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Can't Relate: Why Ford Motor Co. Should Not be the End of the Road for Specific Jurisdiction

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TABLE OF CONTENTS

I. INTRODUCTION 422

II. FROM *PENNOYER* TO *BRISTOL-MYERS SQUIBB*: THE LONG AND WINDING ROAD OF PERSONAL JURISDICTION 425
A. International Shoe*: The "Modern Test" for Personal Jurisdiction Cannot Seem to Shake Its Past* 427
B. Bristol-Myers Squibb *Muddies the Already Murky Jurisdictional Waters* 429
*C. Lower Courts Throw "Relatedness" Out the Window Post-*BMS 430

IV. *FORD MOTOR CO.*: THE SUPREME COURT FACES "RELATEDNESS" HEAD-ON 431
A. The Facts: Ford Tests the Limits of Bristol-Myers Squibb 432
B. Ford*'s New, Unclear Test* 433
C. The Concurrences: Shining a Spotlight on the Flaws in the Ford *Majority's Approach* 435

IV. RETURNING TO *COX*: AN ILLUSTRATION OF THE QUESTIONS *FORD* LEFT GLARINGLY UNANSWERED 437

V. BACK TO THE DRAWING BOARD, SORT OF: WHERE THE SUPREME COURT SHOULD TAKE PERSONAL JURISDICTION FROM HERE 439
A. Reviving the Sliding-Scale Approach 440
B. Filling the General Jurisdiction Gap 441
C. What's in a Name? That Which We Call a Sliding-Scale by Any Other Name Would Smell as Sweet 444

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VI. CONCLUSION 444

I. INTRODUCTION

On March 22, 2018, William Cox planned to end his workweek by catching a flight and returning home—but instead—tragedy struck.[1] Cox was conducting a quality check on a company's newly-purchased hydrogen generator when it exploded.[2] Leading up to the incident, the generator had been functioning properly and passed all necessary diagnostic tests.[3] The explosion occurred as Cox was powering down the machine, and its large panels flew off in Cox's direction and propelled him across the room.[4] Though Cox survived the explosion, he remained in the hospital for two months.[5] He suffered severe injuries including complex facial lacerations, fractured bones, hearing loss, a subdural hematoma, and acute kidney damage; his life will never be the same.[6] Cox sued the company that purchased the generator.[7] That company then impleaded other companies involved in the manufacture and certification of the generator.[8] Instead of the court deciding Cox's case on the merits of his claim, it took years for the court to first determine the preliminary matter of jurisdiction.[9] That is, the court had to figure out if it had the authority—or the jurisdiction—to decide the claims against the impleaded parties.[10]

This story is more than a mere hypothetical—and its outcome is not atypical.[11] It is the true story of what happened to William Cox, a senior technician for Proton Energy Systems, Inc. (Proton).[12] Proton sent Cox, a Connecticut resident, to HP Computing and Printing, Inc.'s (HP) Oregon campus to oversee the installation of

1. *See* Complaint at 3, Cox v. HP Inc., 504 P.3d 52 (Or. App. 2022) (No. 19CV14525) (alleging that William Cox was planning to "head back home to Connecticut" before he was severely injured and subsequently hospitalized due to a workplace explosion).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 4.

6. *Id.* at 7–9.

7. Cox v. HP Inc., 492 P.3d 1245 (Or. 2021).

8. *Id.* at 1247. *See generally Impleader*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/impleader (last visited Apr. 23, 2022) (on file with the *University of the Pacific Law Review*) (defining impleader as a procedural device by which defendants can bring another party into litigation "and try to show that this 'third party defendant' is liable instead of the original defendant").

9. *See* Complaint, *supra* note 1, at 1 (showing that Cox's claims for relief included negligence, employers' liability law, negligence per se, and strict products liability. Cox sued other companies involved in the installation and manufacturing of the generator beyond HP. Additionally, Cox's wife sued all defendants for loss of consortium). *See generally Personal Jurisdiction*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/personal_jurisdiction (last visited Jan. 9, 2022) (on file with the *University of the Pacific Law Review*) (defining personal jurisdiction as "the power that a court has to make a decision regarding the party being sued in a case").

10. *Personal Jurisdiction*, *supra* note 9.

11. Complaint, *supra* note 1, at 1–19.

12. *Cox*, 492 P.3d at 1247; Complaint, *supra* note 1, at 2.

a hydrogen generator Proton sold to HP.[13] Cox sued HP, claiming that HP altered the generator in ways that made it unsafe and ultimately contributed to the accident.[14] HP then impleaded a Delaware corporation called TÜV Rheinland of North America, Inc. (TÜV).[15] TÜV was responsible for testing and certifying the hydrogen generator for safety compliance before its installation.[16] HP claimed TÜV negligently certified the defective generator.[17] In response, TÜV moved to dismiss the third-party claim, arguing that the Oregon court did not have specific personal jurisdiction over it.[18] After the trial court denied the motion to dismiss, TÜV appealed to the Oregon Supreme Court through a writ of mandamus.[19]

The Oregon Supreme Court's analysis hinged on *Ford Motor Co. v. Montana Eighth Judicial District* (*Ford*).[20] In *Ford*, the United States Supreme Court expanded the test for personal jurisdiction after a years-long trend of severely narrowing it.[21] Before *Ford*, many lawyers interpreted the Court's specific jurisdiction test to require a direct causal link between a defendant's in-state conduct and a plaintiff's injuries.[22] That is, the plaintiff's injuries must directly

13. Complaint, *supra* note 1, at 2–3.

14. *Cox*, 492 P.3d at 1249–50. *See generally* Complaint, *supra* note 1, at 1 (showing that HP is a foreign corporation maintaining a principal place of business in California and "regular and sustained business activity" in Oregon).

15. *Cox*, 492 P.3d at 1249. *See generally What Is the Third Party Claim Legal Definition?*, UPCOUNSEL, https://www.upcounsel.com/third-party-claim-legal-definition (last updated Oct. 29, 2020) (on file with the *University of the Pacific Law Review*) ("A third party claim refers to a claim made by a defendant during the course of legal proceedings with the intention of enjoining an individual or entity that is not involved in the original action to perform a related duty."). *See generally State of Incorporation: Everything You Need to Know*, UPCOUNSEL, https://www.upcounsel.com/state-of-incorporation (last visited Mar. 5, 2022) (on file with the *University of the Pacific Law Review*) ("The state of incorporation refers to the state where the company was registered. For instance, a corporation registered in Delaware will be designated as a Delaware Corporation, and its state of incorporation will be Delaware. Further, the state of incorporation means a corporation is under a certain classification with the IRS.").

16. *Cox*, 492 P.3d at 1249–50.

17. *Id.*

18. *Id.* at 1250. *See generally Motion to Dismiss*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/motion_to_dismiss (last visited Mar. 5, 2022) (on file with the *University of the Pacific Law Review*) ("A motion to dismiss is a formal request for a court to dismiss a case.").

19. *Cox*, 492 P.3d at 1250; *see also Mandamus*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/mandamus (last visited Jan. 9, 2022) (on file with the *University of the Pacific Law Review*) (defining a writ of mandamus as "an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion").

20. *Cox*, 492 P.3d at 1251, 1257; Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021).

21. *Ford*, 141 S. Ct. at 1017; *see also e.g.*, Bristol-Myers Squibb Co. v. Super. Ct. of Cal., 137 S. Ct. 1773 (2017); Walden v. Fiore, 571 U.S. 277 (2014); J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873 (2011).

22. *See The Incredible Shrinking Doctrine of Specific Personal Jurisdiction: The U.S. Supreme Court's Decision in* Bristol-Myers Squibb Company v. Super. Ct. of Cal., MORRISON FOERSTER (June 20, 2017), https://www.mofo.com/resources/insights/170620-bristol-myers-squibb-company-v-superior-court-california.html (on file with the *University of the Pacific Law Review*) (stating that the Supreme Court "effectively established" a causation requirement for specific jurisdiction); *see also* Brooke Killian Kim & Isabella Neal, *U.S. Supreme Court Clarifies Scope of Specific Personal Jurisdiction Over Corporations:* Ford Motor Co. v. Montana Eight Judicial District, DLA PIPER: LITIG. ALERT (Apr. 12, 2021), https://www.dlapiper.com/en/us/insights/publications/2021/04/us-supreme-court-clarifies-scope/ (on file with the *University of the Pacific Law Review*) (stating that, before the Court decided *Ford*, "A split developed among the Circuits, with some Circuits requiring

"arise out of" the defendant's in-state conduct.[23] Some lower courts that adopted this causal connection standard did so because of the Supreme Court's holding in *Bristol-Myers Squibb Co. v. Superior Ct.* (*BMS*).[24]

BMS rejected the California Supreme Court's "sliding-scale approach" to the "arise out of or relate to" standard.[25] The sliding-scale approach did not require that a defendant's forum contacts have a causal connection to the plaintiff's injuries.[26] Instead, California courts would balance "the intensity of the defendant's forum contacts with the plaintiff's connection to these contacts."[27] Some lower courts and litigants—like Ford—inferred from the United States Supreme Court's categorical rejection of the sliding-scale approach that causation is necessary for specific jurisdiction.[28]

Ford reaffirmed the "arise out of" test of *BMS*: that a direct causal link between a defendant's in-state contacts and the plaintiff's injuries will satisfy specific jurisdiction.[29] But the Court also held that specific jurisdiction could *alternatively* be proper on a lesser showing of relatedness between the plaintiff's injuries and the defendant's in-state conduct.[30] On its face, *Ford*'s new distinction between "arise out of" and "relate to" seems to make satisfying personal jurisdiction easier for plaintiffs.[31] However, this Comment argues that *Ford* was too ambiguous and too limited in scope to provide enough meaningful guidance to lower courts.[32] Instead, *Ford*'s holding only exacerbated the already complicated analysis for lower courts determining specific jurisdiction.[33]

'but for' causation, and others requiring proximate causation"); King & Spalding, *Supreme Court Scuttles Causation "Requirement" for Specific Jurisdiction and Ninth Circuit Weighs in on* Bristol-Myers Squibb, JD SUPRA (Jan. 12, 2022), https://www.jdsupra.com/legalnews/supreme-court-scuttles-causation-4657922/ (on file with the *University of the Pacific Law Review*) (stating that the Supreme Court's decision in *Ford* "rejected the approach adopted by several circuits requiring that there be a *causal connection* between a defendant's in-state activities and a plaintiff's claims").

