) (citation omitted); *HID Global Corp. v. Isonas, Inc.*, 2014 WL 10988340, at \*4 (C.D. Cal. Apr. 21, 2014) (“The *Daimler* opinion makes clear that a ‘foreign’ corporation is one either outside the United States *or* a sister state to the forum state.”) (emphasis in original).

Indeed, *Brown* is directly on point. There, the personal representative of a deceased Alabama resident sued Lockheed-Martin and thirteen other companies in Connecticut, alleging that the decedent was exposed to asbestos in various locations in Europe and the United States, but not in Connecticut (the forum state). *Brown*, 814 F.3d at 622. The plaintiff conceded that the court lacked specific jurisdiction over Lockheed-Martin, because the decedent’s claims did not arise out of Lockheed-Martin’s contacts with Connecticut given that he was not exposed to asbestos there. *Id.* She contended, however, that Lockheed-Martin was subject to general jurisdiction in Connecticut because (1) Lockheed-Martin had registered to do business and appointed an agent for service of process in Connecticut,<sup>4</sup> and (2) Lockheed-Martin has had a physical presence in

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<sup>4</sup> The court in *Brown* rejected the argument that the Connecticut registration statute at issue conferred general jurisdiction. *Brown*, 814 F.3d at 641. Here, Ms. Hofferber does not contend that Georgia-Pacific has consented to any type of personal jurisdiction by virtue of its registration to do business in Washington.

Connecticut for over thirty years, leases several buildings there, employs dozens of workers in Connecticut, derives substantial revenue from its operations there, and pays taxes on that revenue to the state. *Id.* at 622, 625, 628.

The district court dismissed the claims against Lockheed-Martin for lack of personal jurisdiction. On appeal, the Second Circuit affirmed, holding that these contacts were insufficient to support the exercise of general jurisdiction over Lockheed-Martin:

Lockheed's contacts with Connecticut fall far short of the relationship that Due Process requires, under *Daimler* and *Goodyear*, to permit the exercise of general jurisdiction over Lockheed by Connecticut courts. Indeed, given that it is common for corporations to have presences in multiple states exceeding that of Lockheed in Connecticut, general jurisdiction would be quite the *opposite* of "exceptional" if such contacts were held sufficient to render the corporation "at home" in the state.

*Brown*, 814 F.3d at 630 (emphasis in original).

Other courts have similarly refused to exercise general jurisdiction over a defendant that was not incorporated in and did not have its principal place of business in the forum state where the plaintiff alleged exposure to asbestos only outside the forum state. *See, e.g., BNSF Ry. Co. v. Super. Ct.*, 235 Cal. App. 4th 591, 603–05 (2015) (no general jurisdiction even though defendant transacted substantial business in the forum state where plaintiff's only exposure to asbestos occurred outside the forum state and

defendant was not incorporated in the forum state, did not have its principal place of business there, and was not “at home” there), *rev. granted and opinion superseded by* 352 P.3d 417, 189 Cal.Rptr.3d 854 (2015); *Denton v. Air & Liquid Sys. Corps.*, 2015 WL 682158, at \*1–2 (S.D. Ill. Feb. 17, 2015) (no personal jurisdiction where the plaintiff’s only exposure to asbestos-containing products manufactured by the defendant occurred outside the forum state, and although the defendant had facilities in the forum state and had substantial operations there, the defendant was not incorporated in the forum state and did not have its principal place of business there).

As in these cases, the nature and extent of Georgia-Pacific’s ongoing business activities in the forum state of Washington are no different than the nature and extent of Georgia-Pacific’s ongoing business activities in virtually every other jurisdiction in which it operates. Were Georgia-Pacific’s contacts with Washington deemed sufficient to constitute an “exceptional case” in which Georgia-Pacific is subject to general jurisdiction outside the paradigm fora of the state in which Georgia-Pacific was formed and the state in which it has its principal place of business, *any* case filed in a state where a corporation maintains ongoing business activities would be an “exceptional case.” But this result is expressly at odds with the Supreme Court’s decision in *Daimler*. See *Daimler*, 134 S.

