

**RATIONALIZING RELATEDNESS:  
UNDERSTANDING PERSONAL JURISDICTION’S  
RELATEDNESS PRONG IN THE WAKE OF  
BRISTOL-MYERS SQUIBB AND FORD MOTOR CO.**

*Anthony Petrosino\**

*Ford Motor Co. v. Montana Eighth Judicial District Court marked a watershed in the U.S. Supreme Court’s personal jurisdiction jurisprudence. There, the Court came to a reasonable conclusion: Ford, a multinational conglomerate carrying on extensive business throughout the United States, was subject to personal jurisdiction in states where it maintained substantial contacts that were related to the injuries that prompted the suits. This was so, even though the business it conducted in those states was not the direct cause of the suit. While justifying that conclusion, however, the Court drastically altered the personal jurisdiction inquiry’s relatedness prong, which concerns whether the suit arises out of or relates to the defendant’s contacts with the forum state. The Court’s new framework muddied the water of a doctrine that was already convoluted and, at times, difficult to apply.*

*This Note examines the application of Ford Motor Co.’s relatedness analysis to different factual scenarios presented to state courts and federal appellate courts. While those courts have focused on several different factors, this Note suggests that the inquiry does not have to be so varied. This Note concludes that the relatedness test should apply narrowly to situations that are factually similar to those in Ford Motor Co. and Bristol-Myers Squibb Co. v. Superior Court. Once the relatedness test is triggered, this Note maintains that a comparison between Bristol-Myers Squibb and Ford Motor Co. reveals that only two factors are determinative: the location of the injury and the extent to which the plaintiff is attempting to buy into the forum.*

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\* J.D. Candidate, 2024, Fordham University School of Law; B.S., 2021, Villanova University. I would like to thank Professor Thomas Lee, my editor Peter Giovine, and the staff of the *Fordham Law Review* for their guidance and assistance. I would also like to thank my family and friends for their continuous support and encouragement.

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#### INTRODUCTION

First-year law students, forum-shopping plaintiffs, multinational corporations, and U.S. Supreme Court justices all share at least one thing in common: uncertainty about personal jurisdiction. The language of the Fourteenth Amendment's Due Process Clause, equal parts sweeping and

imprecise, inspires as much.<sup>1</sup> Since *International Shoe Co. v. Washington*,<sup>2</sup> subsequent decisions have attempted to clarify the standards set forth in that canonical decision through, as the Court unironically puts it, a “straightforward application . . . of settled principles.”<sup>3</sup> Just recently, the Court provided its latest elucidation in *Ford Motor Co. v. Montana Eighth Judicial District Court*.<sup>4</sup>

There, the Court was faced with a difficult jurisdictional problem. The defendant, Ford, had extensive contacts with Montana and Minnesota such that haling it into those states’ courts to defend itself would have been fair.<sup>5</sup> Its contacts with the forum states, however, did not directly cause the specific injuries that prompted the suits.<sup>6</sup> Thus, although it seemed fair for Montana and Minnesota to exercise personal jurisdiction over Ford, it was less clear whether such a finding would have fit neatly into the Court’s personal jurisdiction jurisprudence.<sup>7</sup>

To solve this problem, the majority opinion declared that the Court’s “most common formulation of the rule” for specific jurisdiction—that “the suit ‘arise out of or relate to the defendant’s contacts with the forum’”—could be split into two analytical frameworks.<sup>8</sup> “The first half of that standard asks about causation; but the back half, after the ‘or,’ contemplates that some relationships will support jurisdiction *without* a causal showing.”<sup>9</sup> In essence, the Court clarified that a direct causal link between the defendant’s contacts and the injury that gave rise to the claim was not required to establish specific jurisdiction over a defendant.<sup>10</sup> In certain scenarios, a showing of relatedness would suffice.<sup>11</sup>

The establishment of this new test marked a dramatic shift in the procedural balance of power between plaintiffs and corporate defendants. Plaintiffs who lack resources to litigate their claims in distant forums where defendant corporations are “at home”<sup>12</sup> often attempt to do so in more convenient states, prioritizing their financial stability or favorable state laws over potential procedural complications.<sup>13</sup> Corporate defendants, on the

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1. U.S. CONST. amend. XIV, § 1 (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law.”).

2. 326 U.S. 310 (1945).

3. *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1783 (2017).

4. 141 S. Ct. 1017 (2021).

5. *See id.* at 1028; *see also* Maggie Gardner, Pamela K. Bookman, Andrew D. Bradt, Zachary D. Clopton & D. Theodore Rave, *The False Promise of General Jurisdiction*, 73 ALA. L. REV. 455, 456–57 (2022) (“[*Ford Motor Co.*’s] result should not have been surprising . . . . Indeed, what is most remarkable about *Ford* is that . . . Ford could argue with a straight face that specific jurisdiction was lacking.”).

6. *Ford Motor Co.*, 141 S. Ct. at 1029.

7. *See id.*

8. *Id.* (quoting *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1780 (2017)).

9. *Id.* (emphasis added).

10. *Id.*

11. *Id.*

12. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

13. *See* David G. Wirtes, Jr. & Christy Ward Rue, *Combating Weaponized Challenges to Personal Jurisdiction*, 73 ALA. L. REV. 661, 662 (2022).

other hand, seek to block litigation in those aforementioned forums.<sup>14</sup> This dynamic is at play time and time again in personal jurisdiction litigation.<sup>15</sup>

For those reasons, *Ford Motor Co.* marked a watershed in the Court's personal jurisdiction jurisprudence. This shift in balance has, however, come with more questions.<sup>16</sup> Although Justice Kagan emphasized that this new relatedness test would "incorporate[] real limits,"<sup>17</sup> the Court did not explicitly say what those limits would be. Indeed, in his concurring opinion, Justice Alito predicted: "Recognizing 'relate to' as an independent basis for specific jurisdiction risks needless complication . . . . [W]ithout any indication what those limits might be, I doubt that the lower courts will find that observation terribly helpful."<sup>18</sup>

As Justice Alito predicted, courts have since struggled to understand the consequences of *Ford Motor Co.*'s holding.<sup>19</sup> It is difficult, if not impossible, to articulate one consistent analytical framework based on an examination of state courts' and federal appellate courts' applications of *Ford Motor Co.*'s relatedness test. In short, the cases are a mess, and confusion prevails. But the relatedness test does not have to be so complicated.

This Note argues that *Ford Motor Co.* operates as an elaboration on the holding in *Bristol-Myers Squibb Co. v. Superior Court*<sup>20</sup> and provides a sensible, straightforward relatedness test. Part I of this Note discusses the Supreme Court's personal jurisdiction jurisprudence up to and including *Ford Motor Co.*, with an eye toward the Court's evolving understanding of whether showing a causal link between the claim and the defendant's contacts is required. Part II then surveys the application of *Ford Motor Co.*'s relatedness test in the state courts and federal appellate courts to assess Justice Alito's prediction that the "real limits"<sup>21</sup> invoked by the majority opinion would not be able to provide adequate guidance. Finally, Part III proposes a sensible doctrinal test that reflects Court precedent and clarifies the confusion that currently reigns supreme. That is, put together, *Ford*

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14. See Kevin P. Parker & Jennifer B. Cabrera, *Personal Jurisdiction Under Ford Motor Co. v. Montana Eighth Judicial District Court*, ADVOCATE, Summer 2022, at 2, 7.

15. See, e.g., *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773 (2017); *Wallace v. Yamaha Motors Corp.*, U.S.A., No. 19-2459, 2022 WL 61430 (4th Cir. Jan. 6, 2022); *Hepp v. Facebook*, 14 F.4th 204 (3d Cir. 2021).

16. See *Ford Motor Co.*, 141 S. Ct. at 1033–34 (Alito, J., concurring); see also Patrick J. Borchers, Richard D. Freer & Thomas C. Arthur, *Ford Motor Company v. Montana Eighth Judicial District Court: Lots of Questions, Some Answers*, 71 EMORY L.J. ONLINE 1, 19 (2021) ("*Ford* is frustrating on several levels."); Charles W. Rhodes, *Jurisdictional Roadblocks*, ADVOCATE, Winter 2021, at 16, 18 ("But *Ford* did not proffer much guidance regarding the outer limits of the connection requirement.").

17. *Ford Motor Co.*, 141 S. Ct. at 1026.

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

19. See, e.g., *Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1224 (10th Cir. 2021) (explaining that the court "understand[s] *Ford* to adopt" a proposition for applying the relatedness test); *Cox v. HP Inc.*, 492 P.3d 1245, 1251, 1254 (Or. 2021) (explaining that *Ford Motor Co.* "provides some guidance" and "illuminates a key aspect of the test for specific personal jurisdiction").

20. 137 S. Ct. 1773 (2017).

21. *Ford Motor Co.*, 141 S. Ct. at 1026.

*Motor Co.* and *Bristol-Myers Squibb* make clear that only two factors are determinative of the “relate to”<sup>22</sup> analysis: the location of the injury and the extent to which a plaintiff is buying into the forum.

I. RELATEDNESS IN THE CONTEXT OF FAIRNESS: THE SUPREME COURT’S  
PERSONAL JURISDICTION JURISPRUDENCE UP TO AND INCLUDING  
*FORD MOTOR CO.*

This part provides background information on personal jurisdiction. Part I.A discusses the foundation of the Supreme Court’s personal jurisdiction jurisprudence. Part I.B focuses on *World-Wide Volkswagen Corp. v. Woodson*<sup>23</sup> and *Bristol-Myers Squibb*, with a specific focus on whether those holdings required a direct causal connection between the defendant’s contacts and the plaintiff’s claim. Part I.C then discusses *Ford Motor Co.* itself, calling attention to its profound effect on the Court’s personal jurisdiction jurisprudence.

A. *Personal Jurisdiction Background*

Personal jurisdiction refers to a court’s authority to exercise judgment over defendants appearing before it.<sup>24</sup> Over the years, Congress and the courts have placed limits on the courts’ power to entertain suits against out-of-state defendants in order to conform with the protections afforded to defendants by the Fourteenth Amendment’s Due Process Clause.<sup>25</sup> Those limits are often supplemented by states’ “long-arm” statutes, which can further limit those state courts’ jurisdictional reach according to the individual preferences of each state.<sup>26</sup>

In *International Shoe Co.*, the Supreme Court declared that courts could only hale out-of-state defendants into a foreign forum to defend themselves if they had “certain minimum contacts with [the forum state] such that the maintenance of the suit d[id] not offend ‘traditional notions of fair play and substantial justice.’”<sup>27</sup> As applied to corporations, Justice Harlan F. Stone illustrated two scenarios in which the exercise of jurisdiction would comport with those notions. First, “the continuous corporate operations within a state” could be “so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those

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22. *Id.*

23. 444 U.S. 286 (1980).

24. See Alan M. Trammer & Derek E. Bambauer, *Personal Jurisdiction and the “Interwebs,”* 100 CORNELL L. REV. 1129, 1152 (2015).

25. See generally FED. R. CIV. P. 4.

26. See Lawrence B. Solum & Max Crema, *Originalism and Personal Jurisdiction: Several Questions and a Few Answers*, 73 ALA. L. REV. 483, 528–531 (2022) (discussing the content of state long-arm statutes, which can either permit the exercise of personal jurisdiction to the extent allowed by the U.S. Constitution or impose their own categorical limits on their state courts’ jurisdictional reach).

27. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

activities.”<sup>28</sup> Second, even if a defendant’s contacts were not continuous or substantial, courts could still justify jurisdiction if the defendant’s contacts gave rise to the plaintiff’s claim.<sup>29</sup>

The illustration of these two scenarios laid the foundation for the Court’s subsequent separation of the personal jurisdiction analysis into two analytical frameworks—general and specific.<sup>30</sup> For a corporation, general jurisdiction attaches to a place “in which the corporation is fairly regarded as at home,”<sup>31</sup> which typically only includes “its place of incorporation and principal place of business.”<sup>32</sup> Specific jurisdiction, on the other hand, applies more narrowly to instances in which “the litigation results from alleged injuries that ‘arise out of or relate to’” the defendant’s activities that were purposefully directed at the forum.<sup>33</sup>

*B. Requirement of a Strict Causal Relationship Between the Plaintiff’s Claim and the Defendant’s Forum Contacts: World-Wide Volkswagen Corp. v. Woodson and Bristol-Myers Squibb Co. v. Superior Court*

This Note deals primarily with the second prong of the specific jurisdiction analysis—namely, whether the litigation results from alleged injuries that “arise out of or relate to” the defendant’s forum contacts.<sup>34</sup> Sometimes referred to as the “relatedness prong,”<sup>35</sup> this part of the analysis has fostered confusion within the courts. Litigants have specifically questioned whether this formulation requires there to be a strict causal relationship between the claim and the defendant’s contacts with the forum.<sup>36</sup> Two of the Supreme Court’s prior holdings spoke to this issue, both implicitly<sup>37</sup> and explicitly.<sup>38</sup>

*World-Wide Volkswagen Corp. v. Woodson* dealt with a products liability action between a plaintiff involved in a car accident in Oklahoma and four defendants—the automobile’s manufacturer, importer, regional distributor,

28. *Id.* at 318.

