THE ROBERTS COURT'S JURISDICTIONAL REVOLUTION WITHIN *FORD*'S FRAME

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I. INTRODUCTION

The Supreme Court's interest in personal jurisdiction has waxed and waned since the iconic *International Shoe Co. v. Washington*,[1] cycling between thirteen-year spurts of jurisdictional pronouncements followed by two decades of silence. From *International Shoe* in 1945 to *Hanson v. Denckla* in 1958, the Supreme Court issued six personal jurisdiction decisions that developed the minimum contacts analysis under the Due Process Clause.[2] The Court then took an almost twenty-year break before returning to the adjudicative jurisdictional fray in another thirteen-year stint from 1977 to 1990, this time resolving ten personal jurisdiction cases.[3] After failing to coalesce around a majority opinion in its last two attempts,[4] the Supreme Court withdrew again from the field, leaving the lower federal and state courts to their own

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1. 326 U.S. 310 (1945).

2. *See* Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. Int'l Life Ins. Co., 355 U.S. 220 (1957); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952); Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950); Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306 (1950); *Int'l Shoe*, 326 U.S. at 316.

3. *See* Burnham v. Superior Ct., 495 U.S. 604 (1990); Asahi Metal Indus. Co. v. Superior Ct., 480 U.S. 102 (1987); Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984); Calder v. Jones, 465 U.S. 783 (1984); Keeton v. Hustler Mag., Inc., 465 U.S. 770 (1984); Rush v. Savchuk, 444 U.S. 320 (1980); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Kulko v. Superior Ct., 436 U.S. 84 (1978); Shaffer v. Heitner, 433 U.S. 186 (1977).

4. *E.g.*, *Burnham*, 495 U.S. at 606–07 (plurality opinion); *Asahi*, 480 U.S. at 108–13 (plurality opinion).

devices for slightly more than twenty years, until the Roberts Court re-engaged with personal jurisdiction a decade ago.[5]

During this ten-year jurisdictional foray, the Roberts Court has toppled several previously accepted norms of adjudicative power. The Court has discarded decades of lower-court jurisdictional holdings—supported by dicta from its own precedents—that "continuous and systematic" forum business contacts of a substantial nature sufficed for general jurisdiction.[6] The Court has also tightened the requirement for purposeful conduct by the defendant itself (rather than an intermediary or the plaintiff),[7] insulated foreign manufacturers using independent American distributors from products-liability claims in state courts in the absence of regular forum sales,[8] and rejected the relevance of defendants' extensive forum contacts unrelated to the dispute unless the defendant was at home in the forum.[9] Whether these holdings are properly described as a "stealth revolution,"[10] a "muddy-booted, disingenuous revolution,"[11] a counterrevolution, or something else, the Roberts Court has transformed the personal jurisdiction field.

If past decisional cycles hold sway, the Court may be nearing the conclusion of this jurisdictional upheaval, an auspicious time to review its handiwork in this symposium on the Civil Procedure Transformation after Fifteen Years of the Roberts Court. This Article illuminates the transformation of adjudicative power through the lens of a single case: the Supreme Court's most recent jurisdictional pronouncement, *Ford Motor Co. v. Montana Eighth Judicial District Court*, where the plaintiffs—for the first time under the Roberts Court—prevailed.[12] *Ford* held, in accord with pronouncements from earlier decisions, that a company like Ford serving a market for its product in a state can be sued in that state when its product causes an injury there, irrespective of whether the

5. *See* Richard D. Freer, *Personal Jurisdiction in the Twenty-First Century: The Ironic Legacy of Justice Brennan*, 63 S.C. L. REV. 551, 551 (2012) (noting the Court's 2011 personal jurisdiction decisions were its first since 1990); Howard M. Wasserman, *The Roberts Court and the Civil Procedure Revival*, 31 REV. LITIG. 313, 317 (2012) (highlighting same point).

6. *See* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549 (2017); Daimler AG v. Bauman, 571 U.S. 117 (2014); Goodyear Dunlop Tires Ops., S.A. v. Brown, 564 U.S. 915 (2011).

7. *See* Walden v. Fiore, 571 U.S. 277 (2014).

8. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873 (2011).

9. *See* Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773 (2017).

10. Michael H. Hoffheimer, *The Stealth Revolution in Personal Jurisdiction*, 70 FLA. L. REV. 499, 499 (2018).

11. Patrick J. Borchers, *The Muddy-Booted, Disingenuous Revolution in Personal Jurisdiction*, 70 FLA. L. REV. F. 21, 21 (2018).

12. 141 S. Ct. 1017 (2021). I was inspired to employ a single case to unravel a doctrine's transformation by Richard D. Freer, *Refracting Domestic and Global Choice-of-Forum Doctrine Through the Lens of a Single Case*, 2007 BYU L. REV. 959 (2007).

product was originally designed, manufactured, or sold within that state.[13]

Yet even though the plaintiffs finally won one, the mere fact that the nation's High Court granted certiorari to resolve the case epitomizes the sea change in adjudicative jurisdiction wrought by the Roberts Court. Before 2011, the governing principles were so well settled that Ford did not bother to raise a jurisdictional challenge in similar lawsuits—indeed, my research indicates that Ford Motor Co. did not object, specially appear, or otherwise challenge the constitutional basis for personal jurisdiction in any domestic case within the Westlaw database during the period between *International Shoe* in 1945 and 2011.[14] As the Roberts Court fundamentally transformed the governing principles in its first six jurisdictional decisions, though, Ford began challenging its amenability to suit in any jurisdiction outside its home states unless it designed, manufactured, or originally sold the vehicle within that state.[15] The resolution of these new jurisdictional objections by Ford—once thought too frivolous to raise—became doubtful enough to warrant Supreme Court review, with Ford relying on the Roberts Court's recent opinions as overturning previously settled jurisdictional canon.

This Article surveys these changes to the jurisdictional landscape by employing *Ford*'s underlying factual context as a case study. Part II delves into the background of the case to highlight three previously available jurisdictional grounds that have either been foreclosed or

13. *Ford*, 141 S. Ct. at 1022, 1027–32.

14. I used the following search in the 'all state cases' and 'all federal cases' Westlaw databases: adv: (Ford Defendant Manufacturer Movant Appellant Appellee Petitioner Respondent) /s (object! appear! dismiss challeng!) /s jurisdiction & DA(before 2011) & DA(aft 1945) & TI("Ford Motor Co."). None of the 166 cases the search returned (the vast majority of which addressed subject matter jurisdiction, appellate jurisdiction, or conditions for forum non conveniens dismissals) involved a constitutional challenge by Ford initially raised before *International Shoe* to its amenability to suit for an injury occurring in any U.S. jurisdiction. *Cf.* Hoagland v. Ford Motor Co., No. Civ.A. 06-615-C, 2007 WL 2789768, at *1–3 (W.D. Ky. Sept. 21, 2007) (overruling Ford's jurisdictional challenge based on case law interpreting Kentucky's long-arm statute); Ford Motor Co. v. Carter, 233 S.E.2d 444, 446 (Ga. Ct. App.) (affirming denial of Ford's motion to dismiss on personal jurisdiction grounds under state statutes governing jurisdiction, venue, and service), *rev'd on other grounds*, 238 S.E.2d 361 (Ga. 1977); Schoonmaker v. Ford Motor Co., 435 N.Y.S.2d 393, 393 (App. Div. 1981) (memorandum opinion overruling Ford's claim that service of process was jurisdictionally defective). In *State v. Ford Motor Co.*, 38 S.E.2d 242, 243–49 (S.C. 1946), the court denied Ford's special appearance to challenge jurisdiction in South Carolina's action filed in 1942 to recover penalties for Ford's failure to comply with the state's corporate registration statute, but *International Shoe* had not been decided when Ford appeared specially in the trial court.

15. *See, e.g.*, Pitts v. Ford Motor Co., 127 F. Supp. 3d 676, 686 (S.D. Miss. 2015) (dismissing for lack of personal jurisdiction when vehicle was not sold, designed, or manufactured in forum); Rodriguez v. Ford Motor Co., 458 P.3d 569, 583 (N.M. Ct. App. 2018) (affirming denial of Ford's motion to dismiss for lack of personal jurisdiction), *cert. granted*, No. S-1-SC-37491, 2019 WL 11706154 (N.M. Apr. 8, 2019); State *ex rel.* Ford Motor Co. v. McGraw, 788 S.E.2d 319, 344–45 (W. Va. 2016) (remanding Ford's jurisdictional challenge for further development).

unsettled by the Roberts Court's earlier sextet of decisions. Part III then details how Ford's argument that a state's jurisdictional authority extends only to claims that strictly arise from the defendant's forum activities was built on the foundation of Roberts Court decisions. While the Supreme Court's rejection of Ford's argument halts for now a further upheaval in jurisdictional doctrine, the remaining jurisdictional terrain is still uncertain.

II. THE JURISDICTIONAL ROADS BEFORE THE REVOLUTION

Ford addresses two consolidated state products-liability lawsuits. In the first case, Ford manufactured an Explorer in Kentucky and sold it in 1996 to an independent Ford dealership in Washington.[16] Years later, after being bought and sold by several subsequent owners, a Montana resident purchased the Explorer second-hand in Montana and afterwards registered the vehicle in Montana.[17] Her adult daughter, Markkaya Gullett, suffered a fatal accident while driving her Explorer when the tread on a rear tire separated and the car swerved off a Montana highway, rolled into a ditch, and landed upside down.[18] The representative of Gullet's estate asserted products-liability claims against Ford for design defect, failure to warn, and negligence in Montana state court.[19]

In the other case, Ford designed a Crown Victoria in Michigan that was assembled in Ontario, Canada and then sold in 1993 to an independent Ford dealership in North Dakota.[20] The vehicle was bought and sold several times before being purchased second-hand in Minnesota by a Minnesota resident.[21] On a snowy day, Adam Bandemer, another Minnesota resident, was a passenger in this Crown Victoria when the car rear-ended a snowplow on a rural Minnesota road and landed in a ditch.[22] The airbags failed to deploy, and Bandemer suffered a traumatic brain injury.[23] Bandemer sued the driver, the vehicle's owner, and Ford in Minnesota state court, alleging the driver's

16. Brief for Petitioner at 5, Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021) (Nos. 19-368 & 19-369 consolidated).