Ct. at 761–62 (stating that “[s]uch exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants ‘to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit’”). Because Georgia-Pacific is not “at home” in Washington, the trial court correctly concluded that Georgia-Pacific is not subject to general jurisdiction here.

**C. Georgia-Pacific Is Not Subject to Specific Jurisdiction Because Ms. Hofferber’s Injuries Are Not Connected With Any of Georgia-Pacific’s Washington Activities.**

The trial court correctly held that it lacked specific jurisdiction over Georgia-Pacific because Ms. Hofferber’s exposure to asbestos occurred entirely in South Dakota and bore no connection to any of Georgia-Pacific’s activities in Washington.

Under Washington’s long-arm statute, RCW 4.28.185, a trial court may exercise specific jurisdiction over a nonresident defendant only if *all* of the “following factors . . . coincide”:

- (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
- (2) the cause of action must arise from, or be connected with, such act or transaction; and
- (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative

convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

*Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 767, 783 P.2d 78 (1989).

To satisfy the second requirement—that the cause of action “arise from, or be connected with” an act or transaction undertaken by the defendant in the forum state—the plaintiff must show that “but for” the defendant’s activities in Washington, the plaintiff would not have been injured. *Shute*, 113 Wn.2d at 772. Stated another way, the plaintiff must show that some action of the defendant that is in the causal chain of events that led to plaintiff’s alleged injury took place in Washington. *See id.*

Thus, in *Shute*, the plaintiffs’ claims arose from or were connected to the defendant’s contacts with Washington because the defendant solicited business in Washington, and that solicitation of business in Washington caused the plaintiffs to purchase tickets on the defendant’s cruise ship on which one of the plaintiffs was injured. 113 Wn.2d at 768, 772. In other words, had the defendant not solicited business in Washington, the plaintiffs would not have been injured. *See id.* at 772 (“‘But for’ Carnival’s ‘transaction of any business within this state,’ Mrs. Eulala Shute would not have been injured on respondent’s cruise ship. Therefore her claim ‘arises

from' Carnival's Washington contacts.")<sup>5</sup>. That causal connection between a defendant's forum activities and the plaintiff's cause of action is absent here.

**1. Georgia-Pacific's Activities in Washington Are Not A "But For" Cause of Ms. Hofferber's Alleged Injuries.**

The trial court correctly concluded that Ms. Hofferber did not meet her burden of showing that her alleged injury arises from or is connected with Georgia-Pacific's activities in Washington. Ms. Hofferber's claims against Georgia-Pacific are based on alleged activities that occurred, if at all, in South Dakota. Specifically, Ms. Hofferber claims she was exposed to asbestos-containing joint compound manufactured by Georgia-Pacific only at her home in Fort Pierre, South Dakota. (CP 52–55; App. Br. at 4) She no longer alleges—and there is no evidence—that the asbestos-

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<sup>5</sup> *Accord SeaHAVN, Ltd. v. Glitnir Bank*, 154 Wn. App. 550, 571, ¶ 50, 226 P.3d 141 (2010) ("Jurisdiction is proper if the events giving rise to the claim would not have occurred 'but for' the solicitation of business in the forum state."); *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 719, 919 P.2d 1243 (1996) ("Jurisdiction is proper in Washington if the events giving rise to the claim would not have occurred 'but for' the corporation's solicitation of business within this state."), *rev. denied*, 131 Wn.2d 1020 (1997); *Harbor Cold Storage, LLC v. Strawberry Hill, LLC*, 2009 WL 3765361, at \*5 (W.D. Wash. Nov. 9, 2009) ("To determine if the claim asserted in the litigation arises out of the defendant's forum-related activities, the court must consider whether the plaintiff would have been injured 'but for' the defendant's conduct directed toward the plaintiff in the forum state."); *Port Lynch, Inc. v. New England Int'l Surety of Am., Inc.*, 1990 WL 167126, at \*5 (W.D. Wash. May 23, 1990) ("[T]he Washington Supreme Court [has] adopted the 'but for' test in analyzing whether a cause of action arises from a party's contacts with a forum state. The test is whether, but for the activities of the nonresident firm in the forum where it is ultimately sued, the plaintiff's cause of action would not have arisen.").