23. *See* King & Spalding, *supra* note 22 (stating that the Supreme Court's use of the "arise out of or relate to" standard splintered lower courts. Several Circuits interpreted that language to require a "causal connection" between the plaintiff's claims and the defendant's forum contacts, essentially ignoring the "or relate to" portion of the rule).

24. *Bristol-Myers Squibb*, 137 S. Ct. at 1773.

25. *Id.* at 1773, 1778, 1781; *Supreme Court Rejects "Sliding Scale Approach" to Specific Jurisdiction*, THOMSON REUTERS: PRAC. L. LITIG. (June 20, 2017), https://www.westlaw.com/w-008-6778?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0 (on file with the *University of the Pacific Law Review*).

26. Linda S. Mullenix, *Stirring the Jurisdictional Stew: Will California's "Sliding Scale" Approach to Specific Personal Jurisdiction Withstand Due Process Scrutiny?*, 44 PREVIEW 244, 245 (2017).

27. *Id.*

28. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1024 (2021); King & Spalding, *supra* note 22.

29. *Ford*, 141 S. Ct. at 1026.

30. *Id.*

31. Brittany Day, Ford Motor Company v. Montana Eighth Jud. District Court*: Redefining the Nexus Requirement for Specific Jurisdiction*, 16 DUKE J. CONST. L. & PUB. POL'Y SIDEBAR 1, 1–2 (2021).

32. *See* discussion *infra* Part IV (analyzing the Supreme Court's holding in *Ford*).

33. *See* discussion *infra* Part V (demonstrating lower court confusion in the wake of *Ford*).

Ford's lack of meaningful direction forces lower courts to fill in too many gaps when determining specific jurisdiction.[34] To ameliorate lower court confusion surrounding jurisdiction, the Court should clarify the "relatedness" test.[35] In doing so, the Court should reconsider its rejection of the "sliding-scale approach" that some lower courts previously adopted, given the "relatedness" test's striking similarity to a sliding-scale analysis.[36] Part II of this Comment summarizes the evolution of the Supreme Court's pre-*Ford* personal jurisdiction jurisprudence.[37] Part III summarizes *Ford*.[38] Part IV returns to *Cox* and demonstrates how the Oregon court misinterpreted *Ford*.[39] Part V suggests changes the Supreme Court should make to clarify the test for personal jurisdiction.[40] Part VI concludes that the sliding-scale approach, previously rejected by the Court, is its best solution for adequately handling the gamut of modern-day suits.[41]

II. FROM *PENNOYER* TO *BRISTOL-MYERS SQUIBB*: THE LONG AND WINDING ROAD OF PERSONAL JURISDICTION

The United States Supreme Court's personal jurisdiction decisions—spanning over a century—have been accordion-like.[42] In 1877, the Court decided *Pennoyer v. Neff* (*Pennoyer*): its first major personal jurisdiction case.[43] Though the Supreme Court has overruled most of *Pennoyer*, the case remains the fountainhead of the Court's personal-jurisdiction jurisprudence.[44] *Pennoyer* held, in part, that plaintiffs must provide service of process to nonresident defendants in-hand and in the state

34. *See* discussion *infra* Part V (demonstrating lower court confusion in the wake of *Ford*).

35. *Infra* Part V.

36. *Infra* Part V.

37. *See* discussion *infra* Part II (explaining how the Supreme Court's specific jurisdiction jurisprudence has evolved since the 1800s).

38. *See* discussion *infra* Part III (summarizing the Supreme Court's holding in *Ford*).

39. *Infra* Part IV.

40. *See* discussion *infra* Part V (proposing that the Supreme Court reconsider its rejection of California's sliding-scale approach to the minimum contacts analysis).

41. *See* discussion *infra* Part VI (concluding that the sliding-scale approach to minimum contacts is best suited to handle most modern day suits).

42. *See* MICHAEL VITIELLO, ANIMATING CIVIL PROCEDURE 21–71 (2017) (detailing the Supreme Court's personal jurisdiction jurisprudence).

43. Pennoyer v. Neff, 95 U.S. 714 (1877).

44. *See* VITIELLO, *supra* note 42, at 21 (stating that many civil procedure casebooks begin the topic of personal jurisdiction with *Pennoyer*).

they seek to sue to satisfy personal jurisdiction.[45] "In-hand, in-state" is no longer the only means of satisfying jurisdiction, but *Pennoyer* remains noteworthy because of the case's emphasis on due process.[46]

Pennoyer anchored personal jurisdiction analysis in the Due Process Clause of the Fourteenth Amendment.[47] The Due Process Clause of the Fourteenth Amendment states:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[48]

The Fourteenth Amendment curtails state power: states cannot deprive a person of certain liberties without the "due process of law."[49] Congress enacted the Fourteenth Amendment after the Civil War to "protect individual rights from interference by the states."[50]

The *Pennoyer* Court's interpretation of the Fourteenth Amendment, however, cut against the Amendment's clear language and history.[51] The *Pennoyer* Court reasoned that due process ensures that the Constitution protects *states' rights*, not the rights of individual citizens.[52] Specifically, the Court held that the Fourteenth Amendment protects a state's sovereign power from encroachment by another

45. *Pennoyer*, 95 U.S. at 714; *see also Service of Process*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/service_of_process (last visited Mar. 5, 2022) (on file with the *University of the Pacific Law Review*) ("The Due Process clauses in the United States Constitution prohibit courts from exercising personal jurisdiction over a defendant unless the defendant has proper notice of the court's proceedings. To meet this rule, courts require plaintiffs to arrange for defendants to be served with a court summons and a copy of the plaintiffs' complaint. These papers are collectively called process.").

46. 95 U.S. at 727, 733 (1877).

47. *Id.*; Wendy Collins Perdue, *Sin, Scandal, and Substantive Due Process: Personal Jurisdiction and* Pennoyer *Reconsidered*, WASH. L. REV. 479, 499–508 (1987).

48. U.S. CONST. amend. XIV.

49. U.S. CONST. amend. XIV.

50. Nathan S. Chapman & Kenji Yoshino, *The Fourteenth Amendment Due Process Clause*, NAT'L CONST. CTR., https://constitutioncenter.org/interactive-constitution/interpretation/amendment-xiv/clauses/701 (last visited Mar. 2, 2022) (on file with the *University of the Pacific Law Review*).

51. *See* VITIELLO, *supra* note 42, at 23 (asserting that *Pennoyer*'s reading of the Fourteenth Amendment as protecting "a state from overreaching another state's sovereign power makes little sense").

52. 95 U.S. at 728, 733; *see also* Perdue, *supra* note 47, at 504 (portraying *Pennoyer*'s characterization of personal jurisdiction "as a substantive due process right" tied to state boundaries as the "doctrinal core" of modern personal jurisdiction).

state.[53] *Pennoyer*'s characterization of personal jurisdiction as a matter of state sovereignty, tied up in the Fourteenth Amendment, set the Court on a decades-long journey to explain this framework.[54]

A. International Shoe*: The "Modern Test" for Personal Jurisdiction Cannot Seem to Shake Its Past*

The notion of state sovereignty continues to animate the Court's modern specific jurisdiction test, beginning with *International Shoe v. Washington* (*International Shoe*).[55] *International Shoe* created a two-part test for personal jurisdiction.[56] First, due process requires that a defendant "have certain minimum contacts" with the forum state.[57] The defendant must have a strong enough relationship with—or connection to—the state and "receive[] the benefits and protections of the laws of that state" to satisfy the minimum contacts test.[58] For example, a defendant can have minimum contacts by conducting business in the state or by having their business incorporated therein.[59] Second, the defendant's minimum contacts must "arise out of or [be] connected with" the plaintiff's claims.[60]

In the decades following *International Shoe*, the Court developed other requirements of varying degrees and in various contexts for personal jurisdiction.[61] Generally, however, the test for specific jurisdiction leading up to *Ford* may be summarized as follows: First, a defendant must have sufficient minimum contacts with the forum state for a court to find personal jurisdiction fair.[62] Second, those in-state contacts must be the result of the defendant's "purposeful[] avail[ment]" of the forum.[63] Third, the plaintiff's injuries must "arise out of or relate to" the

53. Michael Vitiello, *Due Process and the Myth of Sovereignty*, 50 U. PAC. L. REV. 513, 521 (2019).

54. *See* Wendy Collins Perdue, *What's "Sovereignty" Got to do With It? Due Process, Personal Jurisdiction, and the Supreme Court*, 63 S.C. L. REV. 729, 730 (2012) ("Much of the credit (or blame) for modern personal jurisdiction doctrine dates back to *Pennoyer v. Neff*. It is there that the Court explicitly address concerns about sovereignty and, for the first time, introduced the Due Process Clause into personal jurisdiction doctrine.").