29. *Id.* (“[S]ingle or occasional acts . . . because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit.”).

30. Adam Drake, *The FLSA’s Bristol-Myers Squibb Problem*, 89 FORDHAM L. REV. 1511, 1516 (2021).

31. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

32. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021).

33. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–73 (1985) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). The Supreme Court’s personal jurisdiction decisions have divided the specific jurisdiction analysis into three separate prongs: (1) whether the defendant has purposefully availed themselves of the privilege of conducting activities in the forum state, (2) whether the plaintiff’s claim arises out of or relates to the defendant’s forum conduct, and (3) whether the exercise of jurisdiction is reasonable under the circumstances. *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1785–86 (2017) (Sotomayor, J., dissenting).

34. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

35. *See Parker & Cabrera, supra* note 14, at 7.

36. *See, e.g., Tamburo v. Dworkin*, 601 F.3d 693, 708–09 (7th Cir. 2010) (collecting cases).

37. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

38. *See Bristol-Myers Squibb*, 137 S. Ct. 1773.

and retail dealer.<sup>39</sup> The plaintiffs, who were residents of New York, were involved in that accident while driving across the country to move to Arizona.<sup>40</sup> Two of the defendants—the manufacturer and the importer—did not contest jurisdiction, even though the car that allegedly malfunctioned was manufactured outside of Oklahoma and was driven into Oklahoma by the customers’ unilateral actions.<sup>41</sup> At the time, the manufacturer and the importer likely chose not to contest jurisdiction because their substantial contacts with Oklahoma were similar to the subject of the claim.<sup>42</sup> Apparently, the Court agreed that a jurisdictional challenge would be unwise: it declared that if “the sale of a product of a manufacturer or distributor . . . [wa]s not simply an isolated occurrence, but ar[ose] from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States,” then it would be reasonable for those states to exercise jurisdiction over those defendants “if [their] allegedly defective merchandise [had] there been the source of injury to its owner or to others.”<sup>43</sup>

From this dicta, the Court implied that an exercise of jurisdiction could be proper in a situation akin to that of *World-Wide Volkswagen*’s manufacturer and distributor: one in which the defendant deliberately serves a market with a product that causes injury in the forum state, even if the injury-causing product was not initially sold in the forum state.<sup>44</sup> Already, the Court emphasized that the location of the injury could be an important factor in a jurisdictional analysis centered on similar facts.<sup>45</sup> Additionally, the Court noted that the forum state would not violate the Due Process Clause if it asserted jurisdiction over a corporation that “deliver[ed] its products into the stream of commerce with the expectation that they [would] be purchased by consumers in the forum State.”<sup>46</sup> The focus on “consumers in the forum State”<sup>47</sup> indicated that it was important to the Court that the plaintiffs were suing in a natural forum—one in which the defendant could expect to be sued as a result of its actions.<sup>48</sup> That said, if there was any doubt about the relevance of the location of the injury and the extent to which the plaintiff

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39. *Id.* at 288. The regional distributor distributed automobiles to Connecticut, New Jersey, and New York. *Id.* at 289. The retail dealer’s principal place of business was in New York. *Id.* at 288–89.

40. *Id.* at 288.

41. *Id.*

42. See Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 661 & n.224 (1988) (suggesting that the manufacturer did not contest jurisdiction even though the claim was not causally related to its contacts with Oklahoma because, considering “the ‘substantial’ nature of the automobile manufacturer’s contacts with the forum,” the manufacturer “might have felt that it had no legitimate jurisdictional defense”).

43. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

44. See *id.*

45. See *id.*

46. *Id.* at 298.

47. *Id.*

48. See Michael Vitiello, *The Supreme Court’s Latest Attempt at “Clarifying” Personal Jurisdiction: More Questions than Answers*, 57 TULSA L. REV. 395, 422 (2022) (suggesting that the fact that the *World-Wide Volkswagen* plaintiffs were not engaged in interjurisdictional forum shopping may have lent support to Justice Kagan’s declaration, in *Ford Motor Co.*, that jurisdiction over the manufacturer and the distributor in *World-Wide Volkswagen* was proper).

bought into the forum in similar situations, *Bristol-Myers Squibb* provided a counterfactual that further clarified the significance of those factors.

In that case, Bristol-Myers Squibb Co. (BMS) faced multiple suits in California for injuries resulting from the consumption of its blood-thinning drug, Plavix.<sup>49</sup> BMS had extensive contacts with California connected to Plavix: it maintained five research and laboratory facilities there, it employed hundreds of employees there, and it derived over one percent of its nationwide sales revenue—more than \$900 million—from sales there.<sup>50</sup> For the purposes of the jurisdictional analysis, there were two types of plaintiffs: those who were residents of the forum state and those who were residents of other states.<sup>51</sup> The Supreme Court held that California lacked specific jurisdiction over the nonresident plaintiffs' claims: "[Those plaintiffs were] not California residents and [did] not claim to have suffered harm in that State. In addition . . . all the conduct giving rise to the nonresidents' claims occurred elsewhere."<sup>52</sup> Thus, even though BMS had substantial contacts with California that were similar to the basis for the nonresident plaintiffs' claims, the Court foreclosed the exercise of jurisdiction.<sup>53</sup>

The Court's holding imparted two important takeaways for defining the bounds of the relatedness analysis. First, the Court placed specific and extensive emphasis on the location of the harm.<sup>54</sup> Comparing the facts of this case to those in a prior personal jurisdiction case,<sup>55</sup> the Court explained: "[T]he connection between the nonresidents' claims and the forum [wa]s even weaker. The relevant plaintiffs [were] not California residents and d[id] not claim to have suffered harm in that State."<sup>56</sup> A mere relationship between the contacts and the claim, on its own, would not suffice.<sup>57</sup> Instead, Justice Alito's opinion implied that the location of the harm could be a critical, if not dispositive, factor in determining whether the relatedness prong was satisfied.<sup>58</sup> In *Bristol-Myers Squibb*, although the defendant's contacts with California were nearly identical with respect to the resident and nonresident plaintiffs' claims, they differed in that key aspect.<sup>59</sup>

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49. *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1778 (2017).

50. *Id.*

51. *Id.* at 1781.

52. *Id.* at 1782.

53. *Id.*

54. *Id.*

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

56. *Bristol-Myers Squibb*, 137 S. Ct. at 1782. Justice Alito invoked this factor of the analysis once more when he distinguished this case from *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), stating that "that holding concerned jurisdiction to determine the *scope of a claim* involving in-state injury and injury to residents of the State, not, as in this case, jurisdiction to entertain claims involving no in-state injury and no injury to residents of the forum State." *Bristol-Myers Squibb*, 137 S. Ct. at 1782.

57. *See* *Bristol-Myers Squibb*, 137 S. Ct. at 1782.

58. *See* Robert M. Bloom & Janine A. Hanrahan, *Back to the Future: The Revival of Pennoyer in Personal Jurisdiction Doctrine and the Demise of International Shoe*, 56 SAN DIEGO L. REV. 581, 610–13 (2019) (discussing the Court's "concern about the place of injury").

59. *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

Second, the Court repeatedly emphasized that jurisdiction was improper partly because the nonresident plaintiffs were not residents of the forum state.<sup>60</sup> The plaintiffs' residence was significant because it indicated whether they were forum shopping—in other words, whether they were bringing suits in forums with favorable laws even though those forums were not the most natural ones for them to do so.<sup>61</sup> In *Bristol-Myers Squibb*, there were other, more natural forums for the nonresident plaintiffs to bring their suits: the forums where they were injured and the forums where the defendants were subject to general jurisdiction.<sup>62</sup> Yet they chose California because “it was thought [to be] plaintiff-friendly.”<sup>63</sup> The Court's focus on the location of the plaintiffs' residence evidenced its issue with the extent to which the nonresident plaintiffs were buying into the forum.<sup>64</sup>

Through *Bristol-Myers Squibb*, corporate defendants secured a key victory in their jurisdictional battle with plaintiffs: it was at least plausible that the Court had limited specific jurisdiction to situations in which the plaintiff's claim was directly caused by the defendant's contacts with the forum state.<sup>65</sup> Armed with such a victory, corporate defendants were encouraged to attack the assumed jurisdictional result for the manufacturer and the importer in *World-Wide Volkswagen Corp.*<sup>66</sup> Enter *Ford Motor Co.*

### C. Relation as Opposed to Causation: Ford Motor Co. v. Montana Eighth Judicial District Court

*Ford Motor Co.* involved two suits in connection with two separate car accidents.<sup>67</sup> For the purposes of the jurisdictional analysis, each accident involved similar operative facts.<sup>68</sup> The victims of the accidents were

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60. See *id.* at 1782.

61. See *Adams v. Aircraft Spruce & Specialty Co.*, 284 A.3d 600, 622–23 (Conn. 2022) (“No doubt a plaintiff's residence in the forum state diminishes the forum shopping concern that the United States Supreme Court expressed with respect to the nonresident plaintiffs in *Bristol-Myers*.”); see also Polina Pristupa, Note, *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, 1407–08 (2019) (“Forum shopping concerns explain the reason for the strong majority in *BMS* and other cases involving nonresident plaintiffs.” (footnote omitted)).

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

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

64. See Mary Anne Mellow, Steven T. Walsh & Timothy R. Tevlin, *Supreme Court Strikes Another Blow to Litigation Tourism in Bristol-Myers Squibb*, DEF. COUNS. J., Apr. 2018, at 1, 8 (“[L]andmark decisions like *BMS* will go a long way to fence in forum-shopping plaintiffs and allow litigation to proceed only in those venues with substantial connections to the litigation itself or other forums where the defendant company is properly subject to general jurisdiction . . . .”); Grant McLeod, Note, *In a Class of Its Own: Bristol-Myers Squibb's Worrisome Application to Class Actions*, 53 AKRON L. REV. 721, 751 (2019) (“The *Bristol-Myers Squibb* Court was concerned with forum shopping because the case involved a host of non-resident plaintiffs attempting to take advantage of California's law by aggregating into a state mass action.”).

65. Ford made such an argument in *Ford Motor Co.* See 141 S. Ct. at 1026.

66. See *supra* notes 39–48 and accompanying text.

67. See *Ford Motor Co.*, 141 S. Ct. at 1022.

68. See *id.*

residents of the forum states.<sup>69</sup> Additionally, the accidents occurred in the forum states.<sup>70</sup> The plaintiffs brought products liability actions against Ford, a multinational corporation that did “substantial business in the State[s]—among other things, advertising, selling, and servicing the model of the vehicle the suit claim[ed was] defective.”<sup>71</sup> The jurisdictional catch, which Ford focused extensively on in its motions to dismiss, was that the particular cars that were involved in the accidents were “not first sold in the forum State, nor [were they] designed or manufactured there.”<sup>72</sup>

Ford argued that to properly exercise specific personal jurisdiction, a court would have to establish that the defendant’s contacts with the forum state were causally linked to the events that gave rise to the plaintiff’s claims.<sup>73</sup> In a unanimous holding, the Supreme Court rejected this view.<sup>74</sup> Justice Kagan explained that for the exercise of specific jurisdiction to be proper, the defendant’s acts did not need to be the direct cause of the plaintiff’s injury, so long as there was a sufficient relationship between the defendant and the forum.<sup>75</sup> In *Ford Motor Co.*, it was clear that such a relationship existed.<sup>76</sup> “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.”<sup>77</sup> Although Ford’s contacts with the forums did not directly give rise to the plaintiffs’ claims, they were designed to encourage residents of the forum states to purchase those particular models.<sup>78</sup> According to the Court, those facts constituted a “paradigm example” of “how specific jurisdiction works.”<sup>79</sup>

Although Justice Kagan declared that jurisdiction based on a relationship between the defendant’s contacts and the plaintiff’s claim would “incorporate[] real limits,”<sup>80</sup> she never expressly outlined what those limits would be. Justice Kagan did, however, place explicit emphasis on “promoting two sets of values”: “treating defendants fairly” and “protecting ‘interstate federalism.’”<sup>81</sup> Ford was treated fairly by the district courts’ exercise of jurisdiction because it extensively marketed the precise car models at issue in the litigation, thereby making jurisdiction “reasonable” and “predictable.”<sup>82</sup> Additionally, interstate federalism was preserved

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69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *See id.* at 1026 (“In Ford’s view, the needed link must be causal in nature . . .”).