17. Brief of Respondents at 8, Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021) (Nos. 19-368 & 19-369 consolidated).

18. *Ford*, 141 S. Ct. at 1023.

19. *Id.*

20. Brief for Petitioner, *supra* note 16, at 8.

21. Brief of Respondents, *supra* note 17, at 6.

22. *Ford*, 141 S. Ct. at 1023.

23. *Id.*

negligence and Ford's design and manufacturing defects, failure to warn, and negligence caused his injury.[24]

Ford moved to dismiss the claims against it in both cases for lack of personal jurisdiction,[25] with its very objection illustrating the Roberts Court's transformation of jurisdictional doctrine. Before 2011, the grounds for a state court's assertion of adjudicative power over Ford were so well settled that Ford did not lodge an objection in such cases.[26] The state courts could have employed well-accepted principles of general jurisdiction, with the additional availability of alternative jurisdictional grounds in many states, such as consent to jurisdiction via corporate registration or placing the vehicles within the stream of commerce. But the Roberts Court has either discarded or unsettled these theories.

A. General "Doing Business" Jurisdiction

Ford's business operations in both Minnesota and Montana are extensive. Ford established its first dealership in Minnesota in 1903, and today there are over eighty licensed Ford dealerships in the state selling thousands of Ford vehicles (including more than two thousand 1994 Crown Victorias, the model involved in the accident), along with repairing and maintaining Ford vehicles.[27] Ford conducts substantial marketing activities in Minnesota through television, print, and online advertisements, sponsorships of sports teams and athletic events, and direct-mail solicitations to state residents.[28] Similarly, Ford has been selling its vehicles in Montana since at least 1917, with thirty-six licensed Ford dealerships today marketing, selling, and servicing Ford vehicles, including the Explorer model involved in the accident.[29] Just as in Minnesota, Ford also conducts pervasive marketing activities on multiple platforms targeting Montana residents.[30]

Before 2011, a court reviewing Ford's extensive in-state activities presumably would have found the necessary "continuous and systematic" contacts with the forum state of a sufficiently substantial

24. *Id.*
25. *Id.*
26. *See, e.g.*, Hopper v. Ford Motor Co., 837 F. Supp. 840, 844–45 (S.D. Tex. 1993) (granting personal jurisdiction dismissal motion filed by Ford's European subsidiaries—which was not joined by co-defendant Ford Motor Co.—concerning an accident in the United Kingdom involving a Ford vehicle that was designed, manufactured, marketed, and sold in Europe).
27. Brief of Respondents, *supra* note 17, at 4–5.
28. *Id.*
29. *Id.* at 6–7.
30. *Id.*

nature to allow it to be sued on any cause of action, whether or not that cause of action had any connection with the forum state.[31] Such "general," "dispute-blind," or "all-purpose" jurisdiction was appropriate anytime a defendant's in-state business activities were substantial, continuous, and systematic, thereby typically authorizing jurisdiction in any state against sizeable business enterprises with extensive operations throughout the United States.[32] A corporation like Ford was thus subject to general jurisdiction in each and every state—and this principle was sufficiently well accepted that Ford did not challenge it.[33]

The Supreme Court's limited guidance on general jurisdiction during the twentieth century appeared to support this interpretation. *Perkins v. Benguet Consolidated Mining Co.* held that Ohio could exercise adjudicatory jurisdiction over a Philippine-based mining corporation with respect to claims unrelated to its forum activities when it was conducting a "continuous and systematic, but limited, part of its general business" in the state by supervising, from an Ohio corporate office, the necessarily limited rehabilitation of the company's properties during the Japanese occupation of the Philippine Islands.[34] *Helicopteros Nacionales de Colombia, S.A. v. Hall*, on the other hand, determined that a Colombian corporation providing helicopter transportation in South America was not amenable in Texas for its non-suit-related activities there, as such activities were dissimilar to the "continuous and systematic general business contacts" existing in *Perkins*.[35] The Supreme Court's dicta in *Rush v. Savchuk* was also in accord, where the Court first noted that "State Farm is 'found,' in the sense of doing business, in all 50 States," and then continued that such forum contacts would support adjudicative jurisdiction "even for an unrelated cause of action."[36] Lower courts thus appeared to follow the Supreme Court's insinuations by

31. *See* Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 767 (1988); Scott Dodson, *Jurisdiction in the Trump Era*, 87 FORDHAM L. REV. 73, 75–76 (2018); Charles W. "Rocky" Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 862–67 (2004).

32. Judy M. Cornett & Michael H. Hoffheimer, *Good-Bye Significant Contacts: General Personal Jurisdiction After* Daimler AG v. Bauman, 76 OHIO ST. L.J. 101, 115 (2015); Zoe Niesel, Daimler *and the Jurisdictional Triskelion*, 82 TENN. L. REV. 833, 836–37 (2015). The unique circumstances in the rare holdings disclaiming general jurisdiction over such corporations indicate the ubiquity of this understanding. *See, e.g.*, Follette v. Clairol, Inc., 829 F. Supp. 840, 846 (W.D. La.) (holding the exercise of general jurisdiction over Wal-Mart in this particular case was neither fair nor reasonable when the plaintiffs filed suit in the forum solely to take advantage of a longer limitations period), *aff'd mem.*, 998 F.2d 1014 (5th Cir. 1993).

33. *See supra* note 14 and accompanying text.

34. 342 U.S. 437, 438, 447–48 (1952).

35. *Helicopteros*, 466 U.S. 408, 416 (1984). The corporation's Texas activities were limited to one trip by its president for a contract negotiating session, payments drawn on an in-state bank, and in-state purchases of helicopters, equipment, and training. *Id.* at 410–11, 416–18.

36. 444 U.S. 320, 330 (1980).

holding that "continuous and systematic" forum business activities of a substantial nature sufficed for general jurisdiction.

But in a trilogy of decisions, the Roberts Court upended this understanding. First, in 2011, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Court held that a North Carolina state court could not constitutionally assert general jurisdiction over Turkish and European indirect subsidiaries of The Goodyear Tire and Rubber Company (Goodyear USA) when the tires manufactured by the Turkish subsidiary allegedly caused a fatal accident in France that killed two teenagers from North Carolina, as the only tie those foreign subsidiaries had with North Carolina was that a very small percentage of their tires reached the state through the stream of commerce.[37] In accord with its prior general jurisdiction precedents, this "sprawling" jurisdictional assertion was improper, the Court reasoned, as the foreign subsidiaries' "attenuated connections . . . fall far short of the 'the continuous and systematic general business contacts' necessary" for all-purpose jurisdiction.[38]

Goodyear's holding did not necessarily forebode a jurisdictional revolution, as the defendants' forum contacts mirrored *Helicopteros* rather than *Perkins* or the dicta from *Rush*, especially when the jurisdictional objection was only made on behalf of the foreign subsidiaries rather than Goodyear USA.[39] Yet *Goodyear* coined a brand-new metaphor for general jurisdiction: the Court, while repeating earlier pronouncements that general jurisdiction necessitated substantial "continuous and systematic" affiliations, added that such affiliations had to render the defendant "essentially at home in the forum."[40]

Three years later, the Roberts Court wholly reconfigured general jurisdiction around this new metaphor in *Daimler AG v. Bauman*, rejecting as "unacceptably grasping" the longstanding understanding (as reiterated in *Goodyear*) that a "substantial, continuous, and systematic course of business" supported general jurisdiction, downplaying the "essentially" modifier from *Goodyear*'s "at home" language, and holding that general jurisdiction is only appropriate when a corporate defendant is "at home" in the forum.[41] Except perhaps in "exceptional" cases, such as a de facto corporate relocation during a war or other calamity as

37. 564 U.S. 915, 921–29 (2011).

38. *Id.* at 929 (quoting *Helicopteros*, 466 U.S. at 416).

39. *Id.* at 918 ("Goodyear USA, which had plants in North Carolina and regularly engaged in commercial activity there, did not contest . . . jurisdiction.").

40. *Id.* at 919 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945)).

41. 571 U.S. 117, 136–39 (2014). Although *Daimler* occasionally quoted *Goodyear*'s "essentially at home" language, *see id.* at 122, 127, 133 n.11, 139, *Daimler* held the lower court erred by deciding that Daimler "was at home in California, and hence subject to suit there." *Id.* at 139.

occurred in *Perkins*, a corporation is "at home" only where it is domiciled—meaning its state of incorporation and the state where it maintains its principal place of business.[42] Daimler, as a German company with a principal place of business in Germany, was therefore not amenable to the jurisdiction of the California courts for claims arising from alleged actions in Argentina, despite the pervasive activities (including a regional headquarters) of its U.S. subsidiary in California, which the Court assumed could be attributed to Daimler.[43]

The Roberts Court affirmed its commitment to the "at home" formulation, even for domestic corporations, in the last of its general jurisdiction trilogy, *BNSF Railway Co. v. Tyrrell*.[44] Although the outcome was not surprising after *Daimler* and *Goodyear*, this was the Court's first opportunity to apply its newfound jurisdictional restrictions in a context where general jurisdiction previously was routinely exercised by lower courts.[45] *BNSF* involved two consolidated suits filed in Montana state court by allegedly injured railroad employees against their railroad employer alleging BNSF was "doing business" within Montana because it operated two thousand miles of railroad track, maintained an automotive facility, employed over two thousand Montana workers, and generated almost ten percent of its total revenue from the state.[46] But despite such ongoing activities in Montana, BNSF was neither incorporated nor had its principal place of business there.[47] And therefore, the Court held, BNSF was not "at home" in Montana and could not be sued there for claims unrelated to its forum activities.[48]

After these three cases, Ford is no longer amenable to general jurisdiction in the numerous states where it conducts extensive operations; instead, general jurisdiction is only available when suing Ford in its state of incorporation, Delaware, or its principal place of business, Michigan.[49] This has led plaintiffs, such as Bandemer and Gullett's representative, to search for alternative jurisdictional grounds, but some of these have also been cast into doubt.