containing joint compound was manufactured in Washington, that she saw advertising of the product in Washington, that she purchased the product in Washington, or that she was exposed in Washington to the product or to any other asbestos-containing products manufactured by Georgia-Pacific.

Each step in the alleged causal chain that ultimately led to Ms. Hofferber's injury took place somewhere other than in Washington. Under these circumstances, Ms. Hofferber's claims simply do not arise out of and are not connected with Georgia-Pacific's contacts with Washington. The trial court, therefore, correctly concluded that Georgia-Pacific is not subject to specific jurisdiction with respect to the claims of Ms. Hofferber. *See, e.g., SeaHAVN*, 154 Wn. App. at 571, ¶ 52 (no specific jurisdiction where the events giving rise to the plaintiff's claims took place in Europe, not in Washington).

**2. The Fact That Georgia-Pacific Sold The Same Product in Washington Does Not Establish Specific Jurisdiction.**

Ms. Hofferber's contention that Georgia-Pacific happened to also sell in Washington the same type of asbestos-containing joint compound that Ms. Hofferber claims caused her injury is insufficient to support specific jurisdiction. Ms. Hofferber relies on two different lines of cases: the so-called "stream of commerce" cases and cases that apply a different relatedness standard than the "but for" standard recognized by Washington

law. Neither line of cases supports the existence of specific jurisdiction in this case.

**a) The “Stream of Commerce” Theory Does Not Support the Exercise of Personal Jurisdiction Over Georgia-Pacific.**

The “stream of commerce” theory does not allow the exercise of personal jurisdiction absent an allegation that the defendant placed a defective product into the stream of commerce, directed at the forum state, which injured the plaintiff in the forum state. The United States Supreme Court first recognized the “stream of commerce” theory in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980), explaining as follows:

[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 owner or to others.***

444 U.S. at 297 (emphasis added). Of course, the word “there” refers to ***the forum state***. Thus, the “stream of commerce” theory is relevant ***only if*** the plaintiff claims that she was injured by a defective product in the forum state. It simply does not apply when a product allegedly causes an injury ***outside the forum state***. See also *Hinrichs v. Gen. Motors of Canada, Ltd.*, \_\_\_ So.3d \_\_\_, 2016 WL 3461177, at \*23 (Ala. June 14, 2016) (no specific

jurisdiction where “the stream of commerce for the [product] ended at its sale in Pennsylvania, approximately 1,000 miles from [the forum state of] Alabama,” because “for specific jurisdiction to exist, [the defendant’s] in-state activity must ‘g[i]ve rise to the ‘episode-in-suit,’ and involve ‘adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction’”) (citations omitted); Wright & Miller, 4 Fed. Prac. & Proc. Civ. § 1067.4 (4th ed.) (quoting *World-Wide Volkswagen*, 444 U.S. at 297).

Mr. and Mrs. Cox’s argument that *World-Wide Volkswagen* held that specific jurisdiction arises in any “one of those states” where a product is sold, even if the injury at issue did not occur there, is not supported by *World-Wide Volkswagen* or any other authority. In *World-Wide Volkswagen*, the Supreme Court simply said no such thing. Instead, what the Court said and plainly meant is that if a company sells its product in a number of states, a plaintiff injured in one of those states can sue the company in the state where the injury occurred. See *World-Wide Volkswagen*, 444 U.S. at 297.