55. Int'l Shoe Co. v. St. of Wash., Off. Of Unemployment Comp. & Placement, 326 U.S. 310 (1945).

56. *Id.* at 316–320.

57. *Id.* at 316.

58. *Id.* at 320.

59. *Id.*; *Minimum Contacts*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/minimum_contacts (last visited March 3, 2022) (on file with the *University of the Pacific Law Review*).

60. *Int'l Shoe*, 326 U.S. at 319.

61. *See* VITIELLO, *supra* note 42, at 21–71 (detailing the Supreme Court's personal jurisdiction jurisprudence post-*International Shoe*).

62. *Int'l Shoe*, 326 U.S. at 316; *see also* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (describing the minimum contacts test as the "constitutional touchstone" of personal jurisdiction).

63. Hanson v. Denckla, 357 U.S. 235, 235 (1958); *see also* Stephen Higdon, *If It Wasn't on Purpose, Can a Court Take It Personally?: Untangling* Asahi's *Mess That* J. McIntyre *Did Not*, 45 TEX. TECH. L. REV. 463, 470–71 (2013) (explaining that a nonresident defendant's contacts with a forum satisfy the purposeful availment test if the defendant "purposefully directed its activities towards the forum state").

defendant's forum contacts.[64] Finally, the court must consider certain "fairness factors" to ensure that the ensuing litigation would "comport with fair play and substantial justice.'"[65]

General jurisdiction is another form of personal jurisdiction the Supreme Court has addressed—and altered—in recent decades.[66] A court may exercise general personal jurisdiction over a defendant—even when specific jurisdiction is not satisfied—if the defendant is "at home" in the forum state.[67] For a defendant corporation to be "at home" in a state, it must be incorporated or have its principal place of business there.[68] But this "at home" test has not always been the standard for general jurisdiction.[69]

The Court only recently whittled general jurisdiction down to this narrow test in *Goodyear Dunlop Tires, S.A. v. Brown* (*Goodyear*), and solidified it in *Daimler AG v. Bauman* (*Daimler*).[70] Before *Goodyear* and *Daimler*, the test for general jurisdiction only required that a defendant's forum contacts be "continuous and systematic."[71] If "continuous and systematic," a court could exercise jurisdiction over that defendant even if the defendant's contacts had no relation at all to the plaintiff's claims.[72] The Court's extreme narrowing of general jurisdiction in *Goodyear* and *Daimler* set the stage for litigants to more forcefully test the bounds

64. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 425 (1984).

65. McGee v. Int'l Life Ins. Co., 355 U.S. 220 (1957); *see also Burger King Corp.*, 471 U.S. at 476–77 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980)) ("Thus courts in 'appropriate case[s]' may evaluate 'the burden on the defendant,' 'the forum State's interest in adjudicating the dispute,' 'the plaintiff's interest in obtaining convenient and effective relief,' 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies,' and the 'shared interest of the several States in furthering fundamental substantive policies.'").

66. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 918 (2011); Daimler AG v. Bauman, 571 U.S. 117 (2014).

67. *Daimler*, 571 U.S. at 137 (quoting *Goodyear*, 564 U.S. at 924).

68. *Daimler*, 571 U.S. at 137.

69. *See* Richard D. Freer, *SCOTUS Analysis:* Ford Motor Co. *and Personal Jurisdiction*, EMORY L. NEWS CTR. (Apr. 19, 2021), https://law.emory.edu/news-and-events/releases/2021/04/scouts-analysis-ford-motor-company-v.-montana-eighth-judicial-district-court.html (on file with the *University of the Pacific Law Review*) ("Historically, general jurisdiction permitted a plaintiff to sue a corporation wherever that company had 'continuous and systematic' activities.").

70. *Goodyear*, 564 U.S. at 929–930; *Daimler*, 571 U.S. at 121–22.

71. *See Daimler*, 571 U.S. at 149 (Sotomayor, J., concurring) (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416 (1984)) (stating that, until the majority's opinion in *Daimler*, the Court's precedents for general jurisdiction involved a straightforward inquiry about a defendant's "continuous and systematic general business contacts"); *see also* Freer, *supra* note 69.

72. *See* Patrick J. Borchers, Richard D. Freer & Thomas C. Arthur, Ford Motor Company v. Montana Eight Judicial District Court*: Lots of Questions, Some Answers*, 71 EMORY L.J. ONLINE 1, 5 (2021) ("Prior to 2011, courts exercised general jurisdiction if the defendant had 'continuous and systematic' contacts with the forum.").

of specific jurisdiction.[73] In *Bristol-Myers Squibb Co. v. Superior Ct.* (*BMS*), the Court addressed the more-important-than-ever distinction between general and specific personal jurisdiction.[74]

B. Bristol-Myers Squibb *Muddies the Already Murky Jurisdictional Waters*

In 2017, the Court decided *BMS*.[75] Users of Plavix, a blood-thinning medication, filed eight complaints in California state court against BMS, the manufacturer.[76] The plaintiffs, a group of 86 California residents and 592 residents from other states, sued in a nationwide class action and alleged Plavix damaged their health.[77] BMS challenged the out-of-state plaintiffs' claims for lack of jurisdiction, but the California court found that specific jurisdiction was proper.[78]

BMS maintained five research facilities in California, employed over 200 sales representatives, and maintained an office in the State Capitol dedicated to lobbying.[79] BMS also contracted with McKesson, a corporation headquartered in California, to distribute Plavix nationwide and market it in California.[80] By any measure, BMS's contacts in California were extensive.[81] In light of the breadth of BMS's forum contacts, the California Court of Appeal held that California courts had specific jurisdiction over the nonresident plaintiffs' claims.[82] The California Supreme Court affirmed the appellate court's decision.[83] Notably, the California Supreme Court applied a "sliding-scale approach."[84] Under this approach, jurisdiction may be proper if the defendant's in-state contacts are significantly wide-ranging—even if they are not *directly* connected to the plaintiff's claims.[85]

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73. Mullenix, *supra* note 26, at 245 ("Since 2011, the Court has issued four decisions attempting to clarify the doctrines of general and specific jurisdiction . . . . As the *Bristol-Myers* appeal attests, notwithstanding more than a century of explication, the distinction between general and specific jurisdiction remains befogged. This appeal raises the legitimacy of California's novel sliding-scale approach to determining specific jurisdiction or whether, as the dissenters contend, this approach eviscerates any distinction between general and specific jurisdiction.").

74. *See* Lea Brilmayer, *A General Look at Specific Jurisdiction*, 42 YALE J. OF INT'L L. ONLINE 1, 4 (2017) ("For lawyers and judges, distinguishing between specific and general jurisdiction is probably the most important single jurisdictional problem remaining to be resolved."); *infra* II.B.

75. Bristol-Myers Squibb Co. v. Super. Ct. of Cal., 137 S. Ct. 1773, 1773 (2017).

76. *See id.* at 1778 (stating that Plavix is a blood-thinning drug that is meant to inhibit blood clotting).

77. *Id.*

78. *Id.* at 1778–79.

79. *Id.* at 1786.

80. *Bristol-Myers Squibb*, 137 S. Ct. at 1786.

81. *Id.*

82. *Id.* at 1778.

83. *Id.*

84. *Id.*

85. *See Supreme Court Rejects "Sliding Scale Approach" to Specific Jurisdiction*, *supra* note 25 (describing the sliding-scale approach to specific jurisdiction as requiring "a less direct connection between a defendant's activities in the state and a plaintiff's claims" if the defendant's contacts with the state are otherwise "wide-ranging").

As previously mentioned, courts utilizing a sliding-scale approach implement a balancing test, weighing the "intensity of [a] defendant's forum contacts with the plaintiff's connection to these contacts."[86]

BMS appealed and the United States Supreme Court granted certiorari to decide whether California's exercise of specific jurisdiction over BMS was appropriate.[87] In an 8–1 decision, the Court held that specific jurisdiction was unavailable to the out-of-state plaintiffs because their claims did not arise out of BMS's California contacts.[88] The majority in *BMS* categorically rejected the California Supreme Court's sliding-scale approach, describing it as a "loose and spurious form of general jurisdiction."[89] It held that BMS's contacts with California were irrelevant because they lacked an "affiliation" or an "adequate link" to the underlying controversy of the suit.[90] Though BMS marketed and sold Plavix in California, many of the plaintiffs had purchased and taken Plavix outside California.[91] Likewise, the out-of-state plaintiffs did not allege McKesson's conduct in California—namely marketing and distribution efforts—led to their purchasing of the drug.[92] The out-of-state plaintiffs also did not allege BMS "engaged in relevant acts together with McKesson in California."[93] The Court held there must be a connection between the plaintiffs' claims and the defendant's contacts "in order for a state court to exercise specific jurisdiction."[94] Between BMS's extensive California contacts and the non-resident plaintiffs' claims, the Court could find no such connection.[95]

*C. Lower Courts Throw "Relatedness" Out the Window Post-*BMS

After *BMS*, some assumed the Supreme Court had finally defined the outer bounds of the term "arise out of or relate to."[96] By rejecting the sliding-scale approach, one subset of the legal community believed the Court had affirmed that "arise out of or relate to" was a singular standard.[97] Under this singular standard,

86. Mullenix, *supra* note 26, at 245.

87. *Bristol-Myers Squibb*, 137 S. Ct. at 1777–78; *see Certiorari*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining certiorari as "[a]n extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. [T]he U.S. Supreme Court uses certiorari to review most of the cases that it decides to hear.").