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42. *Id.* at 137–38, 139 n.19.
43. *Id.* at 139.
44. 137 S. Ct. 1549 (2017).
45. *See* Richard D. Freer, *Some Specific Concerns with the New General Jurisdiction*, 15 NEV. L.J. 1161, 1162 (2015) (explaining *Daimler* and *Goodyear* could have reached the same holding under prior doctrine).
46. *BNSF*, 137 S. Ct. at 1554.
47. *Id.*
48. *Id.* at 1559.
49. *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1022, 1024 (2021) (concluding "general jurisdiction over Ford . . . attaches in Delaware and Michigan").

B. Jurisdictional Consent through Corporate Registration

A nonresident defendant's consent to personal jurisdiction relinquishes any potential constitutional challenges to the state's adjudicative power.[50] One arrangement that has historically evidenced at least a limited consent to jurisdiction is a corporation's registration to do business and appointment of an agent.[51] In the mid-nineteenth century, states began enacting statutes compelling corporations, as a condition for transacting in-state business, to register with the state and appoint an agent for service of process, thereby ensuring the registering corporation's amenability for its in-state obligations.[52] The Supreme Court first upheld this quid pro quo in 1856, reasoning that a corporation "must be taken to assent to the condition upon which alone such business could be there transacted."[53]

The permissibility of such jurisdictional consent depends on interpreting the state's corporate registration statute in light of constitutional limits.[54] In the nineteenth century, the cases almost always considered claims with at least some transactional relationship to the corporation's in-state business.[55] Subsequently, in the early twentieth century, the Supreme Court indicated that corporate registration statutes could support a state's all-purpose adjudicative authority.[56] But other Supreme Court decisions before *International Shoe* evinced discomfort with this proposition when the defendant was no longer conducting in-state business, with the Court declining several times to interpret a state registration statute as encompassing such a questionable jurisdictional reach.[57] Since *International Shoe*, the Supreme Court has never returned to the issue except in dicta; lower courts, left to their own devices, have reached divergent holdings on both the appropriate state-law interpretation and permissible constitutional jurisdictional scope of registration statutes.[58]

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50. *E.g.*, Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703–04 (1982); Lafayette Ins. Co. v. French, 59 U.S. (18 How.) 404, 407 (1856).

51. *See* Charles W. "Rocky" Rhodes, *Nineteenth Century Personal Jurisdiction Doctrine in a Twenty-First Century World*, 64 FLA. L. REV. 387, 436–41 (2012) (discussing history of jurisdictional consent through corporate registration) [hereinafter Rhodes, *Nineteenth Century*].

52. *See* St. Clair v. Cox, 106 U.S. 350, 354–55 (1882).

53. *Lafayette*, 59 U.S. (18 How.) at 407–08.

54. *E.g.*, Morris & Co. v. Skandinavia Ins. Co., 279 U.S. 405, 408–09 (1929); Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co., 243 U.S. 93, 94–95 (1917).

55. Rhodes, *Nineteenth Century*, *supra* note 51, at 436–37.

56. *Id.* at 437–39.

57. *See id.* at 439–40.

58. *Id.* at 440–41.

The discordant approaches are conveniently illustrated by comparing Montana and Minnesota. A statute in Montana's corporate registration scheme specifies that the appointment of a registered agent "does not by itself create a basis for personal jurisdiction."[59] In *DeLeon v. BNSF Railway Co.*, the Montana Supreme Court held that this statute means what it says—"a company does not consent to general personal jurisdiction by registering to do business in Montana and voluntarily conducting in-state business activities."[60] As a result, Gullett's representative could not have employed Ford's corporate registration in Montana as grounds for subjecting Ford to jurisdiction, even without the Roberts Court's recent refashioning of jurisdictional doctrine.

But the Minnesota Supreme Court reached a contrary conclusion in the years before the Roberts Court's formation.[61] *Rykoff-Sexton, Inc. v. American Appraisal Associates, Inc.* reasoned that the state's statutory registration scheme exacted all-purpose jurisdictional consent from nonresident defendants for any cause of action by requiring the appointment of a corporate agent for service of process as a qualification for transacting business in Minnesota.[62] The court continued that consent as a condition of doing in-state business was "one of the time-honored bases of personal jurisdiction and not constitutionally suspect."[63]

Under *Rykoff-Sexton*'s holding, of course, Ford likewise consented to the jurisdiction of Minnesota courts by registering and appointing its corporate agent. Bandemer pressed this argument in the Minnesota courts, with the trial court agreeing that Ford's corporate registration and agent designation signified jurisdictional consent.[64] Yet the court of appeals, in affirming the trial court, specified that its decision did not address consent-based jurisdiction, and the sole ground for its holding

59. MONT. CODE § 35-7-115 (2019).

60. 426 P.3d 1, 4 (Mont. 2018). DeLeon argued that the "by itself" proviso authorized jurisdiction when a corporation both registered to do business and then conducted business, but the court reasoned that combining two separately insufficient jurisdictional grounds did not confer jurisdiction. *Id.* at 7–8.

61. Rykoff-Sexton, Inc. v. Am. Appraisal Assocs., Inc., 469 N.W.2d 88, 90–91 (Minn. 1991).

62. *Id.* at 90. Under Minnesota law, corporations "irrevocably consent[]" to service of process through their registered agents. MINN. STAT. §§ 303.06, 303.13 (2020). Because the court viewed valid service of process as a means of acquiring jurisdiction over both individual and corporate nonresident defendants, and the statutory scheme was not limited to matters related to Minnesota, the court held that registered corporations were amenable to all suits in the forum. *Rykoff-Sexton*, 469 N.W.2d at 90.

63. *Id.* at 91.

64. Bandemer v. Ford Motor Co., 913 N.W.2d 710, 713 (Minn. Ct. App. 2018), *aff'd*, 931 N.W.2d 744, 748 (Minn. 2019), *aff'd*, 141 S. Ct. 1017 (2021).

was specific jurisdiction.[65] As the issue had not been addressed by the appellate court below, the consent argument was not before either the Minnesota or United States Supreme Court.[66]

Although the Minnesota Court of Appeals did not articulate its rationale for passing on the jurisdictional consent argument, numerous federal and state courts have indicated that the continued constitutional validity of all-purpose jurisdictional consent via corporate registration is doubtful after *Daimler*.[67] As colorfully described by the Second Circuit, all-purpose consent from registration would subject every corporation "to general jurisdiction in every state in which it registered, and *Daimler*'s ruling would be robbed of meaning by a back-door thief."[68] In light of this doubt, state high courts and federal circuit courts confronting corporate consent via registration tend to avoid the constitutional issue by interpreting the state statutory schemes as not signifying all-purpose jurisdictional consent.[69] The Delaware, Nebraska, and New York state high courts have reversed or limited their pre-*Daimler* holdings sanctioning all-purpose jurisdictional consent through registration.[70] And the high courts of New Mexico and Pennsylvania are currently considering whether to likewise overturn earlier decisions that held or implied that corporate registration was a constitutional

65. *Id.* at 716 n.3.

66. *Bandemer*, 931 N.W.2d at 748 n.1 (declining to address consent-based jurisdiction because it had not been decided by the court of appeals). *Cf.* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1559–60 (2017) (remanding for review of the consent-by-registration argument raised but not decided below).

67. *E.g.*, DeLeon v. BNSF Ry. Co., 426 P.3d 1, 8–9 (Mont. 2018); Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, Inc., 898 N.W.2d 70, 76–83 (Wis. 2017); Brown v. Lockheed Martin Corp., 814 F.3d 619, 639–41 (2d Cir. 2016).

68. *Brown*, 814 F.3d at 640.

69. *E.g.*, Chufen Chen v. Dunkin' Brands, Inc., 954 F.3d 492, 498–99 (2d Cir. 2020) (New York law); Waite v. AII Acquisition Corp., 901 F.3d 1307, 1318–22 (11th Cir. 2018) (Florida law); *DeLeon*, 426 P.3d at 7–9 (Montana statute in light of due process concerns); Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., 90 N.E.3d 440, 446–48 (Ill. 2017) (Illinois statute); Norfolk S. Ry. v. Dolan, 512 S.W.3d 41, 52 (Mo. 2017) (Missouri statute); Figueroa v. BNSF Ry. Co., 390 P.3d 1019, 1030 (Or. 2017) (Oregon statute); *Segregated Account*, 898 N.W.2d at 76–83 (Wisconsin statute in light of constitutional avoidance); *Brown*, 814 F.3d at 640–41 (Connecticut law in light of constitutional concerns); *accord* Gulf Coast Bank & Tr. Co. v. Designed Conveyor Sys., L.L.C., 717 F. App'x 394, 397–98 (5th Cir. 2017) (Louisiana law); AM Tr. v. UBS AG, 681 F. App'x 587, 588–89 (9th Cir. 2017) (California law).