Indeed, in each of the “stream of commerce” cases Ms. Hofferber cites, a product entered *Washington* through the “steam of commerce” and was alleged to have caused an injury *in Washington*. See, e.g., *State v. LG Electronics, Inc.*, 185 Wn. App. 394, 399–400, ¶¶ 1–2, 341 P.3d 346 (2015)

(allegation that product manufacturer, whose product was placed into the stream of commerce and sold in Washington, entered into a conspiracy that “caused Washington State residents and State agencies to pay” inflated prices for the product), *rev. granted*, 183 Wn.2d 1002 (2015); *Noll v. Am. Bitrite, Inc.*, 188 Wn. App. 572, 575–76, ¶ 1, 355 P.3d 279 (2015) (allegation that asbestos-containing pipe was manufactured in California, placed into the stream of commerce where it ended up in Washington, and plaintiff claimed he was injured when he was exposed in Washington to asbestos from the pipe).

Here, by contrast, the asbestos-containing joint compound to which Ms. Hofferber claims she was exposed entered *South Dakota* through the stream of commerce and allegedly caused her injury *in South Dakota*. Were this case filed in South Dakota, the “stream of commerce” cases that Ms. Hofferber cites would be relevant to the Court’s analysis. But given that it was filed in Washington, those cases have no relevance whatsoever and certainly do not establish that Georgia-Pacific is subject to specific jurisdiction here.

Nor does the fact that Ms. Hofferber moved to Washington after she claims she was exposed in South Dakota to asbestos-containing joint compound manufactured by Georgia-Pacific establish specific jurisdiction. As the United States Supreme Court has recently held, “however significant

the plaintiff's contacts with the forum may be, those contacts cannot be decisive in determining whether the defendant's due process rights are violated" and cannot form the basis for personal jurisdiction over a defendant. *Walden v. Fiore*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1115, 1122, 188 L. Ed. 2d 12 (2014) (internal quotation marks omitted). That is, "the plaintiff cannot be the only link between the defendant and the forum. 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.* "[M]ere injury to a forum resident" is not enough. *Id.* at 1125.

This principle was recently applied in an asbestos case with nearly identical facts. In *Waite v. All Acquisition Corp.*, 2016 WL 2346743 (S.D. Fla. May 4, 2016), the plaintiff claimed he was exposed to asbestos in Massachusetts from the 1940s through the 1970s. 2016 WL 2346743 at \*1. Sometime thereafter, the plaintiff moved to Florida, where he developed mesothelioma. *Id.* at \*4. Relying on *Walden*, the court correctly held that the defendant was not subject to specific jurisdiction in Florida, stating that the plaintiff "only became ill in Florida (as opposed to another forum) because he moved to Florida. Under *Walden*, that connection is simply too tenuous to connect [the defendant] with Florida 'in any meaningful way.'" *Id.*

The same is true here. The fact that Ms. Hofferber moved to Washington *after* she was allegedly exposed in South Dakota to asbestos-containing products manufactured by Georgia-Pacific does not convert this South Dakota-rooted dispute to one that arises out of *Georgia-Pacific's* contacts with Washington.

**b) Even Under a More Relaxed Standard for Relatedness, Ms. Hofferber's Claims Do Not Arise From or Relate to Georgia-Pacific's Contacts with Washington.**

In a further attempt to establish specific jurisdiction, Ms. Hofferber argues that Georgia-Pacific is subject to specific jurisdiction in Washington if her claims are “connected with” Georgia-Pacific’s business activities in Washington, even if they do not “arise from” those activities. She relies on several cases from other jurisdictions that—unlike Washington—apply a more relaxed test than the “but for” test adopted in *Shute* to determine whether the cause of action arises from, relates to, or is connected with the defendant’s contacts with the forum state. Given that these cases apply a standard that is different than the standard recognized by Washington law, they are wholly inapplicable and are of no help to Ms. Hofferber in this case. In any event, Georgia-Pacific would not be subject to specific jurisdiction even under the more relaxed standard applied in those cases.