74. *Id.*; *see Yamashita v. LG Chem, Ltd.*, 518 P.3d 1169, 1171 (Haw. 2022) (“[A]cts of the defendant within the state do not need to be the *cause* of the plaintiff’s injury, as long as there is a sufficient relationship between the defendant and the forum.”).

75. *See Ford Motor Co.*, 141 S. Ct. at 1026.

76. *See id.* at 1028.

77. *Id.*

78. *See id.* at 1029.

79. *Id.* at 1028.

80. *Id.* at 1026.

81. *Id.* at 1025 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

82. *Id.* at 1030.

because the forum states had paramount interests in overseeing the litigation by virtue of their residents' involvement and their substantive laws' application.<sup>83</sup>

Further, the Court's distinguishing this case from *Bristol-Myers Squibb* and other personal jurisdiction precedent shed more light on the bounds of the relatedness test. Unlike the nonresident plaintiffs in *Bristol-Myers Squibb*, who were "engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State,"<sup>84</sup> the Court emphasized that the *Ford Motor Co.* plaintiffs brought their suits in "the most natural State"—the state where the plaintiffs lived, where they used the allegedly defective products, and where their injuries occurred.<sup>85</sup> Additionally, while distinguishing this case from other personal jurisdiction precedent, the Court emphasized that the plaintiff's residence and the location of their injury "may be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit."<sup>86</sup> Again, the Court suggested—this time rather explicitly—that forum shopping and the location of the injury are relevant, if not paramount, factors to consider in a potential relatedness analysis.

In sum, *Ford Motor Co.* finally addressed the question of whether the defendant's contacts had to be the direct cause of the plaintiff's claim for an exercise of specific jurisdiction to be proper.<sup>87</sup> The Court squarely answered that question in the negative.<sup>88</sup> Further, in distinguishing the facts of *Ford Motor Co.* from other precedent, the Court hinted at some of those "real limits"<sup>89</sup> that the relatedness inquiry was subject to. Whether courts found that invocation "terribly helpful"<sup>90</sup> for different factual scenarios remains to be seen, as shown by the following overview of how state courts and federal appellate courts have applied the relatedness test in subsequent decisions.

## II. CONFUSION PREVAILS: AN OVERVIEW OF STATE COURTS' AND FEDERAL APPELLATE COURTS' TREATMENT OF THE RELATEDNESS TEST

This part provides an overview of state courts' and federal appellate courts' treatment of *Ford Motor Co.*'s relatedness test. Part II.A separates the discussion by factor in order to explore how each is applied. Part II.B then provides a summary, with a specific focus on whether Justice Alito's

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83. *Id.*; see also Borchers et al., *supra* note 16, at 21 ("[T]he interest in efficient litigation is fostered by suit in [the forum states] because the witnesses and relevant evidence will likely be there and (although the Court does not mention this) the forum [states'] law[s] will govern on the merits.").

84. *Ford Motor Co.*, 141 S. Ct. at 1031.

85. *Id.*

86. *Id.* at 1031–32.

87. See *id.* at 1029.

88. See *id.*

89. *Id.* at 1026.

90. *Id.* at 1034 (Alito, J., concurring).

prediction that the Court's opinion in *Ford Motor Co.* would not be "terribly helpful"<sup>91</sup> was correct.

A. *Overview of State Courts' and Federal Appellate Courts' Application of the Relatedness Test*

In *Ford Motor Co.*, Justice Alito, borrowing the words of Justice Antonin Scalia, warned that the use of "relates to" as a separate basis for jurisdiction is "a project doomed for failure, since, as many a curbstone philosopher has observed, everything is related to everything else."<sup>92</sup> As one might expect from such a seismic shift, courts applying *Ford Motor Co.* have since struggled to understand the consequences of its holding.<sup>93</sup> Some courts have aimed their focus almost exclusively on the facts of *Ford Motor Co.* while ignoring *Bristol-Myers Squibb's* influence on the relatedness test.<sup>94</sup> Others have blended previously distinct prongs of the personal jurisdiction analysis in an effort to understand the bounds of the relatedness analysis.<sup>95</sup> In short, there is a lack of consensus among the courts over how exactly to apply *Ford Motor Co.'s* new relatedness test.

A look at state court and federal appellate court cases shows that courts have utilized a broad range of factors in their relatedness analyses, including (1) whether the plaintiff's claim arises from essentially the same activity as the defendant's extensive contacts with the forum state,<sup>96</sup> (2) whether the defendant's contacts were purposefully directed at residents of the forum state,<sup>97</sup> (3) the foreseeability of the defendant's being haled into the forum,<sup>98</sup> (4) the location of the injury,<sup>99</sup> and (5) the extent to which the plaintiff is buying into the forum.<sup>100</sup> Based on a close analysis of those cases, this section will discuss the importance that the courts place on these factors in applying *Ford Motor Co.'s* relatedness test.

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91. *Id.*

92. *Id.* at 1033 (quoting *Cal. Div. of Lab. Standards Enf't v. Dillingham Const., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring)).

93. See Gregory C. Cook & Andrew Ross D'Entremont, *No End in Sight?: Navigating the "Vast Terrain" of Personal Jurisdiction in Social Media Cases After Ford*, 73 ALA. L. REV. 621, 645 (2022) ("[P]ost-*Ford* confusion has now arisen.").

94. See, e.g., *Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1224 (10th Cir. 2021) (discussing *Ford Motor Co.* extensively in its relatedness analysis without mentioning *Bristol-Myers Squibb*); *Alexander v. Anheuser-Busch, L.L.C.*, No. 19-30993, 2021 WL 3439131 (5th Cir. Aug 5, 2021) (per curiam), *cert. denied*, 142 S. Ct. 716 (2021).

95. See, e.g., *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972 (9th Cir. 2021); see also discussion *infra* Part II.A.2.

96. See, e.g., *Hood*, 21 F.4th at 1224.

97. See, e.g., *id.*

98. See, e.g., *Cox v. HP Inc.*, 492 P.3d 1245, 1256 (Or. 2021).

99. See, e.g., *Canaday v. Anthem Cos.*, 9 F.4th 392, 397 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 2777 (2022) (mem.).

100. See, e.g., *NBA Props., Inc. v. HANWJH*, 46 F.4th 614, 625–27 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 577 (2023) (mem.).

1. Whether the Plaintiff's Claim Arises from Essentially the Same Activity as the Defendant's Extensive Contacts with the Forum State

In *Ford Motor Co.*, while explaining how Ford's "Montana- and Minnesota-based conduct" satisfied the relatedness inquiry, Justice Kagan focused on the fact that the plaintiffs' injuries involved the "very vehicles" that Ford "had advertised, sold, and serviced . . . in both States for many years."<sup>101</sup> Although *out-of-state* conduct directly caused the plaintiffs' injuries, Ford's *forum-state* conduct was substantially similar to the out-of-state conduct that caused the plaintiffs' injuries such that a finding of personal jurisdiction was justified.<sup>102</sup> In *Bristol-Myers Squibb*, on the other hand, Justice Alito expressly rejected the relevance of BMS's California contacts, which concerned "matters unrelated to Plavix."<sup>103</sup> The only contacts that the Court was willing to consider were BMS's activities in the forum state that were connected to the manufacture, sale, and distribution of Plavix, the drug at the center of the plaintiffs' claims.<sup>104</sup> An overview of cases shows that courts agree that the extent to which a plaintiff's claim arises from essentially the same activity as the defendant's contacts with the forum state is an important, if not necessary, factor to consider for the relatedness analysis.<sup>105</sup>

*Hood v. American Auto Care, LLC*<sup>106</sup> considered whether "the plaintiff's claim arises from essentially the same type of activity" that the defendant purposefully directed into the forum.<sup>107</sup> There, Alexander Hood, a Colorado resident, sued American Auto Care, LLC (AAC) in Colorado, alleging that AAC violated the Telephone Consumer Protection Act of 1991<sup>108</sup> by "directing unwanted automated calls to . . . cell phones without consent."<sup>109</sup> AAC directed those calls to Hood's Vermont phone number, but Hood received the calls while he was physically present in Colorado.<sup>110</sup> Thus, there was no causal connection between AAC's contacts with Colorado and AAC's calls to Hood.<sup>111</sup> Although AAC tried to distinguish this case from *Ford Motor Co.* by arguing that the calls to Colorado phone numbers were not the "very activity" at issue in this case, the U.S. Court of Appeals for the Tenth Circuit held that "AAC's contacts with Colorado suffice if . . . they regularly include activity *substantially the same* as that giving rise to the

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101. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 (2021).

102. *See id.*

103. *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1781 (2017).

104. *Id.* at 1785. Even those contacts, however, were not enough to satisfy the relatedness inquiry. *See id.*

105. *See, e.g., Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1224 (10th Cir. 2021); *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314 (5th Cir. 2021), *cert. denied*, 143 S. Ct. 485 (2023) (mem.).

106. 21 F.4th 1216 (10th Cir. 2021).

107. *Id.* at 1224.

108. Pub. L. No. 102-243, 105 Stat. 2394 (codified as amended in scattered sections of 47 U.S.C.).

109. *Hood*, 21 F.4th at 1220.

110. *Id.*

111. *Id.* at 1224.

claim against it.”<sup>112</sup> In other words, the defendant’s contacts with Colorado—calling Colorado phone numbers—were sufficiently similar to the conduct giving rise to the claim—calling Vermont phone numbers—such that personal jurisdiction in Colorado was justified.<sup>113</sup>

The same factor was determinative, albeit in the other direction, in *Johnson v. TheHuffingtonPost.com, Inc.*<sup>114</sup> There, Charles Johnson sued HuffPost in Texas, alleging that it libeled him on its online blog.<sup>115</sup> Although Johnson pointed to the website’s visibility in Texas and its utilization of location-based advertisements, the U.S. Court of Appeals for the Fifth Circuit held that those contacts were not related to Johnson’s claim.<sup>116</sup> The Fifth Circuit asserted that the mere existence of “commercial activities in a state” could not support specific jurisdiction over a defendant on its own—those activities had to somehow relate to the claim at hand.<sup>117</sup> According to the majority opinion, this requirement was not met in *Johnson* because HuffPost’s contacts with Texas had nothing to do with the specific article at the center of Johnson’s libel claim.<sup>118</sup> Instead, they concerned separate activity that HuffPost engaged in to make money through other means.<sup>119</sup>

These cases show that courts believe that a necessary factor to consider in the relatedness analysis is the extent to which the plaintiff’s claim arises from essentially the same activity as the defendant’s contacts with the forum state.<sup>120</sup> This factor compares two sets of contacts: (1) the defendant’s out-of-state contacts that gave rise to the plaintiff’s claim<sup>121</sup> and (2) the defendant’s contacts with the forum in which the plaintiff was attempting to establish personal jurisdiction.<sup>122</sup> When the defendant has forum-state contacts that are substantially the same as the defendant’s out-of-state conduct that gave rise to the plaintiff’s claim, a finding of relatedness is supported.<sup>123</sup> Disagreement, however, lies in the extent to which the two sets

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112. *Id.* at 1225 (emphasis added).

113. *Id.*

114. 21 F.4th 314 (5th Cir. 2021), cert. denied, 143 S. Ct. 485 (2023) (mem.).

115. *Id.* at 316.

116. *Id.* at 326.

117. *Id.* at 325.