70. Aybar v. Aybar, No. 54, 2021 WL 4596367, at *6, *17 (N.Y. Oct. 7, 2021) (holding "foreign corporation's registration to do business" and appointment of an agent only constitutes consent to accept service of process rather than consent to general jurisdiction); Lanham v. BNSF Ry. Co., 939 N.W.2d 363, 368–71 (Neb. 2020) (holding Nebraska registration statute does not explicitly signify jurisdictional consent and any implied consent would violate due process under *Goodyear* and *Daimler*); Genuine Parts Co. v. Cepec, 137 A.3d 123, 126–28 (Del. 2016) (overruling earlier Delaware precedent that in-state registration could establish general jurisdiction).

basis for exacting a defendant's all-purpose jurisdictional consent.[71] Since *Daimler*, only in Georgia has a state high court interpreted its corporate registration statute as a constitutionally valid basis for exacting such an expansive jurisdictional consent.[72]

The permissible scope of consent under registration statutes was seldom raised before the Roberts Court's jurisdictional upheaval, as the availability of general "doing business" jurisdiction, or its progenitor corporate "presence," obviated the need in most cases to employ a consent theory.[73] Now though, after general "doing business" jurisdiction's demise, the issue is more salient as a jurisdictional alternative. Yet *Daimler*'s stated constitutional concerns with "grasping" or "exorbitant" jurisdictional rules appears to be swaying state supreme and federal appellate courts to adopt the assumption—even in those jurisdictions, such as Minnesota, that previously held otherwise—that all-purpose jurisdictional consent as a consequence for registration violates the Constitution. So plaintiffs typically must search for other jurisdictional grounds.

C. The Stream of Commerce

The Montana Supreme Court's holding that Ford was amenable to jurisdiction flowed from its understanding of the "stream of commerce." Ford, the court determined, satisfied specific jurisdiction's purposeful availment requirement by delivering its vehicles and parts into the

71. *See* Rodriguez v. Ford Motor Co., 458 P.3d 569 (N.M. Ct. App. 2018), *cert. granted*, No. 1-SC-37491, 2019 WL 11706154 (N.M. Apr. 8, 2019); Mallory v. Norfolk S. Ry. Co., No. 3 EAP 2021 (Pa. argued Sept. 21, 2021). The Pennsylvania Supreme Court cannot duck the constitutional issue, as its registration statute is unique as the only provision in the nation that explicitly specifies amenability to general jurisdiction is the consequence of registration. 42 PA. CONS. STAT. § 5301 (2020) (authorizing "general personal jurisdiction" over qualifying corporations).

72. Cooper Tire & Rubber Co. v. McCall, 863 S.E.2d 81 (Ga. 2021).

73. *See* Jeffrey L. Rensberger, *Consent to Jurisdiction Based on Registering to Do Business: A Limited Role for General Jurisdiction*, 58 SAN DIEGO L. REV. 309, 318–21 (2021); Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, *A New State Registration Act: Legislating a Longer Arm for Personal Jurisdiction*, 57 HARV. J. ON LEGIS. 377, 402, 409–10 (2020). My personal view, which I have detailed previously, is that states cannot constitutionally condition authorization to do business on a corporation consenting to all-purpose jurisdiction. *See* Rhodes, *Nineteenth Century*, *supra* note 51, at 436–44. Yet I believe the Constitution authorizes states to exact such consent with respect to those particular claims falling within the state's sovereign prerogatives, such as those Andra Robertson and I proposed in our Model Corporate Registration Jurisdictional Consent Act that would require explicit corporate consent to jurisdiction in specifically defined circumstances implicating state sovereign interests. *Id.* Jeff Rensberger has likewise concluded that the linchpin for the constitutionality of consent through registration is a state's sovereign interests, although we have slight differences regarding the permissible scope of the state's interest, specifically with respect to "the validity of a state interest in [litigation] efficiency." Rensberger, *supra* note 73, at 374 n.430.

stream of commerce and by conducting in-state advertisements, marketing, sales, and operations.[74] The court continued that the plaintiff's claims sufficiently related to Ford's purposeful conduct under this "stream of commerce plus theory" because Gullett's foreseeable use of the Ford Explorer in Montana was connected to Ford's in-state activities of selling, maintaining, and repairing its vehicles.[75] But while Gullett's representative defended this reasoning as a "straightforward application of … personal-jurisdiction precedents" in opposing certiorari before the Supreme Court,[76] his merits briefing urged that the Court had no need to address the Montana court's "stream of commerce" analysis.[77]

The latter strategy appears to have been wise, as the Supreme Court has struggled for decades with the expanse of the jurisdictional stream of commerce. *World-Wide Volkswagen Corp. v. Woodson* opined that a manufacturer or distributor's amenability to suit for a forum injury from one of its products was "not unreasonable" when it served the in-state market by "deliver[ing] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."[78] The Supreme Court later attempted to resolve a continuing lower-court split regarding whether a defendant's mere awareness that its products would reach the forum through the stream of commerce sufficed for jurisdiction, but its splintered decision in *Asahi Metal Industry Co. v. Superior Court* only further muddied the waters.[79]

In *Asahi*'s lead opinion, Justice O'Connor, joined by three other Justices, argued that merely placing "a product in the stream of commerce, without more," is insufficient, although she indicated Asahi (a foreign component manufacturer) would have purposefully availed itself of the California market if it had engaged in other conduct in the forum state, such as advertising or targeted marketing.[80] Four other members of the Court disagreed in an opinion by Justice Brennan, reasoning that Asahi had purposefully availed itself of the California market because it was both aware that its product was being marketed

74. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 443 P.3d 407, 414 (Mont. 2019), *aff'd*, 141 S. Ct. 1017 (2021).

75. *Id.* at 416.

76. Respondent's Brief in Opposition at 21, Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021) (No. 19-368).

77. *See* Brief of Respondents, *supra* note 17, at 44.

78. 444 U.S. 286, 297–98 (1980).

79. 480 U.S. 102, 105 (1987). *Asahi* involved an indemnity claim arising from a California motorcycle accident between Cheng Shin, the Taiwanese manufacturer of the motorcycle tire's tube, and Asahi, the Japanese manufacturer of the tube's valve assembly. *Id.* at 106.

80. *Id.* at 110–12 (O'Connor, J., lead opinion).

there and it benefitted economically from such sales.[81] Justice Stevens contended that resolving the minimum contacts question was unnecessary when exercising jurisdiction was unreasonable in any event, but he suggested that Asahi's "regular course of dealing that results in deliveries of over 100,000 units annually over a period of several years would constitute 'purposeful availment.'"[82]

Twenty-four years later, the Roberts Court fared no better navigating the stream of commerce in *J. McIntyre Machinery, Ltd. v. Nicastro*.[83] The Court considered whether a New Jersey state court could exercise specific jurisdiction in Robert Nicastro's products-liability action against the English manufacturer J. McIntyre Machinery when it sold a metal shearer to its exclusive independent U.S. distributor, which then sold it to Nicastro's New Jersey employer. A sharply divided Supreme Court concluded that generalized targeting by the foreign manufacturer of the entire United States as a market for its products was insufficient to support jurisdiction, at least, according to the pivotal concurrence, in the absence of regular forum sales.[84]

Justice Kennedy's plurality opinion in *Nicastro* expressed doubts regarding the usefulness of the "stream of commerce" metaphor, reasoning that the "transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum" through purposeful conduct.[85] On the other hand, Justice Breyer's concurrence resisted any refashioning of prior doctrine, concluding that neither *World-Wide Volkswagen* nor *Asahi* suggested that a single isolated sale of a product sufficed for jurisdiction, "even if that defendant places his goods in the stream of commerce."[86]

The continued utility of the stream of commerce theory after *Nicastro* is therefore debatable. Gullett's representative had no real reason to navigate this route, as Ford's purposeful conduct in Minnesota was admitted, with the only question being whether that conduct was sufficiently related to the resulting accident to warrant specific jurisdiction.[87] Moreover, the boundaries of the jurisdictional stream of

81. *Id.* at 116–17 (Brennan, J., concurring in part).
82. *Id.* at 121–22 (Stevens, J., concurring in part).
83. 564 U.S. 873 (2011).
84. *Id.* at 882–89. Justice Kennedy's plurality opinion concluded that McIntyre did not appropriately "manifest an intention to submit to the power of a sovereign" because the company did not specifically target New Jersey for the transmission of goods but rather directed its marketing efforts at the whole United States. *Id.* at 882–87 (plurality opinion).
85. *Id.* at 881–83.
86. *Id.* at 888–90 (Breyer, J., concurring). *But see* McGee v. Int'l Life Ins. Co., 355 U.S. 220, 222–23 (1957) (upholding jurisdiction based on a single forum life insurance policy).
87. *See* Brief for Petitioner, *supra* note 16, at 6–7, 9, 13.

commerce are "far from exact."[88] Typically, the stream of commerce describes products that travel through a distribution chain from manufacturers through distributors to consumers, such as component parts incorporated into final products (as in *Asahi*) or a product manufacturer selling to distributors or dealers (as in *Nicastro*).[89] Here, though, Gullett's vehicle was brought into the forum through a series of transactions on the used-car market well after the product reached the original consumer. Perhaps a more apt metaphor for Gullett is that the original stream of commerce reached its conclusion, with her vehicle flowing into underground aquifers that combined downstream to create new secondary-market waterways. Yet such an accurate metaphor only complicates rather than clarifies the underlying jurisdictional question.

While the Montana Supreme Court relied on the stream of commerce, it thus appears problematic to defend, especially after *Nicastro*, confirming the strategic choice to avoid this doctrine.[90] Indeed, the United States Supreme Court, in summarizing Montana's holding below, conspicuously omitted referencing the stream of commerce.[91] One theory thus remained supporting Ford's amenability: that a defendant's substantial activities in the forum to market its products are sufficiently related to an in-state injury from one of its products to support specific jurisdiction, irrespective of where the product was originally sold.[92] Although the underlying plaintiffs succeeded before the Supreme Court on this argument, earlier decisions from the Roberts Court constructed additional roadblocks to navigate.

III. THE FORD *FRAMEWORK*

Since at least 1980, the Supreme Court has opined that jurisdiction lies against a nonresident defendant deliberately serving the in-state market for its product when that product causes a forum injury. *World-Wide Volkswagen* suggested, in the course of holding that a New York

88. *Nicastro*, 564 U.S. at 881 (plurality opinion).