88. *Bristol-Myers Squibb*, 137 S. Ct. at 1783–84.

89. *Id.* at 1781.

90. *Id.*

91. *See id.* at 1778 (showing that BMS sold over 187 million Plavix pills in California and made over $900 million from sales in the decade leading up to the *BMS* suit).

92. *Id.* at 1783.

93. *Bristol-Myers Squibb*, 137 S. Ct. at 1783.

94. *Id.* at 1780.

95. *Id.* at 1781.

96. *See The Incredible Shrinking Doctrine of Specific Personal Jurisdiction: The U.S. Supreme Court's Decision in* Bristol-Myers Squibb Company v. Superior Court of California, *supra* note 22 (stating that the Supreme Court "effectively established" a causation requirement for specific jurisdiction in *BMS*).

97. *Id.*

a connection, or causal link, between a defendant's in-state conduct and a plaintiff's injury is required.[98] On the other hand, some scholars complained *BMS* was ambiguous, failing to resolve the split already fracturing lower courts—some requiring causation to satisfy jurisdiction, some not.[99]

If there was any question as to whether the majority opinion in *BMS* did, in fact, narrow specific jurisdiction, Justice Sotomayor's dissent seemed to confirm it.[100] She disagreed with the majority's characterization of the Court's specific jurisdiction jurisprudence and rejected the notion that precedent necessitated a "tight relatedness requirement."[101] She asserted that nothing in the Fourteenth Amendment's Due Process Clause prohibited California from hearing the out-of-state plaintiff's claims.[102]

IV. *FORD MOTOR CO.*: THE SUPREME COURT FACES "RELATEDNESS" HEAD-ON

In March 2021, the Supreme Court decided *Ford Motor Co. v. Montana Eighth Judicial District Court*.[103] The idea that *BMS* had narrowed specific jurisdiction and created an explicit causation requirement set the tone for *Ford*.[104] Section A provides the facts of the case and deliberates on the case's trajectory in lower courts.[105] Section B analyzes the *Ford* majority opinion, along with the concurring opinions of Justice Gorsuch and Justice Alito.[106]

98. *Id.*

99. *See* Michael H. Hoffheimer, *The Stealth Revolution in Personal Jurisdiction*, 70 FLA. L. REV. 499, 525 (2018) ("In rejecting California's application of a sliding-scale approach to relatedness, Justice Alito made no effort to resolve the split among lower courts as to whether specific jurisdiction claims must 'arise from' the defendant's forum conduct.").

100. *Bristol-Myers Squibb*, 137 S. Ct. at 1784–89 (Sotomayor, J., dissenting).

101. *Id.* at 1787 (Sotomayor, J., dissenting) ("The majority casts its decision today as compelled by precedent. But our cases point in the other direction."); *see also* Hoffheimer, *supra* note 99, at 522–23 (stating that Justice Sotomayor "saw no legitimate interest served by a tight relatedness requirement" and that she "denied Justice Alito's claim that precedent compelled a tighter connection").

102. *Bristol-Myers Squibb*, 137 S. Ct. at 1787 (Sotomayor, J., dissenting).

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

104. *See The Incredible Shrinking Doctrine of Specific Personal Jurisdiction: The U.S. Supreme Court's Decision in* Bristol-Myers Squibb Company v. Superior Court of California, *supra* note 22 (stating that the Supreme Court "effectively established" a causation requirement for specific jurisdiction in *BMS*).

105. *See* discussion *infra* Part IV.A (describing the facts of the *Ford* case).

106. *See* discussion *infra* Part IV.B (analyzing the Court's majority opinion and concurring opinions in *Ford*).

A. The Facts: Ford Tests the Limits of Bristol-Myers Squibb

In 2015, Montana resident Markkaya Gullet was driving her 1996 Ford Explorer when the tread on a rear tire of the vehicle suddenly separated.[107] The vehicle spun out of control and rolled into a ditch.[108] Gullett did not survive the accident.[109]

In Minnesota, another accident involving a 1994 Ford Crown Victoria also occurred in 2015.[110] Adam Bandemer was a passenger in the Crown Victoria when the car rear-ended a snowplow and crashed into a ditch.[111] The vehicle's airbags did not deploy.[112] Bandemer suffered serious brain damage.[113]

Bandemer and Gullett's estate sued Ford in their respective state courts.[114] Bandemer sued in Minnesota state court, asserting claims for negligence, products liability, and breach of warranty.[115] Gullet's estate sued in Montana state court for negligence, failure to warn, and design defect.[116] Ford had not sold either vehicle in the forum states where the accidents occurred and where the plaintiffs subsequently brought their suits.[117] Similarly, Ford had not designed or manufactured either vehicle in the forum states.[118]

Ford moved to dismiss both suits for lack of personal jurisdiction.[119] The crux of Ford's argument against personal jurisdiction largely mirrored how many lower courts had interpreted *BMS*.[120] Ford relied explicitly on *BMS*, arguing it "squarely foreclose[s]" jurisdiction.[121] Because Ford had not sold, designed, or manufactured the vehicles in the forums, it argued there was no causal link to its in-state activity.[122] Since a strict causal link did not exist, Ford contended the plaintiffs did not satisfy the requirement that claims must *arise out of* the defendant's forum

107. *Ford*, 141 S. Ct. at 1023.
108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. *Ford*, 141 S. Ct. at 1023.
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*; *see also Forum*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining a forum as "a place of jurisdiction").
118. *Ford*, 141 S. Ct. at 1023.
119. *Id.*
120. *Id.* at 1030.
121. *Id.* at 1030–31.
122. *Id.* at 1023–24.

contacts.[123] While Ford conceded that it conducts "substantial business" in each forum state, it asserted that those activities were not sufficiently connected to either of the suits.[124]

Both state supreme courts rejected Ford's argument, instead affirming the decisions of the lower courts.[125] The Montana Supreme Court found that Ford "encourages 'Montana residents to drive Ford vehicles.'"[126] The Montana Supreme Court further held, when this encouragement causes an in-state injury, "the ensuing claims have enough of a tie to Ford's Montana activities to support jurisdiction."[127] The Minnesota Supreme Court found that Ford's marketing efforts allowed it to sell over 2,000 1994 Crown Victorias in the state.[128] The fact that the vehicle owner purchased the vehicle out of state "made no difference."[129] According to the Minnesota Supreme Court, Ford's in-state marketing activities had "the needed connection" to Bandemer's claims.[130] After both states upheld personal jurisdiction, the United States Supreme Court granted certiorari and consolidated the cases.[131]

B. Ford*'s New, Unclear Test*

Some thought that the Court granted certiorari to clarify the confusion surrounding its "arise out of or relate to" test from *BMS*.[132] Perhaps the Court meant to clear up the post-*BMS* confusion, but its majority opinion creates *more* confusion for lower courts.[133] First, the Court unequivocally rejected Ford's interpretation of *BMS*, stating that Ford "misses the point" of the decision.[134] According to the Court, none of its precedents—including *BMS*—held that "only

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

124. *Id.* at 1026.

125. *Id.* at 1023.

126. *See id.* (quoting Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 395 Mont. 478, 491 (2019)).

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

128. *See Ford*, 141 S. Ct. at 1023 (noting that Ford's "marketing and advertisements" allowed Ford to sell over 2,000 1994 Crown Victoria—the exact model of car involved in Bandemer's suit).

129. *Id.* at 1024.

130. *Id.*

131. *Id.*; *see also Certiorari*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining certiorari as "[a]n extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. [T]he U.S. Supreme Court uses certiorari to review most of the cases that it decides to hear"); *Rule 42. Consolidation; Separate Trials*, LEGAL INFO. INST., https://www.law.cornell.edu/rules/frcp/rule_42 (last visited Jan. 9, 2022) (on file with the *University of the Pacific Law Review*) ("If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.").

132. *See* Day, *supra* note 31, at 1–2 (anticipating that the Supreme Court would "have the opportunity to redefine the nexus requirement for exercising personal jurisdiction over nonresident defendants"); King & Spalding, *supra* note 22.

133. *See Ford*, 141 S. Ct. at 1034 (Gorsuch, J., concurring).