118. *Id.*

119. *Id.*

120. *See, e.g.*, *Johnson v. UBS AG*, 860 F. App’x 531, 533 (9th Cir. 2021) (declaring that an exercise of jurisdiction was improper because the receipt of a wire transfer of four million dollars for investment purposes was not similar enough to the defendant’s contacts with the forum state); *Chavez v. Bennet*, No. 81319, 2021 WL 2644771, at \*2 (Nev. June 25, 2021) (holding that the defendant’s two isolated contacts—a permit request for a boxing match in Las Vegas and a social media post about the same match—supported the exercise of jurisdiction because they were sufficiently similar to a claim centered around the defendant’s refusal to take a drug test for the match).

121. In *Hood*, these were the phone calls directed at Vermont residents. *Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1220 (10th Cir. 2021).

122. In *Hood*, these were the phone calls that the plaintiff received in Colorado. *Id.*

123. *See, e.g.*, *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 (2021); *Hood*, 21 F.4th at 1224.

of contacts can differ.<sup>124</sup> Does a distant connection between the defendant's forum-state contacts and the defendant's out-of-state contacts at the center of the plaintiff's claim suffice?<sup>125</sup> Or does *Ford Motor Co.* require more closely related contacts? At best, these cases show that reliance on this factor alone does not clarify the bounds of the relatedness test—the courts do not apply it consistently. A look at the courts' treatment of other factors might provide some further insight into the outer limits of the relatedness test.

## 2. Whether the Defendant's Contacts Were Purposefully Directed at Residents of the Forum State

Purposeful availment is a separate prong of the personal jurisdiction analysis that asks whether the defendant “has purposefully directed its activities at the forum state.”<sup>126</sup> It is typically analyzed separately from the relatedness prong.<sup>127</sup> Yet Justice Kagan utilized the fact that Ford purposefully directed contacts at residents of the forum states to reject Ford's direct causation test.<sup>128</sup> Partly because “Ford had systematically served a market in Montana and Minnesota for the very vehicles” that caused the plaintiffs' injuries, there was “a strong ‘relationship among the defendant, the forum, and the litigation’—the ‘essential foundation’ of specific jurisdiction.”<sup>129</sup> This was so because those contacts could encourage the plaintiffs, either implicitly or explicitly,<sup>130</sup> to operate Ford vehicles inside the forum states.<sup>131</sup> Yet in *Bristol-Myers Squibb*, BMS's contacts that were directed at the forum state's residents did not tip the scale toward a proper exercise of personal jurisdiction.<sup>132</sup> This friction between *Ford Motor Co.*

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124. The majority and the dissent in *Johnson* grappled with this issue. See *Johnson*, 21 F.4th at 326 (“At bottom, the dissent urges that we have power over HuffPost because it erected a website where Texans can visit and click ads. Accepting that position would give us unlimited jurisdiction over virtual defendants—and not just our cooking-blog granny. A rising YouTube star enables advertising on his channel, then libels someone in a video he posts there. If the dissent is right, all fifty states may hale him into court to answer for it. But our law is clear that more is needed to protect due process.”). *But see id.* at 327 (Haynes, J., dissenting) (“[T]he state in which an injury occurred can exercise specific personal jurisdiction over a defendant if the defendant deliberately engaged in commercial activities in that state.”).

125. In *Johnson*, the defendant's forum-state contacts were related to the defendant's out-of-state contacts that caused the plaintiff's claim only to the extent that they supported the out-of-state contacts financially. 21 F.4th at 321–23. The Fifth Circuit held that such a relationship was not enough for a proper exercise of personal jurisdiction. *Id.*

126. *Alpine View Co. v. Atlas Copco AB*, 205 F.3d 208, 215 (5th Cir. 2000).

127. See *Rogers v. City of Hobart*, 996 F.3d 812, 819 (7th Cir. 2021) (listing purposeful availment and relatedness as separate requirements for specific jurisdiction); see also *Cook & D'Entremont*, *supra* note 93, at 629 (discussing “purposeful availment” and “purposeful direction” as relevant in the first prong of the personal jurisdiction analysis).

128. *Ford Motor Co.*, 141 S. Ct. at 1029. Justice Kagan even said that “specific jurisdiction attaches in cases identical to the ones here—when a company like Ford serves a market for a product in the forum State and the product malfunctions there.” *Id.* at 1027 (emphasis added).

129. *Id.* at 1028 (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

130. See *id.* at 1029, 1039 n.5.

131. *Id.* at 1029 (“Those contacts might turn any resident of Montana or Minnesota into a Ford owner—even when he buys his car from out of state.”).

132. See *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1778 (2017).

and *Bristol-Myers Squibb* has likely caused confusion over how to properly employ the relatedness analysis.<sup>133</sup> A look at some courts' analyses of whether the defendant's contacts were purposefully directed at residents of the forum state indicates that they agree that it could be relevant for, but never determinative of, the relatedness analysis.<sup>134</sup>

*Ayla, LLC v. Alya Skin Pty. Ltd.*<sup>135</sup> considered this factor in its relatedness analysis.<sup>136</sup> There, Ayla, LLC sued the Australian company Alya Skin Pty. Ltd. ("Skin") in a Lanham Act<sup>137</sup> action.<sup>138</sup> In its relatedness analysis, the U.S. Court of Appeals for the Ninth Circuit focused almost exclusively on whether Skin's contacts were purposefully directed at residents of the United States.<sup>139</sup> The Ninth Circuit explained that Skin "sought to capture the attention of an American audience and thereby sell allegedly infringing products to that audience with advertisements addressed to 'USA BABES,' representations that its products were approved by the [U.S. Food and Drug Administration], and promises that it could ship goods from the Idaho distribution center to American customers."<sup>140</sup> The Ninth Circuit specifically stated that "[e]ach of these contacts relate[d] to Ayla's claims because they [were] part of Alya Skin's attempts to *serve and attract customers in the United States market*, which caused Ayla's injuries in the United States."<sup>141</sup> At least when online sales were involved, the extent to which the defendant's contacts were purposefully directed at residents of the forum state carried significant weight.<sup>142</sup>

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133. Compare *Hepp v. Facebook*, 14 F.4th 204, 208 (3rd Cir. 2021) (focusing on the fact that in *Ford Motor Co.*, the defendant "urged state residents to buy the types of cars in the accidents"), with *Kaliannan v. Liang*, 2 F.4th 727, 734 (8th Cir. 2021) (declaring that the relatedness prong was satisfied even though the communications that were at the center of the claim took place in a foreign country), *cert. denied*, 142 S. Ct. 758 (2022) (mem.).

134. See *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972 (9th Cir. 2021); *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1 (Tex. 2021); *LG Chem, Ltd. v. Lemmerman*, 863 S.E.2d 514 (Ga. Ct. App. 2021).

135. 11 F.4th 972 (9th Cir. 2021).

136. See *id.* at 983.

137. Ch. 540, 60 Stat. 427 (1946) (codified as amended at 15 U.S.C. §§ 1051–1141n).

138. *Ayla, LLC*, 11 F.4th at 977.

139. *Id.* at 983. Because the court exercised jurisdiction under Federal Rule of Civil Procedure 4(k)(2), the relevant forum for the jurisdictional inquiry was the United States as a whole. See FED R. CIV. P. 4(k)(2).

140. *Ayla, LLC*, 11 F.4th at 983.

141. *Id.* (emphasis added).

142. See *Good Job Games Bilism Yazilim Ve Pazarlama A.S. v. SayGames, LLC*, No. 20-16123, 2021 WL 5861279, at \*1 (9th Cir. Dec. 10, 2021) (indicating that, per *Ayla, LLC* and other Ninth Circuit precedent, when internet sales are involved, efforts to advertise in, market to, or profit from the forum state are relevant for a finding that the plaintiff's claim arises out of or relates to the defendant's contacts); see also *Future Motion, Inc. v. JW Batteries LLC*, No. 21-cv-06771, 2022 WL 1304102, at \*8 (N.D. Cal. May 2, 2022) ("While neither the Supreme Court nor the Ninth Circuit has articulated a concrete formula for determining personal jurisdiction under the express arising prong of the test where internet sales are involved, it is evident that, absent a large and regular volume of sales into the forum state, there must be some element of targeting the forum state that distinguishes the forum state from other states." (citation omitted)).

Other courts have focused on the extent to which a defendant directs their contacts at residents of a forum state in different circumstances.<sup>143</sup> Yet this factor has not carried as much weight in every relatedness analysis. *Alexander v. Anheuser-Busch, L.L.C.*<sup>144</sup> is an example of that sobering reality. There, the plaintiff alleged that an adversary of his conspired with Anheuser-Busch in Louisiana to poison him through his purchase and consumption of Anheuser-Busch's product in Louisiana.<sup>145</sup> The Fifth Circuit affirmed the district court's dismissal for lack of personal jurisdiction.<sup>146</sup> Although Anheuser-Busch had "contacts with Louisiana to the extent that it ha[d] employees there and it s[old] and distribute[d] its products there through authorized agents," those contacts were not enough to make the court's exercise of personal jurisdiction proper.<sup>147</sup> This was so because "selling beer and poisoning beer [were] unrelated activities," and "even a hint of engaging in the latter activity would presumably preclude any notable success in the former."<sup>148</sup>

Put together, the above cases show that in certain scenarios, courts believe that the extent to which a defendant's contacts are purposefully directed at residents of the forum state could be relevant in the relatedness analysis.<sup>149</sup> Yet that factor is not always dispositive—those contacts must be at least somewhat related to the substance of the plaintiff's claim.<sup>150</sup> Once again, a look at the courts' treatments of other factors is required to get a full glimpse of the relatedness prong's limits.

### 3. Foreseeability of Being Haled into the Forum

In *Ford Motor Co.*, the Court's exercise of jurisdiction was reasonable in part because "[a]n automaker regularly marketing a vehicle in a State . . . has 'clear notice' that it will be subject to jurisdiction in the State's courts when

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143. See, e.g., *LG Chem, Ltd. v. Lemmerman*, 863 S.E.2d 514, 524 (Ga. Ct. App. 2021) (emphasizing the fact that "LG Chem advertised, marketed, distributed, and placed its 18650 lithium-ion batteries *into the Georgia market* and did substantial business [in Georgia]" when finding that LG Chem's contacts were related to the plaintiff's claim (emphasis added)); *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 17 (Tex. 2021) (emphasizing that "[i]t [was] sufficient that SprayFoam *intended to serve a Texas market* for the insulation that the Lucianos allege injured them in this lawsuit" to determine whether the plaintiffs' suit related to the defendant's Texas contacts (emphasis added)).

144. No. 19-30993, 2021 WL 3439131 (5th Cir. Aug 5, 2021) (per curiam), *cert. denied*, 142 S. Ct. 716 (2021).

145. *Id.* at \*1.

146. *Id.*

147. *Id.* at \*3.

148. *Id.*

149. See *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972 (9th Cir. 2021); *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1 (Tex. 2021); *LG Chem, Ltd. v. Lemmerman*, 863 S.E.2d 514 (Ga. Ct. App. 2021); see also *Cox v. HP Inc.*, 492 P.3d 1245, 1260 (Or. 2021) ("Unlike Ford's activities in the forum states, however, [the defendant's] Oregon activities were not directed at . . . prospective Oregon purchasers of products like the Proton hydrogen generator . . . . There is no evidence that [the defendant] marketed or sold generators, or any similar product, to prospective Oregon purchasers.").