In *Chew v. Dietrich*, 143 F.3d 24 (2d Cir. 1998), *cert. denied*, 525 U.S. 948 (1998) (cited in App. Br. at 22), an agent of the defendant recruited crewmembers in Rhode Island to serve on his sailing vessel on a trip to Bermuda. 143 F.3d at 30. At the time the ship set sail, the defendant intended to return to Rhode Island at the end of the voyage with many of the same crewmembers. *Id.* One of the crewmembers fell overboard and was killed during the trip, and his parents filed a wrongful death action against the defendant (a citizen of Germany). *Id.* at 25.

In holding that the defendant was subject to specific jurisdiction in Rhode Island, the court rejected the “but for” test that this Court adopted in *Shute* in favor of a more flexible test that considers “whether the exercise of personal jurisdiction in a particular case does or does not offend ‘traditional notions of fair play and substantial justice.’”<sup>6</sup> *Chew*, 143 F.3d at 29. The Second Circuit held that allowing the suit to proceed in Rhode Island did not offend due process because the defendant “could reasonably anticipate that he might be ‘haled into court’ in Rhode Island to respond to a suit to recover damages for injuries that crew members recruited in Rhode

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<sup>6</sup> The test adopted by the Second Circuit in *Chew* has been criticized by other courts because it blurs the lines between general and specific jurisdiction. *See, infra*, p. 32.

Island might suffer during the round-trip voyage.” *Id.* at 30 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

Here, however, Georgia-Pacific could not “reasonably anticipate” being “haled into court” in Washington for a claim asserted by a plaintiff who alleges that she was injured because she was exposed *in South Dakota* to asbestos-containing joint compound, which she purchased *in South Dakota*. Unlike in *Chew*, where there was a clear nexus between the plaintiff’s claims and actions undertaken by the defendant in the forum state, there is absolutely no nexus between Ms. Hofferber’s claims and any actions undertaken by Georgia-Pacific in Washington. Had Georgia-Pacific never sold asbestos-containing joint compound in Washington, *Ms. Hofferber’s alleged injury would have still occurred*. By contrast, in *Chew*, had the defendant never recruited crewmembers in Rhode Island, the plaintiff would not have been aboard the sailing vessel and would not have been injured.

Ms. Hofferber also cites *Del Ponte v. Universal City Development Partners, Ltd.*, 2008 WL 169358 (S.D.N.Y. Jan. 16, 2008) (App. Br. at 22). In *Del Ponte*, the plaintiff (a New York resident) alleged that she purchased a necklace from the defendant, who operated a kiosk at a theme park in Florida. According to the plaintiff, the necklace contained lead which caused her child to become sick. Applying the flexible test adopted by the

Second Circuit in *Chew*, the court held that the defendant was subject to personal jurisdiction in New York, although the court acknowledged that this conclusion was “not free from doubt.” 2008 WL 169358, at \*11. Among other factors, the court concluded that the exercise of specific jurisdiction was reasonable because the defendant “purchased a very significant portion of its inventory from New York vendors” and because it was possible that the very necklace that allegedly caused the plaintiff’s son’s injury was sold to the defendant by a vendor from New York and then sold to the plaintiff in Florida. *Id.* The court also noted that the defendant’s “New York contacts have enabled [the defendant] to stock the variety of inventory desired by consumers such as Plaintiffs.” *Id.*

Here, by contrast, there is *no possibility* that the joint compound Ms. Hofferber allegedly purchased in South Dakota was manufactured in Washington. (CP 109) To the contrary, Ms. Hofferber *concedes* that no act undertaken by Georgia-Pacific in Washington was part of the causal chain that she claims led to her injury. (App. Br. at 4) The only “connection” alleged between Ms. Hofferber’s injury and Georgia-Pacific’s contacts with Washington is that Georgia-Pacific sold the same joint-compound product in Washington. Even under the test applied in *Del Ponte*, that is not enough.