89. *See id.*

90. *See* Brief of Respondents, *supra* note 17, at 44. Respondents only cited *Asahi* and *Nicastro*, the Supreme Court's primary stream of commerce decisions, to distinguish them or to buttress other propositions. *E.g.*, *id.* at 1 (distinguishing *Nicastro* and *Asahi* as cases "about foreign companies that have done nothing to target a state"), 18 (citing *Nicastro* dissent's interpretation of *World-Wide Volkswagen*), 24 (quoting *Nicastro* plurality to support that defendant's "course of conduct" may establish jurisdiction), 41 (quoting *Nicastro* concurrence's caution regarding "a rule of broad applicability"), 44 (citing *Nicastro* plurality's definition of stream of commerce as support for avoiding the issue), 44–45 (urging *Asahi*'s fairness factors prevent jurisdiction over attenuated contacts).

91. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1023 (2021).

92. *See* Brief of Respondents, *supra* note 17, at 12–21.

automobile retailer and its regional distributor were not amenable to jurisdiction in Oklahoma for an in-state car accident because they conducted no Oklahoma activities, that the vehicle manufacturer and distributor were subject to jurisdiction:

> [I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen 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.[93]

This was not loose language that was pronounced and then ignored, as several subsequent Supreme Court opinions—along with numerous lower court decisions—relied upon or reiterated the same principle.[94]

Nonetheless, Ford argued that two recent Roberts Court decisions solidified that specific jurisdiction demanded a causal connection between the defendant's forum contacts and the plaintiff's claims.[95] This causal requirement, Ford maintained, controlled over the "dicta" from *World-Wide Volkswagen* and subsequent Supreme Court decisions.[96]

A. Ford's View of *Walden* and *Bristol-Myers*

The first Roberts Court decision Ford highlighted was *Walden v. Fiore*, which held that a defendant's mere awareness that a plaintiff will suffer the impact of the defendant's conduct in a particular forum is insufficient for jurisdiction.[97] *Walden* reasoned that a Georgia police officer's alleged actions in drafting a false probable cause affidavit to seize the plaintiffs' poker winnings at the Atlanta airport as they were about to board a flight to Nevada had an effect in Nevada only "because Nevada is where [plaintiffs] chose to be at a time when they desired to use the funds," not because "the defendant's conduct connects him to the forum in a meaningful way."[98] All the officer's "relevant conduct occurred entirely in Georgia," as the officer questioned and searched the

93. 444 U.S. 286, 297 (1980).

94. *See Ford*, 141 S. Ct. at 1027–28 (discussing prior Supreme Court cases); Charles W. "Rocky" Rhodes, Cassandra Burke Robertson & Linda Sandstrom Simard, Ford*'s Jurisdictional Crossroads*, 109 GEO. L.J. ONLINE 102, 111–13 (2020) (discussing additional cases).

95. *See Ford*, 141 S. Ct. at 1030 ("Ford mainly relies for its rule on two of our recent decisions.").

96. *See* Brief for Petitioner, *supra* note 16, at 34.

97. 571 U.S. 277 (2014).

98. *Id.* at 290.

plaintiffs, seized the cash, and drafted the affidavit in Georgia.[99] Thus, as the officer had not purposefully "create[d] contacts with the forum State," jurisdiction in Nevada was improper.[100]

Walden's holding demands "a direct link between the defendant and the forum that cannot be bridged by the plaintiff's activities or presence."[101] The Court emphasized that specific jurisdiction requires "contacts that the 'defendant *himself* creates with the forum state,'" such that the plaintiff's contacts, no matter how significant, alone are not dispositive.[102] "[T]he plaintiff cannot be the only link between the defendant and the forum," as "a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction."[103]

Ford's briefing repeatedly highlighted that *Walden* also noted that the necessary connections are based on "the defendant's *suit-related*" activities.[104] Because *Walden* held that a "mere injury to a forum resident is not a sufficient connection to the forum" for specific jurisdiction, Ford urged that the locale of the plaintiffs' injuries did not justify jurisdiction.[105] Rather, according to Ford, what mattered is whether the specific claims of Bandemer and Gullett's representative in their suits arose from Ford's own forum conduct.[106]

To buttress this proposition, Ford relied on yet another Roberts Court decision, *Bristol-Myers Squibb Co. v. Superior Court*.[107] This pharmaceutical products-liability suit against Bristol-Myers for its blood-thinning drug Plavix was filed in California state court by consumers from California and thirty-three other states.[108] Bristol-Myers sold almost a billion dollars of Plavix to California consumers between 2006 and 2012 with the help of its 250 California sales representatives, but it had not developed, manufactured, labeled, packaged, or established the marketing strategy for the drug in any of its five California research and development facilities.[109] Bristol-Myers challenged the California state court's jurisdiction over the claims of the

99. *Id.* at 288, 291.
100. *Id.* at 291.
101. Scott Dodson, *Personal Jurisdiction and Aggregation*, 113 NW. U. L. REV. 1, 24–25 (2018).
102. *Walden*, 571 U.S. at 284–85 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)).
103. *Id.* at 285–86.
104. *E.g.*, Brief for Petitioner, *supra* note 16, at 13, 17, 18, 22 (quoting *Walden*, 571 U.S. at 284).
105. *Id.* at 14 (quoting *Walden*, 571 U.S. at 290).
106. *Id.* at 20.
107. 137 S. Ct. 1773 (2017).
108. *Id.* at 1778.
109. *Id.*

nonresident plaintiffs, who had neither obtained the drug through a California source nor suffered any injury within the state.

The Supreme Court agreed that Bristol-Myers was not amenable to jurisdiction in California with respect to the nonresident plaintiffs' claims.[110] The Court thereby rejected the notion that the relationship requirement for specific jurisdiction may be relaxed because of the defendant's extensive unrelated forum contacts; instead, "a connection between the forum and specific claims at issue" is required.[111] This necessary "affiliation between the forum and the underlying controversy" typically arises through an "activity or an occurrence that takes place in the forum State and is therefore subject to the state's regulation."[112] The nonresident plaintiffs "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California."[113] Underscoring *Walden* to "illustrate[]" the connection requirement, the Court explained that, just as in *Walden*, the "*relevant* conduct occurred entirely" outside the forum state, as "all the conduct giving rise to the nonresidents' claims occurred elsewhere."[114]

Bristol-Myers thereafter rejected "a last ditch contention" by the plaintiffs: that the company's decision to use a California corporation as one of its national distributors for Plavix established another basis for personal jurisdiction.[115] The Court, returning to *Walden*, first highlighted that a defendant's relationship with a third party, standing alone, is not sufficient for jurisdiction, unless the parties acted together or the defendant had derivative liability for the conduct of the other party.[116] The Court then added that the plaintiffs could not trace their Plavix to a particular distributor to demonstrate the necessary connection.[117]

Ford urged that, under *Bristol-Myers*, jurisdiction could not be based on its other forum activities in Montana and Minnesota, including thousands of vehicle sales and ongoing marketing activities, because those activities had nothing to do with the plaintiffs' claims.[118] Instead, Ford contended, *Bristol-Myers* demanded that "the *suit*" must have the

110. *Id.* at 1781.
111. *Id.*
112. *Id.* at 1780, 1781 (quoting Goodyear Dunlop Tires Ops., S.A. v. Brown, 564 U.S. 915, 919 (2011)).
113. *Id.* at 1781.
114. *Id.* at 1781–82 (quoting Walden v. Fiore, 571 U.S. 277, 291 (2014)).
115. *Id.* at 1783.
116. *Id.*
117. *Id.* The plaintiffs conceded at oral argument before the Supreme Court that it was impossible to track a particular pill to a particular distributor. *See id.*
118. Brief for Petitioner, *supra* note 16, at 3, 14, 20.

appropriate connection "to the defendant's contacts with the *forum*."[119] This necessary causal link, Ford continued, could only be satisfied if the vehicle was designed, manufactured, or originally sold in the forum state.[120] Just as the nonresident plaintiffs could not sue Bristol-Myers in California when Plavix was sold outside the forum, Ford contended that it likewise was not amenable to jurisdiction when it sold and constructed the vehicles outside the forum states.[121] The Supreme Court, however, disagreed.

B. The Supreme Court Resists *Walden's* Allure

Justice Kagan's majority opinion explained that the Court's prior precedents had never suggested that specific jurisdiction requires a strict causal relationship between the defendant's forum activities and the litigation.[122] Rather, according to the Court, the "most common formulation of the rule demands that the suit 'arise out of *or relate to* the defendant's contacts with the forum.'"[123] Although the "arise out of" portion signifies causation, the latter "relate to" formulation "contemplates that some relationships will support jurisdiction without a causal showing."[124] Specific jurisdiction merely requires "an affiliation between the forum and the underlying controversy," which may be present when an "'activity [or] occurrence' involving the defendant" occurs within the forum.[125]

The Court then scrutinized its earlier opinions, such as *World-Wide Volkswagen* and *Asahi*, which acknowledged the propriety of specific jurisdiction when a company undertakes substantial forum marketing activities related to a product that causes an in-state injury, even if that particular product was not originally sold in the forum.[126] As "Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States," this satisfied the foundational specific jurisdiction "relationship among the defendant, the forum, and the litigation."[127]

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119. *Id.* at 17 (additional quotations omitted) (quoting *Bristol-Myers*, 137 S. Ct. at 1780).
120. *Id.* at 2.
121. Reply Brief for Petitioner at 2, Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021) (Nos. 19-368 & 19-369 consolidated).
122. *Ford*, 141 S. Ct. at 1026.
123. *Id.* (quoting *Bristol-Myers*, 137 S. Ct. at 1780).
124. *Id.*
125. *Id.* (quoting *Bristol-Myers*, 137 S. Ct. at 1779–80, 1780–81).
126. *Id.* at 1027–28.
127. *Id.* at 1028 (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984)).