150. See *Alexander*, 2021 WL 3439131; see also *supra* Part II.A.1.

the product malfunctions there.”<sup>151</sup> The predictability of jurisdiction in the forum states generally advantaged Ford because it allowed Ford to structure its conduct in the forum state to “lessen or even avoid the costs of state-court litigation.”<sup>152</sup> Indeed, in *World-Wide Volkswagen*, the Supreme Court declared: “[T]he foreseeability that is *critical* to due process analysis . . . [I]s that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.”<sup>153</sup> Yet *Bristol-Myers Squibb* did not rely on the foreseeability of being haled into the forum when determining that the defendant’s contacts did not relate to the plaintiff’s claims.<sup>154</sup> The courts’ treatment of this factor indicates some confusion: one court found that the foreseeability of being haled into the forum is a *helpful* factor to consider in the relatedness analysis,<sup>155</sup> while another court believed it to be a *necessary* factor.<sup>156</sup>

*Cox v. HP Inc.*<sup>157</sup> focuses on foreseeability as a critical, if not necessary, factor in the relatedness analysis.<sup>158</sup> There, the Oregon Supreme Court stated that it would “continue to adhere . . . to [its] conclusion that a case will ‘arise out of or relate to’ the defendant’s connection to Oregon *only if* the defendant’s Oregon activities ‘provide a basis for an objective determination that the litigation was reasonably foreseeable.’”<sup>159</sup> Indeed, the court emphasized that although the U.S. Supreme Court in *Ford Motor Co.* “did not use the labels ‘foreseeability’ or ‘quid pro quo’ . . . much of the Court’s reasoning aligns with [the Oregon Supreme Court]’s emphasis in *Robinson* that “[t]he animating principle behind the relatedness requirement is the notion of a tacit quid pro quo that makes litigation in the forum reasonably

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151. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1030 (2021) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

152. *Id.*

153. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (emphasis added). Note, however, that *World-Wide Volkswagen* dealt primarily with the first prong of the personal jurisdiction analysis—whether the defendant had purposefully availed themselves of the benefits and protections of the forum state. *Id.*

154. See Shai Berman, Note, *Claimless Claimants and the Preclusion Premium: Troubling Trends in Class Action Settlements*, 120 COLUM. L. REV. 389, 428 (2020) (“The party objecting to personal jurisdiction in *BMS* did not contend that the forum in question was logistically unfair or burdensome . . . [S]ometimes, as was the case in *BMS*, “territorial limitations on the power of the respective States” . . . work independently . . . to restrict the adjudicatory authority of a state.” (second alteration in original) (quoting Scott Dodson, *Personal Jurisdiction and Aggregation*, 113 NW. U. L. REV. 1, 28 (2018))).

155. See *LNS Enters. LLC v. Cont’l Motors, Inc.*, 22 F.4th 852 (9th Cir. 2022).

156. See *Cox v. HP Inc.*, 492 P.3d 1245, 1256 (Or. 2021).

157. 492 P.3d 1245 (Or. 2021).

158. See *id.* at 1256; David C. Kent, *Personal Jurisdiction—Time for a New Pair of (International) Shoes?*, TORTSOURCE, Fall 2021, at 3, 4 (“The Oregon Supreme Court recognized that *Ford Motor Co.* required a new approach to specific jurisdiction beyond simple causation but nevertheless held that ‘relatedness’ continues to incorporate the concept of foreseeability.” (quoting *Cox v. HP Inc.*, 492 P.3d 1245, 1256 (Or. 2021))).

159. *Cox*, 492 P.3d at 1256 (emphasis added) (quoting *Robinson v. Harley-Davidson Motor Co.*, 316 P.3d 287, 300 (Or. 2013), *overruled in part by Cox v. HP Inc.*, 492 P.3d 1245 (Or. 2021)).

foreseeable.”<sup>160</sup> In *Cox*, that requirement was not met because the defendant had neither directed its contacts at entities similarly situated to the plaintiffs nor served a market for the product at issue in the litigation.<sup>161</sup> It followed that the required nexus between the defendant’s activities in Oregon and the plaintiff’s claim was not present because being haled into Oregon to defend such a suit was not reasonably foreseeable.<sup>162</sup> This was so despite the fact that the injury occurred in Oregon, mitigating the specter of forum shopping.<sup>163</sup>

*LNS Enterprises LLC v. Continental Motors, Inc.*<sup>164</sup> also focused on the foreseeability requirement, albeit less explicitly. There, the plaintiffs sued Continental Motors, Inc. and Textron Aviation, Inc. in a products liability action regarding a plane engine that malfunctioned and allegedly caused a crash landing in Arizona.<sup>165</sup> Although neither the aircraft nor its engine were sold, manufactured, or serviced in Arizona by Textron, the plaintiffs maintained that Textron should be subject to personal jurisdiction in Arizona because a single one of its service centers was located in Arizona.<sup>166</sup>

While discussing the implication of *Ford Motor Co.*’s holding, the Ninth Circuit referenced the Supreme Court’s discussion of *World-Wide Volkswagen*, in which it explained that the manufacturer’s and the distributor’s “deliberate extension to the Oklahoma market put [the manufacturer] and [the distributor] on ‘clear notice of [their] exposure in that State to suits arising from local accidents involving [their] cars.’”<sup>167</sup> In *LNS Enterprises LLC*, Textron had no such deliberate extension into the Arizona market.<sup>168</sup> Its only relevant contact was a single service center in Arizona.<sup>169</sup> Even assuming that that service center could service the plane at issue in the suit, Textron could not be said to have the same volume of contacts with the forum as the manufacturer and distributor from *World-Wide Volkswagen* and Ford in *Ford Motor Co.* did to establish that it had “‘fair warning’ that it could be haled into court in Arizona.”<sup>170</sup> The Ninth Circuit stopped there—it did not engage in a discussion surrounding any other potential factors, including the location of the injury or the extent to which the plaintiff was buying into the forum.<sup>171</sup>

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160. *Id.* (quoting *Robinson v. Harley-Davidson Motor Co.*, 316 P.3d 287, 299 (Or. 2013), *overruled in part* by *Cox v. HP Inc.*, 492 P.3d 1245 (Or. 2021)).

161. *Id.* at 1259–60.

162. *Id.* at 1260–61.

163. *Id.* at 1258.

164. 22 F.4th 852 (9th Cir. 2022).

165. *Id.* at 856–57.

166. *Id.* at 864.

167. *Id.* at 861 (quoting *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1027 (2021)).

168. *Id.* at 864.

169. *Id.*

170. *Id.* (quoting *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021)).

171. *See id.*

Put together, these cases demonstrate that courts see the foreseeability of being haled into the forum as a necessary factor to consider in the relatedness analysis. Some courts have halted their relatedness inquiries after finding that being haled into the forum state was not foreseeable.<sup>172</sup> On the other hand, a finding of foreseeability is generally insufficient, on its own, to establish relatedness.<sup>173</sup> To establish the requisite nexus between the defendant's contacts and the plaintiff's claim, more than foreseeability is required.<sup>174</sup>

#### 4. Location of the Injury

In *Ford Motor Co.*, Justice Kagan declared that when a corporation has “continuously and deliberately exploited [a State’s] market, it must reasonably anticipate being haled into [that State’s] court[s]’ to defend actions ‘based on’ products causing injury there.”<sup>175</sup> Justice Alito also spent some time discussing the location of the injury in *Bristol-Myers Squibb*.<sup>176</sup> Yet neither justice made the extent of this factor’s relevance to the relatedness inquiry clear.<sup>177</sup> A look at courts’ applications of the relatedness prong in light of *Ford Motor Co.*’s holding shows that this is an important factor in assessing the defendant’s relationship to the plaintiff’s claim.<sup>178</sup>

*Canaday v. Anthem Cos.*<sup>179</sup> involved a Fair Labor Standards Act of 1938<sup>180</sup> (FLSA) claim that offers a glimpse into the courts’ understanding of how the location of the injury affects the outcome of the relatedness analysis. There, the plaintiff filed a collective action alleging that the defendant misclassified her and other similarly situated employees as exempt from the

172. See *id.* at 864; *Cox v. HP Inc.*, 492 P.3d 1245, 1256–60 (Or. 2021).

173. See *Ford Motor Co.*, 141 S. Ct. at 1030; *LG Chem, Ltd. v. Lemmerman*, 863 S.E.2d 514, 524 (Ga. Ct. App. 2021) (considering the residence of the plaintiff, the location of the injury, and the extent to which the defendant availed itself of the forum—in other words, foreseeability—in its relatedness analysis); see also *Kent*, *supra* note 158.

174. See *Schrier v. Qatar Islamic Bank*, No. 20-60075-CIV, 2022 WL 4598630, at \*18 n.17 (S.D. Fla. Sept. 30, 2022) (“Unfortunately, while we now know what the standard *isn’t* (but-for causation), it’s a little unclear what the right standard *is* . . . . We thus handle our Circuit’s pre-*Ford* jurisprudence with great care—rejecting, on the one hand, the ‘but-for’ standard, but taking stock, on the other, of the still-viable principles of fairness and foreseeability.”).

175. *Ford Motor Co.*, 141 S. Ct. at 1027 (alterations in original) (emphasis added) (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 781 (1984)).

176. While distinguishing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), Justice Alito declared that “that holding concerned jurisdiction to determine *the scope of a claim* involving in-state injury . . . not, as in this case, jurisdiction to entertain claims involving no in-state injury.” *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1782 (2017).

177. Justice Kagan merely claimed that the location of the injury “*may* be relevant in assessing the link between the defendant’s forum contacts and the plaintiff’s suit—including its assertions of who was injured where.” *Ford Motor Co.*, 141 S. Ct. at 1031–32 (emphasis added).

178. See, e.g., *Canaday v. Anthem Cos.*, 9 F.4th 392 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 2777 (2022) (mem.); *Martins v. Bridgestone Ams. Tire Operations, LLC*, 266 A.3d 753 (R.I. 2022).

179. 9 F.4th 392 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 2777 (2022) (mem.).

180. Ch. 676, 52 Stat. 1060 (codified as amended in scattered sections of 29 U.S.C.).

FLSA’s overtime pay provisions.<sup>181</sup> “Dozens of [employees] opted into the action . . . . Some worked for Anthem in Tennessee. Others worked for the company in other States across the country.”<sup>182</sup> In a divided opinion, the U.S. Court of Appeals for the Sixth Circuit held that the out-of-state plaintiffs’ claims were entirely unrelated to Anthem’s contacts with Tennessee.<sup>183</sup> It was true that Anthem allegedly underpaid similarly situated employees, regardless of whether those employees were located in Tennessee or some other forum state.<sup>184</sup> Yet Anthem did not have *any* contacts with Tennessee that corresponded with the out-of-state plaintiffs’ claims—those plaintiffs were not employed there, paid there, or injured there.<sup>185</sup> It followed that Anthem’s contacts with Tennessee did not relate to the out-of-state plaintiffs’ claims.<sup>186</sup>

Despite these assertions, the dissent disagreed: “Even though the nonresident plaintiffs were allegedly injured by Anthem’s nationwide conduct in states outside the forum, it does not mean that their claims do not ‘relate to’ Anthem’s conduct in Tennessee.”<sup>187</sup> In its relatedness analysis, the dissent analyzed the out-of-state plaintiffs’ claims through the dual lenses of “treating defendants fairly and protecting ‘interstate federalism.’”<sup>188</sup> To that end, the fact that the out-of-state plaintiffs’ claims arose under federal law made a marked difference to Judge Bernice B. Donald.<sup>189</sup> As to fairness, the dissent asserted that Anthem could not complain “that it [wa]s a victim of forum-shopping because federal law is to be implemented and interpreted uniformly throughout the nation in *all* courts.”<sup>190</sup> Moreover, as to interstate federalism, neither Tennessee nor any other states’ laws were implicated by the employees’ claims, so no state could declare that it had a paramount interest in exercising jurisdiction.<sup>191</sup> Despite these arguments, however, the Sixth Circuit held that the defendant’s contacts were unrelated to the out-of-state plaintiffs’ claims, showcasing the importance that the court placed on the location of the injury in the context of FLSA actions.<sup>192</sup>

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181. *Canaday*, 9 F.4th at 394.

182. *Id.* at 395.

183. *Id.* at 396–97.

184. *Id.* at 394–95.

185. *Id.* at 397; *see also* Aaron Marr Page, Jonathan I. Blackman, Carmine D. Boccuzzi, Theodore J. Folkman, Phillip B. Dye, Jr., Matthew D. Slater, Mark McDonald, Ari MacKinnon, Igor V. Timofeyev & Joseph R. Profaizer, *International Litigation*, 56 YEAR REV., 2022, at 227, 233 (noting that *Canaday* and *Vallone v. CJS Solutions Group, LLC*, 9 F.4th 861 (8th Cir. 2021), “suggest that the presence of forum residents *who have been injured within the forum state* is a potentially significant factor in how rigorously the court will apply the relatedness standard” (emphasis added)).

186. *See Canaday*, 9 F.4th at 397.

187. *Id.* at 410 (Donald, J., dissenting).

188. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1025 (2021) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

189. *See Canaday*, 9 F.4th at 411–12 (Donald, J. dissenting).

190. *Id.* at 411.

191. *See id.*

192. *See id.* at 397 (majority opinion); *see also* *Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861, 865–66 (8th Cir. 2021) (dismissing out-of-state plaintiffs’ claims in an FLSA action in which the out-of-state plaintiffs were not injured in the forum state).

*Martins v. Bridgestone Americas Tire Operations, LLC*<sup>193</sup> provides an example of courts' focus on the location of the injury beyond the context of FLSA claims.<sup>194</sup> There, the estate of John Martins sued Bridgestone in a products liability action after one of Bridgestone's tires allegedly malfunctioned, causing Martins to get into an accident and suffer injuries that led to his eventual death in a Rhode Island hospital.<sup>195</sup> Although the accident occurred in Connecticut, Martins's estate sued Bridgestone in Rhode Island.<sup>196</sup> Despite Bridgestone's large volume of related contacts with the forum state, the Rhode Island Supreme Court held that jurisdiction over this claim was improper because the injury did not occur in the forum state.<sup>197</sup> Indeed, it stated that "[t]he phrase 'has *there* been the source of injury' in *World-Wide Volkswagen* suggests that the product has both been directed toward the forum state *and* has caused injury in the forum state."<sup>198</sup>

Taken together, the preceding cases show that courts consider the location of the injury to be an important, if not decisive, factor in the relatedness analysis.<sup>199</sup> Although the plaintiff still must show that the defendant had the requisite contacts with the forum state themselves,<sup>200</sup> if the injury that gave rise to the suit occurred in the forum state, then the scales of the relatedness test would likely be tipped toward the exercise of jurisdiction.<sup>201</sup>

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193. 266 A.3d 753 (R.I. 2022).

194. *See id.* at 761 ("Although the decedent was a resident of Rhode Island whose death ultimately occurred in Rhode Island, those facts alone are not enough; it was key in *Ford* that the injury also occurred in the forum state."); *see also* Wallace v. Yamaha Motors Corp., U.S.A., No. 19-2459, 2022 WL 61430, at \*4 (4th Cir. Jan. 6, 2022) ("As with the nonresident plaintiffs in *Bristol-Myers*, neither the injury in this case nor Yamaha's conduct related to the product that allegedly caused the injury took place in South Carolina, the forum state.").

195. *Martins*, 266 A.3d at 756.

196. *Id.*

197. *Id.* at 760–61 ("Here, the injury allegedly caused by the tire occurred in *Connecticut*; plaintiff's claims did not 'arise[] from a car accident in' Rhode Island. Although the decedent was a resident of Rhode Island whose death ultimately occurred in Rhode Island, those facts alone are not enough; it was key in *Ford* that the injury also occurred in the forum state." (quoting *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 (2021))).

198. *Id.* at 760.

199. *See* Christine P. Bartholomew & Anya Bernstein, *Ford's Underlying Controversy*, 99 WASH. U. L. REV. 1175, 1202 (2022) (noting that in their relatedness analyses, some state courts and federal appellate courts have focused on "defendant forum contacts that relate to a particular element or aspect of a claim"—in other words, contacts that relate to the location of the injury); *see also* Grant A. Bosnich, *It's Tough to Be Ford*, ILL. BAR J., April 2022, at 40, 50 (noting that a takeaway from *Ford Motor Co.*'s holding is that "[t]he location of a plaintiff's residence and the place of injury—and whether the defendant's product is sold and used in either place—all help determine specific personal jurisdiction").

200. *See, e.g.*, *Herderos De Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 43 F.4th 1303 (11th Cir. 2022), *cert. denied*, 2023 WL 192008 (U.S. Jan. 17, 2023) (mem.); *Vapotherm, Inc. v. Santiago*, 38 F.4th 252, 261 (1st Cir. 2022).

201. *See* *LG Chem, Ltd. v. Goulding*, 194 N.E.3d 355, 362 (Ohio 2022) (per curiam) ("The Darrow plaintiffs' claims are related to LG Chem's activities in Ohio, because the allegations in the complaint and inferences that may reasonably be drawn from the record arguably show that[, among other things,] the batteries injured the plaintiffs in Ohio."). *But see* *Cox v. HP Inc.*, 492 P.3d 1245, 1258 (Or. 2021) ("In short, the Court in *Ford Motor Co.* did not end its due process inquiry with the fact that the product at issue caused injury to forum residents in the forum states, and neither can we.").

## 5. Extent to Which the Plaintiff Is Buying into the Forum

While distinguishing *Ford Motor Co.* from *Bristol-Myers Squibb*, Justice Kagan highlighted that, unlike the plaintiffs in *Ford Motor Co.*, the nonresident plaintiffs in *Bristol-Myers Squibb* “were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State.”<sup>202</sup> Unlike in *Bristol-Myers Squibb*, the plaintiffs in *Ford Motor Co.* “brought suit in the most natural State—based on an ‘affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that t[ook] place’ there.”<sup>203</sup> The Court’s emphasis on the plaintiff’s motivation is curious, especially because personal jurisdiction predominantly asks whether the *defendant* has the requisite minimum contacts with the forum state.<sup>204</sup> Yet through a comparison of *Ford Motor Co.* and *World-Wide Volkswagen*, at least one scholar has argued that this plaintiff-focused factor could carry significant weight in *Ford Motor Co.*’s relatedness analysis.<sup>205</sup> A survey, however, shows that courts sparsely consider this factor in their relatedness analyses.<sup>206</sup>

*NBA Properties, Inc. v. HANWJH*<sup>207</sup> and *Getagadget, L.L.C. v. Jet Creations Inc.*<sup>208</sup> provide factual scenarios that can be used to discuss the implication of this factor on courts’ relatedness analyses. Both cases involved trademark infringement claims in which the plaintiffs asserted that one or two sales of the allegedly infringing products and the availability of the defendants’ website in the forum state were claim-related contacts that were sufficient for an exercise of specific jurisdiction over the defendants.<sup>209</sup> In both cases, the sales of the allegedly infringing product were orchestrated by the plaintiffs’ counsel to provide a basis for personal jurisdiction.<sup>210</sup>

The Lanham Act, the basis for trademark infringement claims, provides that “[t]he holder of a registered mark . . . has a civil action against anyone employing an imitation of it in commerce when ‘such use is likely to cause

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

203. *Id.* (alterations in original) (quoting *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1781 (2017)).

204. *See Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (“[D]ue process requires only that in order to subject a *defendant* to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it . . . .” (emphasis added)).

205. Richard D. Freer, *From Contacts to Relatedness: Invigorating the Promise of “Fair Play and Substantial Justice” in Personal Jurisdiction Doctrine*, 73 ALA. L. REV. 583, 602 (2022) (“[T]he Court failed to note one distinction between [*Ford Motor Co.* and *World-Wide Volkswagen Corp.*]: in *World-Wide Volkswagen*, the plaintiff was not a resident of the forum. If anything, the fact that the plaintiffs in *Ford* were residents of the forum states makes jurisdiction in that case stronger than *World-Wide Volkswagen*—at least if one is willing to consider fairness factors such as the plaintiff’s interest in litigating at home.”).

206. *See, e.g., NBA Props., Inc. v. HANWJH*, 46 F.4th 614 (7th Cir. 2022), *cert denied*, 143 S. Ct. 577 (2023) (mem.); *Getagadget, L.L.C. v. Jet Creations, Inc.*, No. 19-51019, 2022 WL 964204 (5th Cir. Mar. 30, 2022) (per curiam).

207. 46 F.4th 614 (7th Cir. 2022), *cert denied*, 143 S. Ct. 577 (2023) (mem.).

208. No. 19-51019, 2022 WL 964204 (5th Cir. Mar. 30, 2022) (per curiam).

209. *NBA Props., Inc.*, 46 F.4th at 617; *Getagadget, L.L.C.*, 2022 WL 964204, at \*1.

210. *NBA Props., Inc.*, 46 F.4th at 617, 627; *Getagadget, L.L.C.*, 2022 WL 964204, at \*1.

confusion, or to cause mistake, or to deceive.”<sup>211</sup> In *NBA Properties, Inc.*, the U.S. Court of Appeals for the Seventh Circuit concluded that the single contact that the defendant had with Illinois—the sale of the infringing product to the NBA’s investigator—was sufficiently related to the claim to support an exercise of personal jurisdiction over the defendant.<sup>212</sup> Although the likelihood of confusion was not necessarily present in this case because the plaintiff’s counsel orchestrated the purchase of the allegedly infringing product to establish jurisdiction, the Seventh Circuit still concluded that the single sale was sufficiently related to the claim because “actual confusion [was] not necessary.”<sup>213</sup>

The Fifth Circuit came to a different conclusion in *Getagadget, L.L.C.*<sup>214</sup> There, the Fifth Circuit reasoned that the people who bought the allegedly infringing products—the plaintiff’s counsel—could not “have been potentially deceived by the alleged infringement.”<sup>215</sup> This was because Getagadget’s counsel orchestrated the sale for the express purpose of establishing jurisdiction in Illinois while knowing that the allegedly infringing product was not the trademarked product.<sup>216</sup> Thus, because it was impossible for Getagadget’s counsel to assert that they were actually confused between the trademarked product and the allegedly infringing product, they could not plausibly claim that the allegedly infringing product was “likely to cause confusion” from the contact that formed the basis of their claim.<sup>217</sup> Therefore, the court held that the sales were not sufficiently related to the Lanham Act claim.<sup>218</sup>

These two results evince a disagreement about how the relatedness test should be applied to these facts. The Seventh Circuit asserted that “*Gatagadget* does not come to grips with [the] aspect of *Ford*” that rejected “a direct causal inquiry in the ‘arising out of or related to’ analysis” and merely required the court to “ensure that the conduct and the litigation are related.”<sup>219</sup> Indeed, the Fifth Circuit focused extensively on whether the sale

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211. *NBA Props., Inc.*, 46 F.4th at 626 (alteration in original) (quoting *SportFuel, Inc. v. PepsiCo, Inc.*, 932 F.3d 589, 595 (7th Cir. 2019)).

212. *Id.* at 625–27.

213. *Id.* at 626–27, 626 n.18 (explaining that *Ford Motor Co.*’s rejection of the need for a direct causal link to establish specific jurisdiction, combined with the interpretation of the Lanham Act which does not require actual confusion, leads to the conclusion that the sale of a single product is sufficiently related to the claim). In *Brothers & Sisters in Christ, LLC v. Zazzle, Inc.*, 42 F.4th 948 (8th Cir. 2022), however, the U.S. Court of Appeals for the Eighth Circuit held that a single sale of an allegedly infringing product in the forum state did not suffice to establish personal jurisdiction over the defendant seller. *Id.* at 953–54. This was so even without the added fact that the purchase was made by the plaintiff’s counsel to establish personal jurisdiction in the forum—instead, the purchase was merely made by a “Missouri resident.” *Id.* at 950.

214. 2022 WL 964204, at \*6.

215. *Id.* at \*5.

216. *Id.*

217. *Id.* at \*4 (quoting *Marathon Mfg. Co. v. Enerlite Prods. Corp.*, 767 F.2d 214, 217 (5th Cir. 1985)).

218. *Id.* at \*5.