Ms. Hofferber also cites *Vons Companies, Inc. v. Seabest Foods, Inc.*, 926 P.2d 1085, 14 Cal. 4th 434 (1996), *cert. denied*, 522 U.S. 808 (1997) (App. Br. at 23), which held that Washington franchisees' ongoing relationship with a California franchisor was sufficient to confer specific jurisdiction over claims against those franchisees that were substantially connected with that relationship. In *Vons*, 85 Jack-in-the-Box franchisees filed suit in California against the franchisor and various meat processors seeking damages "for loss of business caused by . . . adverse publicity" in connection with an E. coli outbreak. 926 P.2d at 1089. One of those meat processors filed a cross-complaint in that action against two Washington franchisees that owned Jack-in-the-Box restaurants where customers had fallen ill from eating contaminated meat, alleging that they "failed to follow proper procedures for cooking the meat, and that their procedures were 'systematically deficient when measured against industry standards.'" *Id.*

The California Supreme Court held that specific jurisdiction existed over the Washington franchisees who had entered into ongoing contractual relationships with a California franchisor. *Vons*, 926 P.2d at 1094–96. Although the meat supplier was not a party to those contracts, the court found that the plaintiffs' claims were sufficiently related to the franchisees' contacts with California to confer specific jurisdiction. In so holding, the court explained that the franchisees "purposefully availed [themselves] of

an ongoing contractual relationship with a business in [California],” and this contact with California was substantially related to their dispute with the franchisees because (1) the franchisees acquired the allegedly tainted meat pursuant to the franchise agreement, and (2) the meat supplier “alleged that the franchisees failed to cook the meat properly because of deficiencies in the cooking and training procedures and equipment requirements provided for by [the California franchisor] on a systemwide basis.” *Id.* at 1101.

Here, however, Ms. Hofferber’s claims are not connected in any way with Georgia-Pacific’s business activities in Washington. Those activities—including Georgia-Pacific’s sale of asbestos-containing joint compound in Washington—occurred entirely independently of the chain of events that Ms. Hofferber claims led to her injury. And in any event, *Vons* is limited to the context of an ongoing franchise relationship with a resident of the forum state and does not support the exercise of specific jurisdiction in this case.

In short, Ms. Hofferber cites *no case* that supports the exercise of specific jurisdiction in the circumstances present here. Even under the more flexible standard applied by courts in some other jurisdictions, Ms. Hofferber cannot show that her claims arise from or are connected with Georgia-Pacific’s business activities in Washington. Indeed, to hold that a defendant is subject to specific jurisdiction in a state based solely on the fact that the

defendant sells the same product in that state (even though the alleged injury occurred elsewhere) would obliterate the distinction between general and specific jurisdiction that the Supreme Court has expressly maintained for over seventy years. See *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 320 (3d Cir. 2007) (criticizing *Chew*'s flexible test because under that test "there appears to be no rigid distinction between general and specific jurisdiction"); *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 103 (7th Cir. 2004) (Scirica, C.J., concurring in part and dissenting in part) (discussing *Chew* and stating that the Seventh Circuit "has rejected this sort of 'hybrid' jurisdictional analysis which effectively blends the concepts of general and specific jurisdiction"); see also *Daimler*, 134 S. Ct. at 754 (the type of personal jurisdiction discussed in *International Shoe* "is today called 'specific jurisdiction'"). By contrast, the "but for" test that the Washington Supreme Court adopted in *Shute* "preserves the essential distinction between general and specific jurisdiction." *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1988) ("The 'but for' test is consistent with the basic function of the 'arising out of' requirement—it preserves the essential distinction between general and specific jurisdiction."), *rev'd on other grounds*, 499 U.S. 585, 111 S. Ct. 1522 (1991).