Requiring Ford to answer for these suits was neither a surprise nor an undue burden when Ford reaped continuing substantial benefits from the laws of Montana and Minnesota while conducting extensive marketing and sales activities in those states.[128] Moreover, the forum states possessed significant interests in protecting their residents by providing a convenient forum for redress and enforcing their statutory and common-law regulations regarding product safety.[129]

The Court then disputed Ford's interpretations of *Bristol-Myers* and *Walden*. In *Bristol-Myers*, neither the forum state of California nor the defendant's California activities had "any connection to the plaintiffs' claims" when the plaintiffs were nonresidents who neither ingested Plavix nor sustained injuries from Plavix in California.[130] The nonresident plaintiffs instead were merely "forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State."[131] But the suits against Ford did not denote forum shopping: Bandemer and Gullett were residents of the forum states, using their vehicles there and suffering injuries there, such that their suits were brought "in the most natural" locale.[132]

The Court likewise quarreled with Ford's contention that plaintiff's residence and injury situs are jurisdictionally irrelevant under *Walden*.[133] The Court interpreted *Walden* as only addressing purposeful availment and not the required relationship for specific jurisdiction: "[*Walden*] had no occasion to address the necessary connection between a defendant's in-state activity and the plaintiff's claims."[134] While *Walden* held that neither the plaintiff's home nor the location of the injury signaled the defendant's purposeful contact with the forum, these locales "still may be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit."[135] The suits by Bandemer and Gullett's representative arising from their in-state injuries from "defective products that Ford extensively promoted, sold, and serviced" within the forums were thus sufficiently connected to Ford's purposeful in-state conduct to support specific jurisdiction.[136]

128. *Id.* at 1030.
129. *Id.*
130. *Id.* at 1031.
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.* at 1031–32.
136. *Id.* at 1032.

While restricting *Walden*'s holding to the purposeful availment prong is welcome, the Court neglected its role in originating the confusion regarding *Walden*'s scope. *Walden* never separated the first prong of specific jurisdiction—demanding defendant's purposeful availment of or purposeful direction toward the forum via deliberate conduct—from the second prong, which necessitates an adequate connection between defendant's activities and plaintiff's claims. Instead, *Walden* collapsed the prongs into a singular requirement stressing the connection of the defendant's "suit-related conduct" to the forum.[137] *Walden* repeatedly referenced the need for the defendant's activities to "connect" with or create a "connection" to the forum,[138] but did not mention "purposeful availment" or "purposefully avail."[139] This generated uncertainty regarding whether the basis for *Walden*'s holding was the lack of the officer's forum contacts, the adequacy of the connection of those contacts to the dispute, or a combination of both.

In cases such as *Walden*, where a nonresident defendant's amenability is based on intentional acts "aimed" at and causing an effect in the forum state, the dispositive issue typically is the defendant's purposefulness (oftentimes entwined with wrongfulness) in aiming, targeting, or focusing such actions to cause an in-state impact.[140] If the defendant has so purposefully directed intentional wrongful actions at the forum state to cause harm there, the in-state injury effects of those actions typically follow as a matter of course, thereby satisfying the relationship prong for specific jurisdiction.[141] The two specific jurisdiction prongs therefore tend to merge in effects cases, so judicial appraisal under a singular focus is not atypical.[142] But *Walden*'s fixation

137. Walden v. Fiore, 571 U.S. 277, 284 (2014).

138. *E.g.*, *id.* at 284, 285, 289, 290, 291.

139. *See id.* at 284–91. The words "purposeful" or "purposefully" appeared twice in the opinion, but only in the context of describing the holdings of or the arguments presented in prior decisions. *Id.* at 285 ("[W]e have upheld the assertion of jurisdiction over defendants who have purposefully 'reach[ed] out beyond' their State . . . .") (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 479–80 (1985)); *id.* at 288 n.7 ("The defendants in *Calder* argued that no contacts they had with California were sufficiently purposeful . . . ."). The sole prior "effects" case decided by the Supreme Court, *Calder v. Jones*, 465 U.S. 783 (1984), never mentioned any variant of the word "purpose."

140. *See* Allan Erbsen, *Personal Jurisdiction Based on the Local Effects of Intentional Misconduct*, 57 WM. & MARY L. REV. 385, 401 (2015) (discerning four controlling "effects" factors from prior Supreme Court precedent); Cassandra Burke Robertson, *The Inextricable Merits Problem in Personal Jurisdiction*, 45 UC DAVIS L. REV. 1301, 1311–13 (2012) (highlighting importance of the conduct's wrongfulness).

141. *See* Erbsen, *supra* note 140, at 419–20 ("Effects cases by definition link personal jurisdiction to a local injury.").

142. *See, e.g.*, Calder v. Jones, 465 U.S. 783, 788–89 (1984) (holding jurisdiction appropriate based on the "effects" of out-of-state conduct when the forum state was the focal point of both the

appeared to be on the typically ancillary requirement in such cases of a connection to the forum rather than the predominant requirement of purposeful aiming or focusing upon the forum.

The Supreme Court then magnified this focus in *Bristol-Myers* by highlighting *Walden* as an "illustrat[ion]" of the requirement of "a connection between the forum and the specific claims at issue,"[143] despite Justice Sotomayor's complaint in her *Bristol-Myers* dissent that *Walden*, properly understood, did not address the connection requirement.[144] Bristol-Myers had admitted purposeful availment of the California market; the sole jurisdictional question presented in the case was whether the nonresident plaintiffs—who did not obtain, ingest, or suffer injuries from Plavix in California—could satisfy the second specific jurisdiction requirement of "a connection between the forum and the specific claims at issue."[145] In resolving this relationship query, *Bristol-Myers* relied pervasively on *Walden*, even asserting that *Walden* "illustrates this requirement."[146] *Bristol-Myers* interpreted *Walden* as demanding that specific jurisdiction does not lie when "all the conduct giving rise to the nonresidents' claims occurred elsewhere."[147] Lower courts also were enchanted by *Walden*'s allure, employing its reasoning to hold that the necessary relationship between the defendant's forum conduct and the plaintiff's claims did not exist when the nonresident defendant's conduct forming the basis for the suit occurred outside the forum.[148]

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allegedly libelous story and the resulting harm); Miller Yacht Sales, Inc. v. Smith, 384 F.3d 93, 96 n.2 (3d Cir. 2004) (explaining the "effects test" subjects a party to personal jurisdiction in a forum "when his or her tortious actions were intentionally directed at that state and those actions caused harm in that state"); Indianapolis Colts, Inc. v. Metro. Balt. Football Club Ltd. P'shp, 34 F.3d 410, 411–12 (7th Cir. 1994) (determining analysis focuses on whether defendant "'entered' the state in some fashion," thereby causing an in-state injury).

143. Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1781–82 (2017).

144. *Id.* at 1787 (Sotomayor, J., dissenting) ("*Walden* concerned the requirement that a defendant 'purposefully avail' himself of a forum State . . . , not the separate requirement that a plaintiff's claim 'arise out of or relate to' a defendant's forum contacts."). Justice Sotomayor continued that *Walden* was relevant "[o]nly if its language is taken out of context." *Id.* Although the *Ford* majority subsequently adopted Justice Sotomayor's limitation on *Walden*, the majority in *Bristol-Myers* did not respond.

145. *Id.* at 1781 (majority opinion).

146. *Id.*

147. *Id.* at 1782.

148. *See, e.g.*, Waite v. AII Acquisition Corp., 901 F.3d 1307, 1315–16 (11th Cir. 2018) (holding that the connection requirement was not satisfied under *Walden* when plaintiff developed mesothelioma within the forum but his exposure to defendant's asbestos products occurred in another state); Hinrichs v. Gen. Motors of Can., Ltd., 222 So. 3d 1114, 1138–40 (Ala. 2016) (holding *Walden*'s requirement of "*suit-related* conduct" was not satisfied when the foreign manufacturer defendant's vehicle was involved in an in-state accident when the vehicle was originally sold outside the forum).

Ford unsurprisingly relied upon such judicial interpretations of *Walden* in urging that it could not be sued in Minnesota and Montana when all of its conduct "giving rise to the [] claims"—designing, manufacturing, and originally selling the vehicles—"occurred elsewhere," that is, outside the forum states.[149] But the Supreme Court dismissed *Walden*'s relevance to the relationship requirement for specific jurisdiction, reasoning *Walden* "had no occasion to address" this requirement.[150] Instead, according to the Court, *Bristol-Myers* indicated that the plaintiff's home and the location of the injury may be relevant in ascertaining the connection required for specific jurisdiction.[151] The Court then synopsized that, since here the "resident-plaintiffs allege that they suffered in-state injury because of defective products that Ford extensively promoted, sold, and serviced in Montana and Minnesota," the connection between Ford's forum conduct and the plaintiffs' claims sufficed for specific jurisdiction in accord with its prior decisions.[152]

C. Future Jurisdictional Roads

The Court's holding in *Ford*, while welcome, is limited. *Ford* represents a halt in the Roberts Court's jurisdictional revolution—but it does not currently mark a retreat. The previously oft-employed doctrine of general "doing business" jurisdiction remains unavailable over a corporate defendant, such that a corporate defendant, no matter how large, is only amenable to general jurisdiction in its place of incorporation and principal place of business, with the Court merely "leaving open 'the possibility that in an exceptional case'" (presumably such as a de facto home for a corporation during a war or other calamity) a corporation may be subject to jurisdiction elsewhere.[153] As a practical

149. Brief for Petitioner, *supra* note 16, at 18–22 (quoting *Bristol-Myers,* 137 S. Ct. at 1782).

150. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1031 (2021).

151. *Id.* at 1031–32 (explaining that a "key part of *Bristol-Myers*' reasoning" was that the plaintiffs were nonresidents who were not harmed within the forum).

152. *Id.* at 1032.