219. *NBA Props., Inc. v. HANWJH*, 46 F.4th 614, 626 n.18 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 577 (2023) (mem.).

to the plaintiff's counsel directly caused actual confusion, not whether the defendant's contacts with the forum state were related to the plaintiff's claims.<sup>220</sup>

Yet the Fifth Circuit also relied on another aspect of the plaintiff's claim when it dismissed the suit for lack of personal jurisdiction—the fact that the plaintiff manufactured contacts with the forum to provide a basis for exercising personal jurisdiction in that forum.<sup>221</sup> Indeed, in both cases, the plaintiffs literally bought themselves into the forum by purchasing the allegedly infringing products in the forums for the express purpose of establishing jurisdiction there.<sup>222</sup> If these appellate courts considered forum shopping to be an important factor in the relatedness analysis, these cases would have provided an excellent opportunity for them to explicitly say so. Yet the Fifth Circuit devoted nothing more than a sentence to this consideration, implying that if its focus was on whether the plaintiff was suing in the “most natural State,” it was a subliminal focus at best.<sup>223</sup> On the other hand, the Seventh Circuit, in the section of its opinion that analyzed the purposeful availment prong, summarily declared that the plaintiffs’ “motivations in purchasing the allegedly illegal item are in no way relevant to an assessment of whether [the defendant] has established sufficient contacts to sell its products to Illinois residents.”<sup>224</sup> In sum, these cases show that the extent to which a plaintiff is attempting to buy themselves into the forum is, at best, sparsely considered by the courts.<sup>225</sup>

#### *B. Summary of the Relatedness Test as Applied in State Courts and Federal Appellate Courts*

It is difficult to articulate one consistent analytical framework based on *Ford Motor Co.* Indeed, a wide variety of inconsistent relatedness analyses have appeared in the state courts and federal appellate courts.<sup>226</sup> Those courts, grappling with the task of conforming the Supreme Court's personal jurisdiction jurisprudence with their own, have struggled to define the outer bounds of the relatedness test. It is clear that the courts require some clarification on the scope of the relatedness test and the proper way to apply

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220. See *Getagadget, L.L.C.*, 2022 WL 964204, at \*4–5.

221. See *id.* at \*5 (“Indeed, many ‘courts considering similar claims have rejected attempts by plaintiffs to manufacture contacts with the forum state by having an agent purchase the alleged infringing products.’” (quoting *U.S. Olympic Comm. v. Does 1–10*, No. C 08-03514, 2008 WL 2948280, at \*2 (N.D. Cal. July 25, 2008))).

222. See *supra* notes 209–10.

223. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1031 (2021); see also *Adams v. Aircraft Spruce & Specialty Co.*, 284 A.3d 600, 619 (Conn. 2022) (noting that *Adams* was distinguishable from *Bristol-Myers Squibb* because the plaintiff was a resident of the forum state, but clarifying that such a “connection, without more, does not establish the required case linkage on this record”).

224. *NBA Props., Inc.*, 46 F.4th at 624.

225. See *Adams*, 284 A.3d at 623 (“The United States Supreme Court's cases make clear, however, that forum residence may *bolster* other factors that support specific jurisdiction but is not a sufficient basis, in and of itself, to forge the necessary connection between the defendant's forum contacts and the specific litigation.”).

226. See *supra* Part II.A.

it. Thus, Part III attempts to compare *Bristol-Myers Squibb* and *Ford Motor Co.* to provide a sensible doctrinal test that can be applied to the courts' analyses and clear up any confusion.

### III. ONLY TWO FACTORS MATTER: A SENSIBLE DOCTRINE ARISES FROM A COMPARISON OF *BRISTOL-MYERS SQUIBB* AND *FORD MOTOR CO.*

Central to determining the bounds of the relatedness test is a comparison between *Bristol-Myers Squibb* and *Ford Motor Co.* *Bristol-Myers Squibb* provides an example of a case that failed to get past the relatedness prong of the analysis, while *Ford Motor Co.* does the opposite.<sup>227</sup> Thus, a focus on the differences between the two cases should shed light on a doctrine currently shrouded in darkness. Part III.A highlights the similarities and differences between the two cases, ultimately arguing that once the relatedness inquiry is triggered, the only two factors that matter are the location of the injury and the extent to which the plaintiff is buying into the forum. Part III.B then applies this formulation to the cases discussed in Part II.A. In doing so, this Note attempts to clarify the confusion that is prevalent among courts.

#### A. A Sensible Doctrine: Parsing *Bristol-Myers Squibb* and *Ford Motor Co.*

*Ford Motor Co.*'s "relate to" test does not apply to every personal jurisdiction inquiry.<sup>228</sup> Thus, before diving into their differences, a look at *Bristol-Myers Squibb*'s and *Ford Motor Co.*'s similarities provides some guidance on when the "relate to"<sup>229</sup> test should be implicated. First, neither case involved a claim that was causally related to the defendant's contacts with the forum.<sup>230</sup> Had that relationship existed, the Supreme Court likely would have focused its analysis on the "first half" of the relatedness prong—whether the claim "arise[s] out of" the defendant's contacts—instead of the second half—whether the claim "relate[s] to" the defendant's contacts.<sup>231</sup> Second, both defendants had extensive connections to the forum state that warranted a discussion about whether those connections were sufficiently related to the plaintiffs' claims.<sup>232</sup> Absent such extensive connections, a relatedness argument would not have carried much weight—the extent of the

227. See *supra* Parts I.B–C.

228. See Borchers et al., *supra* note 16, at 19 (discussing the Court's "bifurcation of 'arise out of' and 'relate to'" as a process that established two different tests to be applied in different scenarios (quoting *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021))).

229. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021).

230. See *supra* Parts I.B–C.

231. *Ford Motor Co.*, 141 S. Ct. at 1026; see Borchers et al., *supra* note 16, at 9 ("If the defendant has a great deal of contact with the forum . . . the plaintiff need only satisfy the 'relate to' test to support specific jurisdiction. On the other hand, if the defendant has relatively less contact with the forum, the plaintiff perhaps must show a causal relationship between the defendant's contact and her claim.").

232. See *supra* Parts I.B–C.

defendants' connections to the forum state was part of what made the exercise of jurisdiction reasonable in *Ford Motor Co.*<sup>233</sup> and what supported the plaintiffs' argument in *Bristol-Myers Squibb*.<sup>234</sup> Third, in both cases, the plaintiffs' claims arose from essentially the same activity as the defendants' extensive contacts with the forum state.<sup>235</sup> In other words, the defendants' forum-state contacts in both cases were associated with the product that caused the plaintiffs' injuries.<sup>236</sup> Fourth, the defendants' contacts were purposefully directed at the forum states in both cases.<sup>237</sup> Finally, it was at least somewhat foreseeable in both cases that the defendants could be haled into the forum state to defend themselves as a result of their conduct there.<sup>238</sup>

These similarities indicate that the "relate to" test should only be applied in situations akin to those in *Ford Motor Co.* and *Bristol-Myers Squibb*—those in which a defendant conducts extensive, tangible activities in the forum state that are substantially similar to its activities in another state, with the activities in the other state being those that caused the plaintiff's injury.<sup>239</sup> An assessment of whether the defendant's forum-state contacts directly caused the plaintiff's injury, combined with an analysis of the first three factors discussed in Part II,<sup>240</sup> should be considered when deciding whether the "relate to"<sup>241</sup> inquiry applies in the first place. Yet once that inquiry does apply, the court must still decide whether it has been satisfied. Indeed, it was triggered in both *Ford Motor Co.* and *Bristol-Myers Squibb*, but the two cases had opposite results.<sup>242</sup> So what explains the different holdings?

This Note argues that two factors—the location of the injury and the extent to which the plaintiffs were buying into the forum—explain the difference in outcomes. As to the location of the injury, the nonresident plaintiffs in *Bristol-Myers Squibb* were injured outside of the forum state.<sup>243</sup> The majority opinion mentioned this fact multiple times, indicating that it was an important factor in the Court's decision to limit jurisdiction.<sup>244</sup> In *Ford*

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233. See *supra* Part I.C.

234. See *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1781–83 (2017).

235. See *supra* Parts I.B–C.

236. See *supra* Parts I.B–C.

237. See *supra* Parts I.B–C, II.A.2.

238. See *supra* Part II.A.3. Although *Bristol-Myers Squibb* did not discuss foreseeability, BMS would have been hard-pressed to argue that haling them into California would have been unreasonable. See Berman, *supra* note 154, at 427–28 ("The party objecting to personal jurisdiction in *BMS* did not contend that the forum in question was logistically unfair or burdensome.").

239. See *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 n.4 (2021) (noting that the case did not deal with "isolated or sporadic transactions" or "internet transactions," both of which are markedly different from the tangible and continuous contacts at issue in *Ford Motor Co.* and *Bristol-Myers Squibb*).

240. These factors are (1) whether the plaintiff's claim arises from essentially the same activity as the defendant's extensive contacts with the forum state, (2) whether the defendant's contacts were purposefully directed at residents of the forum state, and (3) the foreseeability of being haled into the forum. See *supra* Part II.

241. *Ford Motor Co.*, 141 S. Ct. at 1026.

242. See *supra* Parts I.B–C.

243. See *supra* Part II.A.4.

244. See *supra* Part II.A.4.

*Motor Co.*, Justice Kagan expressly rejected Ford's argument that the location of the injury was "immaterial" and instead proclaimed that such a place "may be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit."<sup>245</sup> *Bristol-Myers Squibb* and *Ford Motor Co.* show that the location of the injury *is* relevant in assessing that link. When the injury took place outside of the forum state, the plaintiff's jurisdictional argument was hindered.<sup>246</sup> Yet when the injury took place inside the forum state, the Court supported the exercise of jurisdiction.<sup>247</sup>

*Ford Motor Co.* and *Bristol-Myers Squibb* also differed in their analyses of the extent to which the plaintiffs were attempting to buy into the forum.<sup>248</sup> In *Bristol-Myers Squibb*, the plaintiffs were not residents of the forum state, were not given access to the defective product in the forum state, and had not used the defective product in the forum state.<sup>249</sup> In other words, those plaintiffs were engaged in "forum-shopping—suing in [the forum state] because it was thought plaintiff-friendly, even though their cases had no tie to the State."<sup>250</sup> Yet in *Ford Motor Co.*, the opposite was true.<sup>251</sup> There, the plaintiffs were residents of the forum states, used the defective products in the forum states, and were injured in the forum states.<sup>252</sup> In other words, those plaintiffs were suing in "the most natural State."<sup>253</sup> That, Justice Kagan declared, was part of the reason why the holding in *Bristol-Myers Squibb* did "not bar jurisdiction" in *Ford Motor Co.*<sup>254</sup> This difference in the two fact patterns, combined with Justice Kagan's explicit and extensive focus on forum-shopping, displayed the importance of the extent to which the plaintiff was attempting to buy into the forum in *Ford Motor Co.*'s "relate to"<sup>255</sup> analysis.<sup>256</sup> When plaintiffs were clearly forum shopping, jurisdiction would likely be improper.<sup>257</sup> To the contrary, when plaintiffs were suing in the most natural state, jurisdiction would likely be proper.<sup>258</sup>

Considering that the location of the injury and the extent to which the plaintiff was attempting to buy into the forum dealt significantly with the *plaintiff's* relationship to the forum, it is curious that the Court placed so much emphasis on those two factors. Indeed, the personal jurisdiction inquiry primarily concerns the *defendant's* contacts with the forum state because the plaintiff concedes to the court's jurisdiction by filing the suit in

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245. *Ford Motor Co.*, 141 S. Ct. at 1026, 1031–32 (emphasis added).

246. *See supra* notes 54–59 and accompanying text.

247. *See supra* Part I.C.

248. *See Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1781 (2017); *Ford Motor Co.*, 141 S. Ct. at 1031.

249. *See Bristol-Myers Squibb*, 137 S. Ct. at 1781.

250. *Ford Motor Co.*, 141 S. Ct. at 1031.

251. *Id.*

252. *See id.*

253. *Id.*

254. *Id.*

255. *Id.* at 1026.

256. *See supra* Part II.A.5.

257. *See supra* Part II.A.5.

258. *See supra* Part II.A.5.

the first place.<sup>259</sup> Yet an analysis of these two factors shows that a focus on them comports with the Court's "two sets of values" underlying personal jurisdiction: "treating defendants fairly" and "protecting 'interstate federalism.'"<sup>260</sup>

A focus on the location of the injury implicates the Court's long-standing protection of interstate federalism.<sup>261</sup> Of course, the state in which an injury occurs has a significant interest in adjudicating a dispute arising from that injury—what other state would be more interested in "enforcing [their] own safety regulations" on conduct that occurs within its geographical boundaries?<sup>262</sup> The state where evidence is easiest to gather and witnesses are easiest to reach, and whose own substantive laws are implicated, certainly would have a paramount interest in overseeing the adjudication of that claim.<sup>263</sup> Further, although a state where plaintiffs are forum shopping might be interested in settling a multiparty dispute in one fell swoop, that interest cannot be said to supersede that of the state where the plaintiff lives.<sup>264</sup> States' first and foremost concern should be their citizens' well-being—providing them with a convenient place to seek redress for injuries inflicted on them by out-of-state actors is certainly an important means to that end.<sup>265</sup> When both of these factors weigh toward the exercise of jurisdiction, the forum state has "significant interests at stake" that cannot be overridden by another forum with more attenuated connections to the controversy.<sup>266</sup>

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259. *See, e.g.*, *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (explaining that the Due Process Clause "does not contemplate that a state may make binding a judgment in personam against an individual or corporate *defendant* with which the state has no contacts, ties, or relations" (emphasis added)).