134. *Id.* at 1031.

a strict causal relationship between the defendant's in-state activity and the litigation will do."[135] The problem for the *BMS* plaintiffs was that their claims lacked *any* connection to the defendant's activities.[136]

Then, the Court addressed its "relatedness" rule head-on, reiterating its formulation that a suit must "arise out of *or relate to* the defendant's contacts with the forum."[137] However, for the first time in its long and winding jurisdiction jurisprudence, the Court explicitly broke "arise out of" and "relate to" into two distinct standards.[138] The Court held that the words "relate to" allow for some non-causal relationships to support jurisdiction.[139] Under this framework, the fact that Ford's conduct in the forum states would not pass a direct causal test does not end the personal jurisdiction inquiry.[140] According to the Court, plaintiffs can satisfy personal jurisdiction through the "relates to" test if a defendant's other activities or occurrences are affiliated enough to the suit's underlying controversy.[141]

On its face, the Court's uncoupling of "arise out of" and "relate to" might seem to make it easier for plaintiffs properly to assert jurisdiction.[142] But, the majority opinion does not provide concrete guidance on *how* related the suit's underlying controversy and the defendant's forum activity must be.[143] The Court tried to distinguish the facts of *BMS* from *Ford*, but these distinctions did not provide much clarity.[144] In *BMS*, the Court asserted that personal jurisdiction was improper because the plaintiffs were forum shopping.[145] The plaintiffs were not California residents, doctors did not prescribe them Plavix in the forum, and plaintiffs did not ingest the medication or sustain their injuries in California.[146] Comparatively, the Court in *Ford* distinguished the parties and their conduct from *BMS*.[147] The Court found the *Ford* plaintiffs were residents of the forum states, allegedly used the defective products in the forum states, and suffered injuries in the forum states.[148] The Court reasoned that Ford, in conducting extensive business in Minnesota and

135. *Id.* at 1026.

136. *Id.* at 1030 (emphasis added).

137. *Id.* at 1026.

138. *Ford*, 141 S. Ct. at 1026.

139. *Id.*

140. *Id.* at 1026–27.

141. *Id.* at 1026.

142. Rebecca M. Plasencia & Nicole S. Alvarez, *United States: Supreme Court Changes Gears on Personal Jurisdiction*, MONDAQ (Apr. 2, 2021), https://www.mondaq.com/unitedstates/consumer-protection/1052820/supreme-court-changes-gears-on-specific-personal-jurisdiction (on file with the *University of the Pacific Law Review*) ("[With *Ford*,] it appears that the Supreme Court removed another potential obstacle to jurisdiction, and the result may be that fewer lawsuits are dismissed for lack of personal jurisdiction.").

143. *Ford*, 141 S. Ct. at 1034 (Gorsuch, J., concurring).

144. *Id.* at 1030–31.

145. *Id.* at 1031; *see also Forum-Shopping*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining forum-shopping as "the practice of choosing the most favorable jurisdiction or court in which a claim might be heard").

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

147. *Id.*

148. *Id.*

Montana, enjoyed the benefits and protections of the states' laws.[149] This enjoyment created a joint obligation, in this case, that Ford was obligated to ensure the safety of the cars Ford marketed in the state.[150] As to matters of state sovereignty, the Court reasoned that Montana and Minnesota have significant interests in providing convenient forums for residents and imposing their own safety policies.[151] The states where the plaintiffs initially purchased the cars—Washington and North Dakota—had much less significant interests in the litigation.[152]

Ford's assertion that personal jurisdiction was proper only in the state where it sold the vehicles would, in these cases, lead to absurd results.[153] These states would have to hear a suit that "involves all out-of-state parties, an out-of-state accident, and out-of-state injuries."[154] According to the Court, "the suit's only connection with [Washington and North Dakota] is that a former owner once (many years earlier) bought the car there."[155] Beyond the Court's distinctions between *BMS* and *Ford*, much of the Court's further elaborations on the relatedness test are imprecise.[156] Justice Gorsuch's and Justice Alito's concurring opinions speak directly to this imprecision and seem to foreshadow the confusion facing lower courts grappling with specific jurisdiction.[157]

C. The Concurrences: Shining a Spotlight on the Flaws in the Ford *Majority's Approach*

While Justices Gorsuch and Alito disagree on how the law of personal jurisdiction should change, their concurrences address the *Ford* majority opinion's imprecision similarly.[158] Justice Gorsuch characterizes the majority opinion's "relate to" rule as follows:

149. *Id.*

150. *Id.*

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

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *See* Xan Ingram Flowers & Trent Mansfield, *Navigating a Foggy Future Post*-Ford Motor Co. v. Montana Eight Judicial District Court, 18 DRI: STRICTLY SPEAKING (July 6, 2021), https://www.dri.org/newsletters/committee-newsletters/strictly-speaking/strictly-speaking-vol-18-issue-1#ff7 (on file with the *University of the Pacific Law Review*) (arguing that the Court's use of the phrase "relates to" in *Ford* is unclear).

157. *Ford*, 141 S. Ct. at 1033–39 (Alito, J., concurring) (Gorsuch, J., concurring).

158. *See id.* at 1032–39 (Alito, J., concurring) (Gorsuch, J., concurring); *see also Concurring Opinion*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/concurring_opinion (last visited Mar. 5, 2022) (on file with the *University of the Pacific Law Review*) (defining a concurring opinion as one that agrees with the ultimate outcome of a case "but does not agree with the [majority opinion's] rationale behind it. Instead of joining the majority, the concurring judge will write a separate opinion describing the basis behind their decision").

> For a case to "relate to" the defendant's forum contacts, the majority says, it is enough if an "affiliation" or "relationship" or "connection" exists between them. But what does this assortment of nouns *mean*? Loosed from any causation standard, we are left to guess. The majority promises that its new test "does not mean anything goes," but that hardly tells us what does.[159]

Justice Alito describes the majority's new test as "unnecessary" and "unwise."[160] Like Justice Gorsuch, Justice Alito warns that the majority's creation of a separate "relate to" standard without indicating any recognizable limits will prove unhelpful to lower courts.[161] In Justice Alito's view, the "arise out of or relate to" phrase is singular, and "simply a way of restating the basic 'minimum contacts' standard adopted in *International Shoe*."[162] Under this minimum contacts standard, courts are meant to ask whether—in light of the defendant's contacts with the forum—asserting personal jurisdiction would offend "traditional notions of fair play and substantial justice."[163] Justice Alito argued that this minimum contacts standard is easily met by Ford in both suits.[164] According to Justice Alito, the relationship between Ford's in-state activities and the suits is a common-sense one and "causal in a broad sense of the concept."[165] Thus, Justice Alito says personal jurisdiction can adequately rest on a common-sense, broadly causal relationship between a defendant's in-state contacts and a plaintiff's claims without offending due process.[166]

Both Justices Alito and Gorsuch indicate clear willingness for the Court to rethink the *International Shoe* test and its case law progeny altogether.[167] Both Justices question whether the *International Shoe* standard suits modern business practices.[168] However, neither Justice suggests how exactly the Court may remedy the problem of the *International Shoe* standard's inutility in the modern era.[169] Although both Justices argue that the Court's specific jurisdiction framework is inadequate, neither specifies which elements to keep and which principles to modify or abandon.[170] Neither do they suggest how the Court might further clarify the Court's new "relatedness" standard.[171]

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159. *Ford*, 141 S. Ct. at 1034–35 (Gorsuch, J., concurring).

160. *Id.* at 1033 (Alito, J., concurring).

161. *Id.* at 1033–34 (Alito, J., concurring).

162. *Id.* at 1033 (Alito, J., concurring).

163. *Id.* at 1032 (quoting Int'l Shoe Co. v. St. of Wash., Off. Of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945)).

164. *Ford*, 141 S. Ct. at 1032 (Alito, J., concurring).

165. *Id.* at 1033 (Alito, J., concurring).

166. *Id.*

167. *Id.* at 1032, 1038 (Alito, J., concurring) (Gorsuch, J., concurring).

168. *Id.* at 1033 (Alito, J., concurring).

169. *Id.* at 1033–39 (Alito, J., concurring) (Gorsuch, J., concurring).

170. *Ford*, 141 S. Ct. at 1033–39.

171. *Id.*

IV. RETURNING TO *COX*: AN ILLUSTRATION OF THE QUESTIONS *FORD* LEFT GLARINGLY UNANSWERED

William Cox's case involving the generator explosion reached the Oregon Supreme Court in 2021—not on the merits—but solely on the issue of personal jurisdiction.[172] The Oregon Supreme Court had to rule whether TÜV's in-state conduct satisfied *Ford*'s relatedness standard.[173] While the court acknowledged *Ford*'s creation of two separate standards, it ultimately held that jurisdiction over TÜV was improper under either.[174]

The court discounted evidence showing that in Oregon TÜV promoted its certification services, obtained state licensing for product assessment and certification, and regularly certified HP products.[175] Though TÜV did not inspect the actual Proton generator that exploded, TÜV did evaluate and certify a sample unit of the generator before it was sent to Oregon.[176] HP claimed that it purchased the Proton generator in part because it was aware that TÜV had certified the generator.[177] TÜV had previously tested and certified products for HP in Oregon on a regular basis.[178] HP declared that it would not have purchased the TÜV-certified generator without knowing that TÜV was specifically approved and licensed by the state of Oregon to do testing.[179] HP also argued that TÜV had engaged in other Oregon activities for the purpose of obtaining in-state clients like HP.[180] For example, TÜV had at one point advertised an office in Portland, Oregon.[181] It also publicized its commitment "to providing a complete menu of compliance and auditing services" to its Oregon customers.[182]

HP argued, these contacts—plus the generator having exploded in Oregon—satisfied *Ford*.[183] The Oregon court conducted a strict one-to-one comparison between TÜV's in-state activities and Ford's in-state activities to show why it disagreed with HP's assertions.[184] Ford urged residents of the forum states to purchase Ford vehicles and sold vehicles of the same model as those the plaintiffs purchased.[185] TÜV did not advertise its service and did not sell generators at all,

172. Cox v. HP Inc., 492 P.3d 1245, 1247 (Or. 2021); *see also* discussion *supra* Part I (describing the details of Cox's case).