153. *Id.* at 1024 (quoting Daimler AG v. Bauman, 571 U.S. 117, 139 n.19 (2014)). Justice Gorsuch, in his concurrence joined by Justice Thomas, indicated discomfort with such a limited scope for general jurisdiction, but he ahistorically attempted to shift the blame on *International Shoe* rather than on the opinions he joined in *Bristol-Myers* and *BNSF*. First, Justice Gorsuch indicated that, while speaking of a corporation's one or two "homes" may have been sensible in 1945, it was "almost quaint in 2021 when corporations with global reach often have massive operations spread across multiple States." *Id.* at 1034 (Gorsuch, J., concurring). But *International Shoe* did not explicitly tie general jurisdiction to one or two corporate homes—rather, it was the Roberts Court in the twenty-first century. *See supra* pt. II.A. Indeed, Ford itself had accepted from 1945 until 2011 that it was subject to general jurisdiction in every state. *See supra* pt. I. Next, Justice Gorsuch suggested that the Roberts Court has "begun cautiously expanding the old rule" barring doing-business jurisdiction in

matter, then, foreign corporate defendants are immunized from general jurisdiction within the United States (unless the United States becomes their temporary home during a crisis), and domestic corporate defendants are only subject to general jurisdiction in one or two states. And these one or two "home" states oftentimes will be inconvenient forums in terms of access to evidence, availability of witnesses, ability to view the premises, and judicial familiarity with the governing law.[154]

The Roberts Court's severe constriction of general jurisdiction is thus consequential for access to justice. Although general "doing business" jurisdiction was abused at times for egregious forum shopping,[155] it served as a backstop in many other circumstances to ensure the reasonable availability of a convenient or efficient forum to resolve all claims, especially in multi-defendant and multi-plaintiff cases.[156] Its demise opens a gap in the quest to secure a suitable forum.[157]

Specific jurisdiction has yet to expand enough to fill this gap. Although *Ford* confirms the Court's prescriptions over the last four

"exceptional case[s]" in order to meet "changing economic realities" since the 1940s. *Ford*, 141 S. Ct. at 1034. But the sole potential example of an "exceptional case" discussed in any Roberts Court decision is *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)—which was decided almost seven decades ago (and only seven years after *International Shoe*), well before any supposed twenty-first century "changing economic realities."

Justice Gorsuch concluded his concurrence by hinting at the possibility the Constitution might authorize jurisdiction in any state against a company like Ford and by criticizing "*International Shoe*'s increasingly doubtful dichotomy" between general and specific jurisdiction. *Ford*, 141 S. Ct. at 1039 & n.5. He omitted that these results were not compelled by *International Shoe*, but instead by the opinions he joined in *BNSF* (ensuring that general jurisdiction was not available over domestic nationwide corporations) and *Bristol-Myers* (rejecting the possibility of a sliding scale between general and specific jurisdiction). *See supra* pts. II.A & III.A. While I share his concerns regarding curtailing jurisdiction over corporate defendants, *International Shoe* and its progeny, at least as interpreted by the lower federal and state courts before the Roberts Court's revolution, are the wrong villain for his musings.

154. *See, e.g.*, Cyr v. Ford Motor Co., No. 345751, 2019 WL 7206100, at *4–7 (Mich. Ct. App. Dec. 26, 2019) (granting Ford's motion to dismiss for forum non conveniens the claims of nonresident plaintiffs in consolidated cases filed in its home state of Michigan), *appeal denied*, 950 N.W.2d 51, 52 (Mich. 2020).

155. *Cf.* Ferens v. John Deere Co., 494 U.S. 516, 519–20 (1990) (filing in Mississippi by plaintiff injured in Pennsylvania to take advantage of Mississippi six-year limitations period for tort actions before seeking a transfer back to Pennsylvania for the convenience of the parties and witnesses and the interests of justice).

156. *See, e.g.*, Patrick J. Borchers, *The Problem with General Jurisdiction*, 2001 U. CHI. LEGAL F. 119, 130–39 (arguing general jurisdiction was an "unpleasant necessity" due to the limitations of specific jurisdiction); Charles W. "Rocky" Rhodes, *The Predictability Principle in Personal Jurisdiction Doctrine: A Case Study on the Effects of a "Generally" Too Broad, but "Specifically" Too Narrow Approach to Minimum Contacts*, 57 BAYLOR L. REV. 135, 216–27 (2005) (discussing the pre-Roberts Court judicial inclination to expand general jurisdiction to support reasonable jurisdictional assertions that might not have satisfied specific jurisdiction's requirements).

157. *See* Robin J. Effron, *The Lost Story of Notice and Personal Jurisdiction*, 74 N.Y.U. ANN. SURV. AM. L. 23, 100 (2018) ("Limiting the general jurisdiction of domestic defendants to just one or two states drastically changed the presumed access to courts that plaintiffs previously enjoyed against large companies with a hefty business presence . . . .").

decades that nonresident defendants extensively marketing products within the forum are amenable to those suffering in-state injuries from such products, the Roberts Court's three other relevant decisions tighten specific jurisdiction's directives of purposeful availment and a sufficient relationship between the defendant's activities and plaintiff's claims.

Purposeful availment under *Walden* demands that the necessary forum activities be undertaken by the defendant itself, rather than by the plaintiff or a third party.[158] *Bristol-Myers* confirms that a defendant's relationship with a third party, such as a national distributor, does not suffice for purposeful availment unless the parties acted together or derivative liability attaches.[159] And even though *Nicastro*'s holding has not been cited in any subsequent majority opinion from the Roberts Court,[160] lower courts are nonetheless bound by its judgment disclaiming jurisdiction over a foreign manufacturer with isolated forum sales that targets the entire United States (rather than the forum state) as a market for its products.[161]

While a strict causal relationship is not a prerequisite to specific jurisdiction under *Ford*, *Bristol-Myers* still ensures the relationship requirement cannot be relaxed because of the defendant's extensive unrelated forum contacts.[162] Some activity must occur within the forum subject to the state's regulation with respect to the particular claims at issue.[163] That activity subject to state regulation must at least "relate to" the defendant's purposeful forum activities, although it does not have to

158. Walden v. Fiore, 571 U.S. 277, 285–86 (2014). A tension exists between this requirement from *Walden* and the Court's explanation in *Calder v. Jones*, 465 U.S. 783, 788 (1984), that the plaintiff's forum contacts "may be so manifold as to permit jurisdiction when it would not exist in their absence." It is possible, though, to reconcile at least the holdings in *Walden* and *Calder* based on the disparate underlying claims at issue. *See Walden*, 571 U.S. at 287 (opining the "crux of *Calder* . . . was largely a function of the nature of the libel tort").

159. Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1783 (2017).

160. Only the dissent in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 893–910 (2011) (Ginsburg, J., dissenting), has been cited in any ensuing Supreme Court majority opinion. *See* Daimler AG v. Bauman, 571 U.S. 117, 132 (2014) (citing *Nicastro* dissent). The remaining writings in *Nicastro* only have appeared in subsequent concurrences and dissents. *See, e.g.*, Ramos v. Louisiana, 140 S. Ct. 1390, 1432 & n.18 (2020) (Alito, J., dissenting) (citing *Nicastro* as an illustration of an "important decision[] currently regarded as precedent[] . . . decided without an opinion of the Court"); *Bristol-Myers*, 137 S. Ct. at 1785–87 (Sotomayor, J., dissenting) (citing *Nicastro* plurality several times to distinguish purposeful availment from the relationship requirement for specific jurisdiction); *Daimler*, 571 U.S. at 151 (Sotomayor, J., concurring) (citing *Nicastro* plurality for principle of reciprocal fairness).

161. *Nicastro*, 564 U.S. at 882–89.

162. *See* Rensberger, *supra* note 73, at 320 ("The Supreme Court's recent decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, does not eliminate the restrictions of *Bristol-Myers Squibb*.").

163. Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct., 141 S. Ct. 1017, 1025 (2021).

causally "arise out of" the defendant's forum contacts.[164] This is met, *Ford* held, when a plaintiff suffers an in-state injury from a product the defendant systematically markets within the state even if that particular product was originally sold elsewhere.[165]

But *Ford* did not proffer much guidance regarding the outer limits of the connection requirement. Although the Court determined that "arise out of" signifies causation while "relate to" indicates that "some relationships will support jurisdiction without a causal showing," the Court did not mark the boundaries of either the causal or non-causal relationships sufficient to support the state's jurisdictional power.[166] According to the majority, causal links had neither been alleged nor established by the plaintiffs,[167] even though Justice Alito's concurrence argued that a "rough causal connection" existed between the plaintiffs' claims and Ford's forum activities.[168] And while the Court held that non-causal relationships may support jurisdiction, it continued "[t]hat does not mean anything goes," as "the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum."[169] But, outside the specific factual context in *Ford* held to be sufficient, what are the defining characteristics of these "some relationships" that are sufficient and what are these "real limits"? The Court's only hints on the scope of the required relationship were that some "affiliation" is necessary, which is principally an in-state activity or occurrence subject to the state's regulation;[170] that the Court has "long treated isolated or sporadic transaction different from continuous ones";[171] that the relationship requirement incorporates the typical jurisdictional values

164. *Id.* at 1026.
165. *Id.* at 1028–29.
166. *Id.* at 1026–27.
167. *Id.* at 1029.
168. *Id.* at 1033–34 (Alito, J., concurring).
169. *Id.* at 1026 (majority opinion).
170. *Id.* at 1025, 1026–27, 1031.
171. *Id.* at 1028 n.4. This recognition, however, is ambiguous regarding the doctrinal source for such differential treatment, that is, whether the divergence arises under the specific jurisdiction prongs for purposeful availment, adequate relationship, or fairness check, or perhaps some combination thereof. For arguments that the relationship requirement should apply differently to single or isolated contacts than to continuous and systematic contacts, see John N. Drobak, *Personal Jurisdiction in a Global World: The Impact of the Supreme Court's Decisions in* Goodyear Dunlop Tires *and* Nicastro, 90 WASH. U. L. REV. 1707, 1724 n.70 (2013); Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 UC DAVIS L. REV. 207, 235–43 (2014); Linda Sandstrom Simard, *Meeting Expectations: Two Profiles for Specific Jurisdiction*, 38 IND. L. REV. 343, 348–73 (2005).

of "treating defendants fairly and protecting 'interstate federalism'";[172] and that, unlike in *Bristol-Myers*, the forum selected by each of the *Ford* plaintiffs was "the most natural State" rather than a product of forum shopping.[173] But these hints leave much unsettled.