Were the Court to adopt the rule advocated by Ms. Hofferber, a product manufacturer would be subject to personal jurisdiction in *any* state

where that product is sold (*i.e.* any state where it transacts business), even with respect to claims that have nothing to do with the defendant's activities in that state. This result is expressly foreclosed by the Supreme Court's decision in *Goodyear*, which held that "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales," 564 U.S. at 930 n.6, and more recently in *Daimler*, holding that such "exorbitant exercises of . . . jurisdiction" violate constitutional guarantees of due process. *Daimler*, 134 S. Ct. at 761–62.

Indeed, just two months ago, the United States District Court for the Southern District of Florida *expressly rejected* the theory that Ms. Hofferber advances here in a case that also alleged exposure to asbestos in a state other than the forum state. In *Waite v. All Acquisition Corp.*, 2016 WL 2346743 (S.D. Fla. May 4, 2016), the court held that the defendant was not subject to specific jurisdiction in the forum state even though the defendant sold the same asbestos-containing products in the forum as those that were alleged to have caused the plaintiff's injury elsewhere. 2016 WL 2346743 at \*1, 4. The court explained: "[E]ven if [the defendant] was in fact shipping the same materials to Florida at the same time [the plaintiff] came into contact with those materials in Massachusetts, [the defendant's] activities in Florida do not 'relate to' [the plaintiff's] cause of action sufficiently to confer jurisdiction on this Court." *Id.* at \*4. This was so even though the plaintiff

was a Florida resident who alleged that he developed mesothelioma as a result of this exposure while he was living in Florida. *Id.* (citing *Walden v. Fiore*, \_\_\_ U.S. \_\_\_, 134 S. Ct. 1115, 1125 188 L. Ed. 2d (2014)). The fact that Georgia-Pacific sold the same product in Washington as the product that Ms. Hofferber claims caused her injury in South Dakota cannot somehow convert this South Dakota-rooted dispute into one that arises from or is connected with Georgia-Pacific’s business activities in Washington.

**D. Additional Jurisdictional Discovery Would Be Futile And Would Not Change The Result.**

The trial court did not abuse its discretion in denying Ms. Hofferber’s request for a continuance to conduct additional jurisdictional discovery before ruling on Georgia-Pacific’s motion for summary judgment. “The trial court’s grant or denial of a motion for continuance [to conduct additional discovery] will not be disturbed absent a showing of manifest abuse of discretion.” *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). “An appellate court will find an abuse of discretion only ‘on a clear showing’ that the court’s exercise of discretion was ‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’” *T.S. v. Boy Scouts of Am.*, 157 Wn.2d 416, 423, ¶ 11, 138 P.3d 1053 (2006).

The trial court acted well within its broad discretion in denying Ms. Hofferber's request for a continuance that would allow her to take the deposition of Georgia-Pacific's CR 30(b)(6) representative. Georgia-Pacific produced to Ms. Hofferber documents containing the information necessary for the court to determine whether Georgia-Pacific was subject to general jurisdiction in Washington or specific jurisdiction in this case, including information about the business activities of Georgia-Pacific and its consolidated entities in Washington state. (CP 108–109, 275–321)

This information showed that Georgia-Pacific and its consolidated entities in 2014 had roughly \$396 million in net sales in Washington (about 2.4 percent of its worldwide net sales), (CP 109), far less than the \$4 billion found insufficient in *Daimler* to support the exercise of general jurisdiction over a defendant that was not "at home" in the forum state. The documents further showed that only two percent of Georgia-Pacific's employees work in Washington, and confirmed that Georgia-Pacific never manufactured asbestos-containing joint compound in Washington and that the company did not ship asbestos-containing joint compound from Washington to Pierre, South Dakota. (CP 109, 298–299) This information was sufficient for Ms. Hofferber to make her jurisdictional arguments, and compelled the trial court's conclusion that her claims did not arise from and were not connected with Georgia-Pacific's business activities in Washington.