173. *Cox*, 492 P.3d at 1247.

174. *Id.* at 1264.

175. *Id.* at 1250.

176. *Id.*

177. *Id.*

178. *Cox*, 492 P.3d at 1249–50.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* at 1250, 1262.

184. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1028 (2021); *Cox*, 492 P.3d at 1254.

185. *Ford*, 141 S. Ct. at 1028; *Cox*, 492 P.3d at 1254.

much less in the forum.[186] Ford maintained "ongoing connections to Ford owners" by providing repair and maintenance services for Ford vehicles.[187] TÜV had no on-going relationship with generator owners after it completed certifications.[188] Because TÜV did not advertise, sell products, or service and maintain products in Oregon, the Oregon court refused to find a "strong [*Ford*-like] relationship" in Cox's suit.[189]

But there are problems with that analysis: the Oregon Supreme Court should not have treated Ford's contacts in the forum states as the minimum necessary for compliance with due process under the relatedness test.[190] However, the Oregon court is not necessarily to blame for its strict reading of *Ford*.[191] The fact the Oregon court based its determination in part on whether TÜV physically sold or marketed generators in state speaks to the confusion *Ford* created.[192] Justice Gorsuch foresaw that *Ford*'s failure to define "affiliation," "connection," or "relationship" would force lower courts to determine the bounds of these words.[193]

Comparing *Cox* to a recent case from the United States Court of Appeals for the Federal Circuit suggests Justice Gorsuch's concerns were well-founded.[194] In *Trimble v. PerDiemCo LLC*, the appellate court found jurisdiction was proper against a defendant who engaged in sufficient communications with the plaintiff in pre-suit negotiations.[195] Trimble Inc. initially sought a declaratory judgment that it did not infringe certain PerDiemCo patents.[196] The district court held that jurisdiction was not proper over PerDiemCo, and dismissed.[197] Trimble appealed to the Federal Circuit, which reversed.[198]

The Federal Circuit relied on *Ford* in finding specific jurisdiction over PerDiemCo.[199] It stated that *Ford* "established that a broad set of a defendant's contacts with a forum are relevant to the minimum contacts analysis."[200] The court

186. *Cox*, 492 P.3d at 1258.

187. *Ford*, 141 S. Ct. at 1028; *Cox*, 492 P.3d at 1255.

188. *Cox*, 492 P.3d at 1258–59.

189. *Id.* at 1258.

190. *See* discussion *supra* Part II (describing the Fourteenth Amendment's due process requirements).

191. *Ford*, 141 S. Ct. at 1034 (Gorsuch, J., concurring).

192. *Cox*, 492 P.3d at 1249–50.

193. *Ford*, 141 S. Ct. at 1034 (Gorsuch, J., concurring).

194. Trimble Inc. v. PerDiemCo LLC, 997 F.3d 1147 (Fed. Cir. 2021).

195. *Id.* at 1151–52.

196. *Id.*; *see also Declaratory Judgment*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/declaratory_judgment (last visited Mar. 5, 2022) (on file with the *University of the Pacific Law Review*) (defining a declaratory judgment as "a binding judgment from a court defining the legal relationship between parties and their rights in a matter before the court"); *Patent*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/patent (last visited Mar. 5, 2022) (on file with the *University of the Pacific Law Review*) ("A patent grants the patent holder the exclusive right to exclude others from making, using, importing, and selling the patented innovation for a limited period of time.").

197. *Trimble*, 997 F.3d at 1151–52.

198. *Id.* at 1159.

199. *Id.* at 1156.

200. *Id.*

further stated that the Supreme Court's focus in *Ford* was on Ford's broader efforts to reach out into the forum states.[201] The court found PerDiemCo communicated with Trimble in California more than twenty times to discuss a patent dispute between the two parties.[202] Through these communications, PerDiemCo "accumulat[ed] an extensive number of contacts with the forum in a short period of time," thus making the court's finding of jurisdiction proper.[203] The court did not cite any other facts showing PerDiemCo had additional contacts with California outside of the party communications.[204] Comparing how the two courts analyze TÜV's Oregon contacts and PerDiemCo's California contacts demonstrates why the Supreme Court should have been clearer in *Ford*.[205] The Court's explanation of its new "relatedness" test was so imprecise as to further compound lower court confusion about personal jurisdiction.[206]

V. BACK TO THE DRAWING BOARD, SORT OF: WHERE THE SUPREME COURT SHOULD TAKE PERSONAL JURISDICTION FROM HERE

In his *Ford* concurrence, Justice Gorsuch expressed hope that future litigants and lower courts would help suggest a new standard for jurisdiction.[207] Unfortunately, he did not indicate what new approach the Court would be most amenable to.[208] Given that a majority of the Court endorsed *Ford*'s relatedness test, the path forward must improve upon that standard.[209] The Court should consider providing clearer guidance for how to apply the relatedness standard.[210] Clearer guidance would help lower courts avoid inconsistent interpretations of the specific jurisdiction test.[211]

201. *Id.*

202. *Trimble*, 997 F.3d at 1156–57.

203. *Id.* at 1157.

204. *Id.* at 1150–52 (showing that PerDiemCo is a Texas limited liability company, that its sole owner worked in Washington, D.C., and that it rented office space in Texas).

205. *Trimble*, 997 F.3d 1147; Cox v. HP Inc., 492 P.3d 1245 (Or. 2021).

206. Flowers & Mansfield, *supra* note 156.

207. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1039 (2021) (Gorsuch, J., concurring).

208. *Id.* at 1038 (Gorsuch, J., concurring).

209. *Ford*, 141 S. Ct. 1017.

210. *Id.* at 1034–35 (Gorsuch, J., concurring):

The majority admits that 'arise out of 'may connote causation. But, it argues, 'relate to' is an independent clause that does not. Where this leaves us is far from clear. For a case to 'relate to' the defendant's forum contacts, the majority says, it is enough if an 'affiliation' or 'relationship' or 'connection' exists between them. But what does this assortment of nouns mean? Loosed from any causation standard, we are left to guess. The majority promises that its new test 'does not mean anything goes,' but that hardly tells us what does.

211. *Id.*

A. Reviving the Sliding-Scale Approach

One way the Court could clarify and strengthen its relatedness test would be to reconsider the hard stance it took against a sliding-scale approach.[212] By separating "arise out of or relate to" into two distinct tests, the Court has already taken one huge step toward the sliding-scale approach.[213]

The sliding-scale approach allows courts to find jurisdiction even when the defendant's forum contacts are not *directly* connected to the plaintiff's claims.[214] *Ford*'s independent-relatedness standard seems nearly identical to this approach, without calling it a sliding-scale test.[215] In fact, some law professors argue outright that *Ford* silently recognized and applied a de facto sliding scale.[216] They argue *Ford* did so by creating a test wherein a plaintiff can satisfy specific jurisdiction by one of two distinct ways.[217] On one end, a plaintiff can do so by showing that a defendant has "a great deal of contact with the forum, such as Ford's contacts with Minnesota."[218] These contacts do not have to be the cause of the plaintiff's injuries, so long as a court can find that they are "related" in some way.[219] "The greater the volume of contacts, the more likely they are related to the claim" under *Ford*, argue the above-mentioned professors.[220] On the other end of the spectrum, the plaintiff opposite a defendant with minimal forum contacts must prove a causal connection between her injuries and those contacts, however sparse.[221]

Despite the resemblance between *Ford*'s relatedness test to the sliding-scale approach, *BMS*'s categorical rejection of the sliding-scale remains good law and hinders the efficacy of *Ford*.[222] By simultaneously creating the "relatedness" test and refusing to reject its position in *BMS*, the Court leaves lower courts in limbo.[223]

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212. *See Supreme Court Rejects "Sliding Scale Approach" to Specific Jurisdiction*, *supra* note 25 ("[A] less direct connection between a defendant's activities in the state and a plaintiff's claims [is] required to establish personal jurisdiction over the defendant where its contacts with the state were wide-ranging.").

213. *See* Borchers, Freer & Arthur, *supra* note 72, at 7 (stating that *Ford*'s bifurcation of the "arise out of or relate to" phrase "inevitably rekindled discussion of a sliding-scale analysis").

214. *See id.* at 15 (observing that the *Ford* majority essentially adopted a sliding-scale approach in which "the greater the volume of [a defendant's] contacts, the more likely they are related to the claim").

215. *See id.* at 9 ("[In *Ford*,] the Court appeared to do what it refused to do in *BMS*: recognize (although not in so many words) a sliding scale.").

216. *Id.* at 9, 13. *See generally De Facto*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/de_facto (last visited Apr. 23, 2022) (on file with the *University of the Pacific Law Review*) ("De facto action is an action taken without strict legal authority to do so, but recognized as legally valid nonetheless. The action is considered something that acquires validity based on the fact of its existence and tradition.").