For example, what would happen if Ford marketed the specific vehicle model involved in an in-state accident only in other states, even though Ford conducted substantial in-state marketing activities for its other models in the forum? While the Court presented this hypothetical as a contrast, it did "not address" whether that would be sufficiently related for specific jurisdiction.[174] Would the relationship requirement be met for an in-state injury caused by a smaller car manufacturer's model sold through the used-car market within the forum if this smaller manufacturer conducted significantly less in-state marketing efforts than Ford did?[175] Could a plaintiff purchasing a Ford vehicle in-state on the second-hand market sue at home if the vehicle allegedly malfunctioned and caused injury while the plaintiff was driving in another state? Or would the claim only be sufficiently related in the state where the injury occurred, under the rationale that an "affiliation" necessitates an "occurrence" within the state that forms the basis for a claim or defense in the lawsuit? Is a causal connection *sufficient* (even though it is not necessary) to satisfy the relationship requirement, such that the *Ford* plaintiffs could have filed suit in the states where Ford first sold the allegedly defective vehicles?[176] Or would this violate the Court's stated concerns with forum shopping and suits maintained outside the

172. *Ford*, 141 S. Ct. at 1025 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980)). Treating defendants fairly, the Court continued, requires reciprocity and fair warning, while interstate federalism ensures that "States with 'little legitimate interest' in a suit do not encroach on States more affected by the controversy." *Id.* (quoting Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1780 (2017)). Such a comparative evaluation of a forum state's interest in the dispute vis-à-vis other affected states originated with the Roberts Court. While the Supreme Court's twentieth-century jurisdictional decisions highlighted that the federalism function necessitated a state's legitimate interest in the suit, a relative weighing of the affected states' interests was not an aspect of the analysis. *See, e.g.*, Keeton v. Hustler Mag., Inc., 465 U.S. 770, 775–81 (1984) (upholding jurisdiction over libel complaint seeking nationwide damages filed by a nonresident in New Hampshire based on the forum's interests in the suit even though only a relatively small number of the defendant's magazines causing the harm were sold within the state).

173. *Ford*, 141 S. Ct. at 1031.

174. *Id.* at 1028.

175. *Cf. id.* at 1028 n.4 (discussing the hypothetical offered at oral argument regarding a retired individual selling carved decoys through a website and specifying that such a situation was not resolved by the Court's decision).

176. *See id.* at 1035 (Gorsuch, J., concurring) (urging that the states of first sale have a "strong interest in ensuring they don't become marketplaces for unreasonably dangerous products" even though the majority opinion suggests without explanation that such a connection is insufficient for jurisdiction).

"most natural State?"[177] These and other similar questions likely to arise in future products-liability claims were left unanswered.[178]

The uncertainties only multiply when addressing the jurisdictional relationship requirement outside the products-liability context. How will lower courts extrapolate *Ford*'s reasoning to very different factual and legal contexts, such as claims for breach of contract, fraud, defamation, invasion of privacy, breach of fiduciary duties, patent and trademark infringement, legal malpractice, or civil rights violations? How does *Ford* inform the proper relatedness analysis in two prior cases where the Supreme Court ducked the issue, which both involved the defendant engaging in some purposeful business activities in the forum that started a chain of events eventually culminating with the plaintiffs being in a position to be allegedly tortiously injured by each defendant outside the United States?[179] And what happens in cases involving activities or communications through the Internet, which *Ford* indicated may raise unique doctrinal questions, when the Court so far has been reluctant to address these questions?[180] The eventual answers to these and similar queries will be critical in determining whether specific jurisdiction will indeed "flourish[]" and prevent "deep injustice" to plaintiffs' forum choices after the demise of general contacts jurisdiction.[181]

Another puzzle is the future role of the fairness or reasonableness factors after the Roberts Court's refashioning of jurisdictional power.

177. *Id.* at 1030–31 (majority opinion).

178. *See* Rensberger, *supra* note 73, at 346 (raising similar unsettled jurisdictional issues in products-liability cases).

179. *See* Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 587–89 (1990) (holding forum selection clause was dispositive of propriety of personal jurisdiction and therefore declining to consider an argument that the cruise line's solicitation of business within the forum led the plaintiffs to purchase tickets and embark on the international cruise during which one plaintiff suffered slip-and-fall injuries); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415–17 & n.10 (1984) (expressing no view as a result of the plaintiffs' alleged concession on whether the foreign defendant's Texas forum contacts, which consisted of conducting a negotiating session for a Peruvian transportation-services contract and purchasing helicopters and training services from a Texas corporation, were sufficiently related to the subsequent crash in Peru occurring during the contract's performance).

180. *See Ford*, 141 S. Ct. at 1028 n.4 (noting "we do not here consider internet transactions, which may raise doctrinal questions of their own"). Of course, even though the Court has been reluctant to offer its guidance, litigants and lower courts must routinely confront these questions as "internet communications and commerce permeate modern society and are therefore enmeshed in the disputes that arise from everyday business," not to mention everyday life. Linda Sandstrom Simard, Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, Ford Motor Co.*: The Murky Doctrine of Personal Jurisdiction*, 5 AM. CONST. SOC'Y SUP. CT. REV. 119, 136–37 (2021).

181. *Cf.* Daimler AG v. Bauman, 571 U.S. 117, 133 n.10 (2014) (urging specific jurisdiction "has flourished" for decades and has prevented the "deep injustice" predicted by Justice Sotomayor's concurrence in the absence of a broader role for general jurisdiction).

During the 1980s, the Supreme Court bifurcated the standard for constitutional personal jurisdiction into separate analyses for "contacts" and "reasonableness," highlighting that even if the necessary contacts with the forum state exist for specific jurisdiction, the assertion of jurisdictional power might violate principles of "fair play and substantial justice" in light of "the defendant's litigation burdens, the forum state's legitimate interests, the plaintiff's remedial interests, judicial efficiency, and the substantive social policies of the concerned sovereigns."[182] But the Roberts Court has not listed these factors as part of a bifurcated analysis in any of its decisions, with merely a singular oblique reference to a "multipronged reasonableness check" for specific jurisdiction in a footnote in *Daimler* in the course of responding to Justice Sotomayor's concurrence.[183]

This has led scholars to question the role the Roberts Court is envisioning for the fairness factors, especially due to the Court's typical disdain for balancing in constitutional adjudication.[184] But because these fairness factors have been employed in the jurisdictional analysis favored by the lower courts for decades, at the very least the Supreme Court will have to be explicit—and then likely explicit again—if it wants to remove such a well-accepted component of the jurisdictional query.[185] Perhaps the Justices hold different views on the matter, cautioning against any discussion that could further splinter the Court's jurisdictional holdings, at least until a granted case squarely presents the issue.

In any event, this is not the place to attempt to resolve such questions, as our focus in this symposium is on the past transformation of procedure by the Roberts Court, not future procedural roads. But it will be interesting to watch subsequent developments. Will the Roberts Court declare victory and leave the field to the lower courts to resolve these questions lingering after *Ford*? Or will the Roberts Court continue to engage with personal jurisdiction over the next decade, leading to further transformations that could either limit or (hopefully) expand access to justice? The answers may not be apparent until a decade from

182. *See* Charles W. "Rocky" Rhodes, *Liberty, Substantive Due Process, and Personal Jurisdiction*, 82 TUL. L. REV. 567, 611–12 (2007).

183. Daimler AG v. Bauman, 571 U.S. 117, 139 n.20 (2014).

184. *See, e.g.*, Scott Dodson, *Personal Jurisdiction, Comparativism, and* Ford, 51 STETSON L. REV. 187 (2022); Linda Sandstrom Simard, Cassandra Burke Robertson, & Charles W. "Rocky" Rhodes, Ford*'s Hidden Fairness Defect*, 106 CORNELL L. REV. ONLINE 45, 51–55 (2020).

185. *See* Simard et al., *supra* note 184, at 51 (discussing the previous prevailing lower court approach using the fairness factors).

now when we reconvene to discuss the Civil Procedure Transformation after Twenty-Five Years of the Roberts Court.

IV. CONCLUSION

The Roberts Court has transformed several doctrines during its civil procedure revival.[186] This symposium has detailed many of these changes, impacting court access, court selection, class actions, pleadings, and discovery. Yet arguably adjudicative jurisdiction is the most consequential of the Roberts Court's procedural transformations "on the ground" with respect to those cases involving nonresident defendants. The Court's new jurisdictional approach led Ford to begin challenging its constitutional amenability to suit in domestic fora for the first time in generations—and it is not the only defendant that has adopted this strategy.[187] While the Supreme Court's rejection of Ford's argument halts for now a further upheaval in jurisdictional doctrine, the remaining jurisdictional terrain is still uncertain. As a result, the courts will continue to be inundated with jurisdictional objections—even in cases where amenability was previously well settled—until the Supreme Court adopts a coherent framework ensuring plaintiffs' access to justice while protecting defendants' due process rights.

186. *See* Wasserman, *supra* note 5, at 316–32.

187. *See, e.g.*, Ingham v. Johnson & Johnson, 608 S.W.3d 663, 695–99 (Mo. Ct. App. 2020), *cert. denied*, 141 S. Ct. 2716 (2021).