As the trial court correctly recognized, allowing Ms. Hofferber to depose Georgia-Pacific's CR 30(b)(6) designee concerning the documents the company had produced would not "change [the] situation." (RP 26) This Court has consistently held that a trial court may deny a motion for a continuance to conduct additional discovery when "the requesting party does not state what evidence would be established through the additional discovery" or when "the desired evidence will not raise a genuine issue of material fact." *Turner*, 54 Wn. App. at 693; *see also Lewis v. Bell*, 45 Wn. App. 192, 196, 724 P.2d 425 (1986); *Sternoff Metals Corp. v. Vertecs Corp.*, 39 Wn. App. 333, 341–42, 693 P.2d 175 (1984). The trial court's decision to do so here was not an abuse of discretion.

Indeed, on appeal, Ms. Hofferber still cannot articulate exactly what she hopes to gain by deposing Georgia-Pacific's CR 30(b)(6) designee, even though her counsel actually deposed Georgia-Pacific's CR 30(b)(6) designee in *Cox v. Alco Industries, Inc.*, No. 15-2-09603-6-SEA, another case where the plaintiff alleged exposure to asbestos only outside the forum state. (RP 18–20)<sup>7</sup> Even with the benefit of her counsel's knowledge of exactly what Georgia-Pacific's CR 30(b)(6) designee's testimony would be, Ms. Hofferber cannot explain how any of that testimony would change the

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<sup>7</sup> Mr. and Mrs. Cox's appealed the dismissal of that lawsuit directly to the Supreme Court, pending under No. 92599-2.

trial court's analysis of the personal jurisdiction issue. This is fatal to her argument that additional discovery is warranted. *See, e.g., Lewis*, 45 Wn. App. at 196 ("The [plaintiffs] failed to even speculate as to what evidence they hoped to establish through the depositions or what genuine issues of material fact would be developed. In view of this, it cannot be said denial of the request for a continuance was a manifest abuse of discretion.") (citing *Jankelson v. Cisel*, 3 Wn. App. 139, 473 P.2d 202 (1970), *rev. denied*, 8 Wn.2d 996 (1971)).

The simple truth is that additional discovery will not show that this case is distinguishable from *Daimler* in any meaningful way, nor will it somehow convert this South Dakota-rooted dispute into one that is connected with Georgia-Pacific's contacts with Washington. The trial court's order granting Georgia-Pacific's motion for summary judgment was a correct application of binding United States and Washington Supreme Court precedent and should be affirmed.

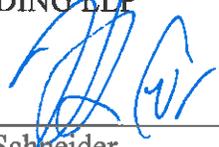
## V. CONCLUSION

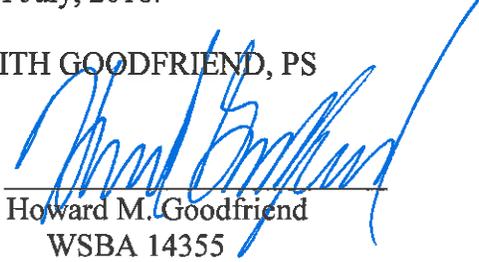
Ms. Hofferber cannot meet her burden of showing that Georgia-Pacific is subject to suit in Washington for claims arising entirely in the state of South Dakota. This Court should affirm Judge Ramseyer's well-reasoned order granting Georgia-Pacific's motion for summary judgment.

Respectfully submitted this 7th<sup>1</sup> day of July, 2016.

KING & SPALDING LLP

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By:   
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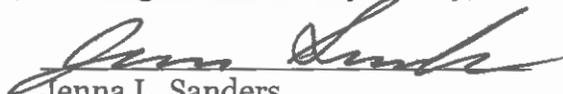
**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 6, 2016, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Brian D. Zeringer Rachel T. Reynolds Megan M. Coluccio Sedgwick LLP 520 Pike St Ste 2200 Seattle WA 98101 <a href="mailto:brian.zeringer@sedgwicklaw.com">brian.zeringer@sedgwicklaw.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
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**DATED** at Seattle, Washington this 6<sup>th</sup> day of July, 2016.

  
Jenna L. Sanders