217. Borchers, Freer & Arthur, *supra* note 72, at 9 (2021).

218. *Id.*

219. *Id.*

220. *Id.* at 9–10, 15.

221. *Id.* at 9–10.

222. *See id.* at 10 (cautioning readers to "not assume that *Ford* overruled *BMS sub silentio*").

223. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1017 (2021); *see also* Borchers, Freer & Arthur, *supra* note 72, at 11 (acknowledging that the Court placed "real limits" on the "relates to" test, but that the Court does not then explain what those limits are).

The Court has provided no guidance as to what the bounds of the "relatedness" test are between requiring a causal connection and employing a full-on sliding-scale analysis.[224]

If the Supreme Court adopted a version of the sliding-scale approach explicitly, it would help lower courts avoid the dilemma the Oregon Supreme Court faced in *Cox*.[225] In *Cox*, the Oregon Supreme Court struggled with having to conduct lengthy, burdensome, and awkwardly forced comparisons between the facts of their case and the highly specific facts in *Ford*.[226] The sliding-scale approach would allow lower courts to conduct a reasonableness analysis that is rooted in the guiding principle of fairness.[227] Before *BMS*, the Ninth, Second, and First Federal Circuits recognized the sliding-scale approach to personal jurisdiction.[228] Their sliding-scale cases could provide a suitable benchmark for future litigants if the Supreme Court embraced the approach.[229]

B. Filling the General Jurisdiction Gap

The *Ford* concurrences signal a growing concern within the Supreme Court that the personal jurisdiction status quo is no longer tenable in modern society.[230] Companies are not as geographically confined as they once were; a company can maintain a strong presence in many states simultaneously without being "at home" in each.[231] A sliding-scale approach to *Ford*'s relatedness standard would allow courts to address the cases that used to, but can no longer be, addressed within the general jurisdiction framework.[232] *Daimler* limited general jurisdiction to defendants who are "at home" in the forum.[233] In so doing, it foreclosed general jurisdiction in cases where "the defendant has continuous and systematic ties with the forum" but is otherwise not at home there.[234] This has inevitably meant that

224. Borchers, Freer & Arthur, *supra* note 72, at 11.

225. *Ford*, 141 S. Ct. at 1028; Cox v. HP Inc., 492 P.3d 1245, 1253–57 (Or. 2021).

226. *Ford*, 141 S. Ct. at 1028; *Cox*, 492 P.3d at 1253–57.

227. *See* John V. Feliccia, Bristol-Myers Squibb Co. v. Superior Court: *Reproaching the Sliding Scale Approach for the Fixable Fault of Sliding Too Far*, 77 MD. L. REV. 862, 885 (2018) ("Courts adhering to the sliding scale approach assess the entirety of a defendant's contacts with the forum state to derive a threshold of relatedness that is fair with respect to that particular defendant.").

228. *Id.* at 884–85.

229. *Id.*

230. *Ford*, 141 S. Ct. at 1033–39 (Alito, J., concurring) (Gorsuch, J., concurring).

231. *See* Polina Pristupa, *Too Big for Personal Jurisdiction? A Proposal to Hold Companies Accountable for In-State Conduct in Accordance with Due Process Principles*, 40 CARDOZO L. REV. 1367, 1401–02 (2019) (acknowledging the "modern, interconnected nature of business activities in multiple states"). *See generally* Ben Crawford, *The Internet: Overcoming Current Challenges to Increase Digital Transformation*, FORBES (Feb. 17, 2021), https://www.forbes.com/sites/forbesbusinesscouncil/2021/02/17/the-internet-overcoming-current-challenges-to-increase-digital-transformation (on file with the *University of the Pacific Law Review*) (detailing the way the internet is transforming business processes and practices).

232. Freer, *supra* note 69.

233. Daimler AG v. Bauman, 571 U.S. 117, 137 (2014); Freer, *supra* note 69.

234. Freer, *supra* note 69.

"such cases must be handled, if at all, by specific jurisdiction."[235] While *BMS* chided the sliding-scale as a "loose and spurious form of general jurisdiction," endorsing the approach is now the best way to salvage personal jurisdiction.[236] Before *Ford*, many legal scholars considered the Court's era of shrinking general and specific jurisdiction an "inappropriate constriction" of access to courts.[237] Even before the Court decided *BMS*, legal scholars expressed wariness toward the increasingly strict dichotomy between general and specific personal jurisdiction.[238] This dichotomy is dangerous because some cases will "fail to meet either paradigm despite the fact that they offer compelling contacts that come up just short in each."[239]

One law professor argues *Ford* "holds promise for an expansion of specific jurisdiction . . . that can remedy the gap created by the Court's restriction of general jurisdiction . . . ."[240] However, *Ford*'s ability to serve as a remedy in this regard requires the Court to answer the questions about the relatedness test that it left unanswered.[241] The sliding-scale approach would be a strong answer in that it would allow courts some flexibility in finding jurisdiction when warranted by a defendant's overwhelming forum contacts.[242] As one legal scholar has argued, "[I]t is especially important that courts be vigilant in not blindly applying overly restrictive tests for specific jurisdiction."[243] Such restrictive application, according to this scholar, "would deprive plaintiffs of access to . . . reasonable forum[s]."[244]

Concerns that the sliding-scale approach would place an unreasonable burden on corporate defendants are unwarranted.[245] A court must still consider the "fairness factors" in every specific jurisdiction calculus it conducts.[246] The fairness factors analysis requires that a court contemplate the burden of the litigation on the defendant.[247] It also requires that a court consider the forum state's interests in the litigation, and the plaintiff's interests "in obtaining effective and convenient relief."[248] Finally, courts may also consider "'the interstate judicial system's

235. *Id.*

236. Bristol-Myers Squibb Co. v. Super. Ct. of Cal., 137 S. Ct. 1773, 1778 (2017).

237. Richard D. Freer, *Personal Jurisdiction: The Walls Blocking an Appeal to Rationality*, 72 VAND. L. REV. EN BANC 99, 99–100 (2019).

238. David W. Ichel, *A New Guard at the Courthouse Door: Corporate Personal Jurisdiction in Complex Litigation*, 71 RUTGERS U. L. REV. 1, 8 (2019).

239. *Id.*

240. Freer, *supra* note 69.

241. *See* discussion *supra* Part IV (discussing the Court's lack of clarity surrounding the "relatedness" standard in *Ford*).

242. Ichel, *supra* note 237, at 32–34.

243. *Id.* at 37.

244. *Id.*

245. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476–77 (1985) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980)) (requiring that courts must analyze certain "fairness factors" to ensure specific jurisdiction is proper).

246. *Id.*

247. *Id.*

248. *Id.*

interest in obtaining the most efficient resolution of controversies,' and the 'shared interest of the several States in furthering fundamental substantive policies.'"[249] These fairness factors appropriately limit the bounds of the sliding-scale approach to what is *fair*.[250] For major companies with extensive ties to a forum, it will likely be the case that litigation in that forum will not be unfair or inconvenient.[251]

BMS and *Ford* echo *Pennoyer*'s emphasis on state sovereignty as a matter of due process.[252] *BMS* rejects the sliding-scale approach in part based on a blanket assertion of state sovereignty and the importance of preserving state borders.[253] Some scholars perceive a missing link between the Court's rejection of jurisdiction in *BMS* and its emphasis on the sovereign interests of states.[254] Other scholars argue the Court's "abstract concerns" about state sovereignty are "the most significant barrier to the reformulation of specific jurisdiction."[255] The consensus among the scholars is that the Court does not have adequate support—either in precedent or the Constitution—for the Court's asserted importance of sovereignty.[256] If the Court has no legitimate basis for its continued emphasis on state sovereignty, it should consider limiting this reasoning, in addition to adopting the sliding-scale approach.[257]

249. *Id.*

250. *See* Feliccia, *supra* note 227, at 885 ("Courts adhering to the sliding scale approach assess the entirety of a defendant's contacts with the forum state to derive a threshold of relatedness that is fair with respect to that particular defendant.").

251. *See e.g.*, Vitiello, *supra* note 53, at 527 (explaining that counsel for Bristol-Myers Squibb in *BMS* conceded that litigation in California would pose virtually zero burden for the company).

252. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1026 (2021); Bristol-Myers Squibb Co. v. Super. Ct. of Cal., 137 S. Ct. 1773, 1780–81 (2017).

253. Vitiello, *supra* note 53, at 526.

254. *See* Hoffheimer, *supra* note 99, at 539 ("The final mystery in Justice Alito's opinion is the exact source and meaning of the sovereign interests of sister states that are promoted by the Court's restriction on California's personal jurisdiction."); *see also* Vitiello, *supra* note 53, at 527 ("I cannot find a plausible explanation for the Court's revived sovereignty theory. *BMS* merely reasserted, without plausible explanation, why state borders matter. Make no bones about it, though: the reliance on sovereignty and the importance of state borders narrows access to convenient fora for plaintiffs.").

255. Borchers, Freer & Arthur, *supra* note 72, at 27.

256. Hoffheimer, *supra* note 99, at 539; Vitiello, *supra* note 53, at 527.

257. *See* Hoffheimer, *supra* note 99, at 539 (stating that the Court's emphasis in *BMS* on "sovereign interests" are not supported by precedent or any constitutional principle); Vitiello, *supra* note 53, at 527.

C. What's in a Name? That Which We Call a Sliding-Scale by Any Other Name Would Smell as Sweet[258]

Some scholars have postulated that the Court—despite employing a sliding-scale approach in *Ford*—would never concede to calling it a sliding scale.[259] This may be so, considering the doctrine of *stare decisis* stands as a limitation on the Court's ability to overrule its harsh rejection of the sliding-scale approach in *BMS*.[260] Perhaps it does not matter what the Court calls the "relatedness" test in the future, so long as it ensures the test functions equivalently to the sliding scale.[261] One legal scholar has already theorized that some lower courts will interpret *Ford* as allowing a sliding-scale analysis in specific jurisdiction cases.[262] The Court would do well to strengthen—not inhibit—courts that adopt this case-by-case, sliding-scale approach and subsequently experience a "liberalizing effect" on their ability to find jurisdiction.[263]

VI. CONCLUSION

The *Ford* majority's relatedness test may be an attempt to expand specific jurisdiction.[264] Unfortunately, the opinion falls short due to ambiguity and the Court's failure to frame its approach explicitly as an application of the sliding-scale analysis.[265] The Oregon Supreme Court's opinion in *Cox* demonstrates the inadequacy of *Ford*'s test.[266] There, the court had too many blanks to fill in—like

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258. *See* WILLIAM SHAKESPEARE, ROMEO AND JULIET act 2, sc. 2, l. 43–44 ("What's in a name? That which we call a rose by any other name would smell as sweet . . . .").

259. *See* Marin K. Levy, Zachary Clopton, Mila Sohoni & Kevin Clermont, *Open Road?* Ford *Reroutes Personal Jurisdiction*, JUDICATURE: BOLCH JUD. INST. DUKE L. SCH., https://judicature.duke.edu/articles/open-road-ford-reroutes-personal-jurisdiction/ (last visited Apr. 23, 2022) (on file with the *University of the Pacific Law Review*) ("So while I cannot imagine a single justice endorsing a sliding scale or using the words 'sliding scale,' we get opinions like *Ford* that invite sliding scale-like activity.").

260. *See Stare Decisis*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/stare_decisis (last visited Apr. 23, 2022) (on file with the *University of the Pacific Law Review*) ("Stare decisis is the doctrine that courts will adhere to precedent in making their decisions. Stare decisis means 'to stand by things decided' in Latin. When a court faces a legal argument, if a previous court has ruled on the same or a closely related issue, then the court will make their decision in alignment with the previous court's decision.").

261. *See* Levy, Clopton, Sohoni & Clermont, *supra* note 259 (theorizing that some district court judges "will view the *Ford* case as allowing them to apply a sliding scale on the power test that looks at level of activity and degree of unrelatedness, but also, in effect, a sliding scale on whether it is reasonable to assert jurisdiction").

262. *Id.*

263. *See id.* ("And so you will get much more of a case-by-case approach that allows the judges to find jurisdiction when they get a case that tears at them to find it. I think there will be a liberalizing effect, whether or not it's intended. And very few cases get reviewed by the Supreme Court!").

264. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021); *and see* King & Spalding, *supra* note 22 (stating that the Supreme Court's use of the "arise out of or relate to" standard splintered lower courts, with several Circuits interpreting that language to require a "causal connection" between the plaintiff's claims and the defendant's forum contacts).

265. *Ford*, 141 S. Ct. 1017; *see also* Borchers, Freer & Arthur, *supra* note 72, at 9 ("[In *Ford*,] the Court appeared to do what it refused to do in *BMS*: recognize (although not in so many words) a sliding scale.").

266. *Ford*, 141 S. Ct. 1017; Cox v. HP Inc., 492 P.3d 1245, 1264 (Or. 2021).

whether Ford's contacts are the minimum required to satisfy due process.[267] A comparison of *Cox* and the U.S. Court of Appeals for the Federal Circuit's dichotomous holding in *Trimble* further demonstrates *Ford*'s inadequacy.[268] The Oregon court's restrictive reading of *Ford* should not become the standard that future, lower courts apply, though certainly *Ford*'s lack of clarity makes it possible.[269]

To ameliorate lower court confusion surrounding jurisdiction,[270] the Supreme Court should provide clearer standards for the "relatedness" test by reconsidering the "sliding-scale approach" some lower courts previously adopted.[271] If the Court acknowledged that the "new" relatedness test is actually the sliding-scale test *incognito*, lower courts would be better-equipped to employ the test.[272] Ultimately, lower courts would be more empowered to find specific jurisdiction proper when a causal link does not exist, but the defendant's forum contacts are otherwise extensive.[273]

The sliding-scale approach is clearly not what Justices Gorsuch and Alito have in mind as the solution to the Court's specific jurisdiction problem.[274] But without further guidance from them, the sliding-scale approach provides a tenable way forward.[275] Justice Alito's *Ford* concurrence warns of a need for the Court to address specific-jurisdiction cases that implicate "21st-century" issues.[276] The sliding-scale approach to the minimum contacts analysis could afford courts a flexible rule—one that fills the gap left by the Court when it shrunk general jurisdiction.[277] The sliding-scale approach is one that judges can easily apply.[278]

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267. *Ford*, 141 S. Ct. 1017; *Cox*, 492 P.3d 1254.

268. *Compare* Trimble Inc. v. PerDiemCo LLC, 997 F.3d 1147 (Fed. Cir. 2021), *with Cox*, 492 P.3d 1245.

269. *See* discussion *supra* Part VI (describing how the Supreme Court's ambiguity allowed the Oregon court in *Cox* to narrowly interpret what *Ford* stands for).

270. King & Spalding, *supra* note 22.

271. *See* discussion *supra* Part V (detailing California's use of the sliding-scale approach to specific jurisdiction before the U.S. Supreme Court rejected the approach in *BMS*); King & Spalding, *supra* note 22.

272. *See* discussion *supra* Part V (detailing California's use of the sliding-scale approach to specific jurisdiction before the U.S. Supreme Court rejected the approach in *BMS*).

273. *Supreme Court Rejects "Sliding Scale Approach "to Specific Jurisdiction*, *supra* note 25.

274. *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1033–39 (2021) (Alito, J., concurring) (Gorsuch, J., concurring) (rejecting the majority's formulation of a two-part "arise out of or relate to" test).

275. *See id.* at 1039 (Gorsuch, J., concurring) ("Hopefully, future litigants and lower courts will help us face these tangles and sort out a responsible way to address the challenges posed by our changing economy in light of the Constitution's text and the lessons of history.").

276. *Id.* at 1032 (Alito, J., concurring).

277. *See* discussion *supra* Part V (detailing the need for the Court to fill the gap left by its restriction on general jurisdiction in *Daimler* and *Goodyear*).

278. Lawrence W. Moore, *The Relatedness Problem in Specific Jurisdiction*, 37 IDAHO L. REV. 583, 600–01 (2001).

Fairness is the foundational principle underlying the minimum contacts doctrine, and the sliding-scale approach keeps the fairness inquiry as the primary concern.[279] Moreover, the "fairness factors" aspect of the specific jurisdiction calculus will continue to be a positive limitation on the sliding-scale approach.[280] The more related a defendant's in-state contacts are to the plaintiff's injuries, the less quantitative the contacts need to be.[281] It is fair, based on the strong relation of the defendant's contacts to the plaintiff's injuries, to find jurisdiction.[282] On the other hand, the less a defendant's in-state contacts relate to the plaintiff's injuries, the more those contacts must be quantitatively and qualitatively substantial.[283] The more substantial the defendant's contacts are, the more it is justifiable to view jurisdiction over that defendant as fair.[284]

Without further clarification on *Ford*'s relatedness standard, the Court risks creating an even deeper chasm in lower court interpretations of specific jurisdiction than ever before.[285] The Court should openly embrace the fact that *Ford* brought back to life the sliding-scale approach.[286] In doing so, the Court would provide lower courts the necessary flexibility to tackle the class of cases left unanswered by the Court's increasingly strict general-versus-specific jurisdiction paradigm.[287] Ultimately, the post-*Ford* Court has an opportunity to create a more "sensible system of jurisdiction" that finally places plaintiffs and defendants on more equal footing.[288]

279. *See* Feliccia, *supra* note 227, at 897 (describing considerations of fairness as "the minimum contacts doctrine's fundamental inquiry").

280. *See* discussion *supra* Part V (elaborating on the "fairness factors" and how they can curb the sliding-scale approach to *Ford*'s new relatedness test).

281. Moore, *supra* note 278, at 600–01.

282. *Id.*

283. *Id.*

284. *Id.*

285. *See* Hoffheimer, *supra* note 99, at 525 ("In rejecting California's application of a sliding-scale approach to relatedness, Justice Alito made no effort to resolve the split among lower courts as to whether specific jurisdiction claims must 'arise from' the defendant's forum conduct.").

286. *See* discussion *supra* Part V (discussing the argument that *Ford* reanimated the sliding-scale approach to specific jurisdiction).

287. *See* discussion *supra* Part V (detailing the need for the Court to fill the gap left by its restriction on general jurisdiction in *Daimler* and *Goodyear*).

288. Borchers, Freer & Arthur, *supra* note 72, at 27.