260. *Ford Motor Co.*, 141 S. Ct. at 1025 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)); *accord Adams v. Aircraft Spruce & Specialty Co.*, 284 A.3d 600, 616 (Conn. 2022) ("What does clearly emerge from *Bristol-Myers* and *Ford Motor Co.* is that, whereas the purposeful availment element of specific jurisdiction focuses exclusively on whether the *defendant* has a sufficiently meaningful affiliation with the forum, the case-linkage element focuses on whether the *plaintiff's specific claim* is sufficiently connected to the defendant's forum contacts.").

261. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 293 (1980) ("[W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution.").

262. *Ford Motor Co.*, 141 S. Ct. at 1030; *accord Adams*, 284 A.3d at 620 ("The forum state's interest is at its zenith when either tortious conduct is committed in the forum or tortious injury occurs in the forum."); Howard M. Erichson, John C.P. Goldberg & Benjamin C. Zipursky, *Case-Linked Jurisdiction and Busybody States*, 105 MINN. L. REV. HEADNOTES 54, 82 (2020) ("Each state has the authority—and indeed the responsibility—not only to set rules and standards for how individuals and firms must avoid causing injuries to others, but also to enable persons within its territory who are injured by violations of those rules and standards to hold the injurer accountable through its courts.").

263. *See supra* note 83 and accompanying text.

264. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) ("A State generally has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957))); *see also Adams*, 284 A.3d at 620.

265. *See Burger King Corp.*, 471 U.S. at 473.

266. *Ford Motor Co.*, 141 S. Ct. at 1030.

Additionally, analyzing the extent to which the plaintiff is buying into the forum ensures that defendants are treated fairly.<sup>267</sup> Subjecting defendants to suits in states whose laws are seen as more plaintiff-friendly would be entirely unfair if those defendants did not have significant contacts with those states—indeed, this is exactly the type of conduct that Justices Alito and Kagan chastised in *Bristol-Myers Squibb* and *Ford Motor Co.*, respectively.<sup>268</sup> Further, when the injury takes place in the forum state, it is often fairer to litigate the controversy there. In *Ford Motor Co.*, Ford could not plausibly assert that jurisdiction in the forum states would have been fairer in other states—the witnesses and evidence were most available in the forum states, and the injured parties lived in the forum states.<sup>269</sup> To the contrary, in *Bristol-Myers Squibb*, the plaintiffs were not residents of California, and their claims were more distant from the forum state.<sup>270</sup> As such, litigation over those claims in California would have been much more difficult to defend.<sup>271</sup>

What is not so clear from a comparison of *Bristol-Myers Squibb* and *Ford Motor Co.* is the interplay between the factors regarding the location of the injury and forum shopping when only one of them points toward the satisfaction of the “relate to”<sup>272</sup> inquiry. For example, consider a scenario with the same facts as *Bristol-Myers Squibb* concerning a hypothetical plaintiff who purchased Plavix in their home state of Ohio and ingested it in California. That defendant then tries to sue BMS in California. The location factor would point toward a proper exercise of jurisdiction in California because the plaintiff ingested Plavix and was injured by it there. Yet the forum-shopping factor would point toward an improper exercise of jurisdiction in California because the most natural forum would be Ohio—the plaintiff lived in Ohio, was exposed to Plavix there, and purchased Plavix there. Should the court exercise jurisdiction in California? Neither *Ford Motor Co.* nor *Bristol-Myers Squibb* provide much guidance for resolving this hypothetical scenario.<sup>273</sup> Still, one thing is clear from a comparison of *Ford Motor Co.* and *Bristol-Myers Squibb*: after the “relate to”<sup>274</sup> inquiry is triggered, the location of the injury and the extent to which the plaintiff is buying into the forum are the only two factors that matter. An application of these factors to the lower court cases discussed in Part II sheds more light on this sensible doctrinal test.

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267. *See id.* at 1031.

268. *See id.*; *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1782–83 (2017).

269. *See* Borchers et al., *supra* note 16, at 16.

270. *Cf. id.* (explaining that the exercise of jurisdiction in *Ford Motor Co.* was fair because “[t]he witnesses, the physical evidence, a view of the accident scene, the residence of the injured parties and co-defendants, and everything else necessary for a fair trial pointed to the injury states”); *see also supra* Parts I.B–C.

271. *See* Borchers et al., *supra* note 16, at 16; *supra* Part I.B.

272. *Ford Motor Co.*, 141 S. Ct. at 1026.

273. *See* Borchers et al., *supra* note 16, at 23–24 (suggesting that *Ford Motor Co.* failed to provide any meaningful guidance for a similar hypothetical).

274. *Ford Motor Co.*, 141 S. Ct. at 1026.

*B. Clearing Up the Confusion: Applying This Sensible Doctrine to State Courts' and Federal Appellate Courts' Applications of the Relatedness Test*

To summarize, a comparison of *Bristol-Myers Squibb* and *Ford Motor Co.* suggests a two-step analysis for cases that involve questions about the relatedness prong. First, the court should ask whether the defendant's relationship with the forum state is close enough to Ford's and BMS's forum contacts to warrant a discussion about whether the claim "relate[s] to"<sup>275</sup> the defendant's contacts.<sup>276</sup> While making such a determination, it could be helpful to look at the following factors: whether the defendant's forum contacts directly caused the plaintiff's claim, whether the plaintiff's claim arose from essentially the same activity as the defendant's extensive contacts with the forum state, whether the defendant's contacts were purposefully directed at residents of the forum state, and the foreseeability of the defendant being haled into the forum. Those factors touch on the conditions that were consistent across the facts in *Bristol-Myers Squibb* and *Ford Motor Co.*: when a defendant has tangible, continuous, and extensive contacts with the forum and the plaintiff's injury results from conduct related to, but not directly caused by, those contacts.<sup>277</sup> Second, if the court decides that the "relate to"<sup>278</sup> test is implicated, then only two factors warrant consideration: the location of the injury and the extent to which the plaintiff was attempting to buy into the forum state.

1. Cases That Should Not Implicate the "Relate To" Test

*Ford Motor Co.* ducked the question of how the personal jurisdiction analysis should be undertaken when internet contacts constituted the bulk of the defendant's contacts.<sup>279</sup> Such a task was difficult because those contacts could "raise doctrinal questions of their own."<sup>280</sup> Indeed, applying *Ford Motor Co.*'s relatedness inquiry to *Johnson*, a controversy primarily involving internet advertisements and transactions, was considerably tricky.<sup>281</sup> A comparison of *Ford Motor Co.* and *Bristol-Myers Squibb* with *Johnson* shows why confusion, rather than clarity, prevailed in the Fifth Circuit. The former two cases involved tangible contacts that gave rise to the

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275. *Id.*

276. A situation that can be meaningfully distinguished from *Ford Motor Co.* and *Bristol-Myers Squibb* should instead be analyzed under the first part of the Court's explanation of the relatedness prong—whether the claim "arise[s] out of" the defendant's contacts. *Ford Motor Co.*, 141 S. Ct. at 1026 (quoting *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1780 (2017)). The "arise out of" inquiry poses different questions about the contacts' relation to the plaintiff's claim. The location and forum-shopping factors might not carry as much weight under that analytical framework. See Borchers et al., *supra* note 16, at 19 (discussing the significance of "the bifurcation of 'arise out of' and 'relate to'" (emphasis added)).

277. See *supra* Parts I.B–C.

278. *Ford Motor Co.*, 141 S. Ct. at 1026.

279. See *id.* at 1028 n.4.

280. *Id.*

281. See *supra* Part II.A.1.

plaintiffs' physical injuries.<sup>282</sup> Discerning how those contacts were directly aimed at the forum state is straightforward—the contacts took place in the forum state, and forum state residents directly interacted with the contacts.<sup>283</sup> This factor was not so easily satisfied in *Johnson*, however. *Johnson* involved internet contacts that were loosely connected to the article at the center of the suit.<sup>284</sup> The tangible contacts in *Ford Motor Co.* and *Bristol-Myers Squibb* could be directly linked to, or distinguished from, the plaintiff's injury.<sup>285</sup> Internet contacts, as the differing opinions in *Johnson* suggest, are more difficult to pin down.<sup>286</sup> Were the advertisements in *Johnson* aimed at supporting a market for the website that hosted the allegedly libelous story, as the dissent suggested?<sup>287</sup> Or were they simply extraneous activities that the defendant engaged in to make money on the side, as the majority suggested?<sup>288</sup> Simply put, the intangibility of internet contacts makes them difficult to analogize to the contacts in *Ford Motor Co.* and *Bristol-Myers Squibb*.<sup>289</sup> At the very least, *Ford Motor Co.*'s application to situations like *Johnson* is very unclear, as evidenced by the Fifth Circuit's inability to come to a unanimous decision.<sup>290</sup> Courts should instead look to the "arise out of" prong to settle these issues—the tests from *Ford Motor Co.* and *Bristol-Myers Squibb* are simply unequipped to deal with internet contacts.<sup>291</sup>

Some other cases involving personal injuries were also unsuited for the "relate to"<sup>292</sup> analysis. *Alexander* is one such example. There, an analysis of the location of the injury and the extent to which the plaintiff was buying into the forum was not warranted. The defendant's forum-state contact—selling beer—was in no way similar to the conduct that the plaintiff alleged the defendant was engaged in—poisoning beer.<sup>293</sup> The absence of this similarity weighed against the application of the "relate to"<sup>294</sup> analysis. Indeed, the court noted that "a hint of engaging in the latter activity would presumably preclude any notable success in the former."<sup>295</sup> Thus, the Fifth Circuit properly neglected to even mention the differences between *Ford*

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282. See *supra* Parts I.B–C.

283. See *supra* Parts I.B–C.

284. See *supra* Part II.A.1.

285. See *supra* Parts I.B–C.

286. See *supra* Part II.A.1.

287. See *supra* note 124.

288. See *supra* Part II.A.1.

289. Cf. *Cook & D'Entremont*, *supra* note 93, at 634 (emphasizing that a jurisdictional inquiry surrounding intangible internet contacts must be analogized to other tangible forms of harm to make sense of how internet contacts play out in light of the Supreme Court's personal jurisdiction jurisprudence).

290. See *supra* Part II.A.1.

291. See *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1028 n.4 (2021).

292. *Id.* at 1026.

293. See *supra* Part II.A.2.

294. *Ford Motor Co.*, 141 S. Ct. at 1026.

295. *Alexander v. Anheuser-Busch, L.L.C.*, No. 19-30993, 2021 WL 3439131, at \*3 (5th Cir. Aug 5, 2021) (per curiam), *cert. denied*, 142 S. Ct. 716 (2021) (mem.).

*Motor Co.* and *Bristol-Myers Squibb*—the plaintiff’s claim was too detached from the defendant’s contacts to warrant it.

In the same vein, *LNS Enterprises LLC* does not provide a set of facts for which *Ford Motor Co.*’s “relate to”<sup>296</sup> test supplies a useful analytical framework. Comparing Textron’s single service center to Ford’s “veritable truckload of contacts”<sup>297</sup> is a fruitless enterprise—they were “in no sense comparable” in volume or substance.<sup>298</sup> Unlike Ford’s sizeable contacts involving the “very vehicle[]”<sup>299</sup> at issue in the litigation, Textron’s single service center neither serviced, nor maintained the capability to service, the aircraft at issue in that litigation.<sup>300</sup> Although the Ninth Circuit went on to alternatively discuss *Ford Motor Co.*’s “relate to”<sup>301</sup> analysis after distinguishing Textron’s contacts from Ford’s, it could have stopped there because the factor assessing whether the plaintiff’s claim arose from essentially the same activity as the defendant’s extensive contacts with the forum state was not present.<sup>302</sup> Accordingly, *Ford Motor Co.* simply was not an appropriate point of comparison for the facts presented in *LNS Enterprises LLC*.

## 2. Cases That Can Be Explained by the “Relate To” Test

Some of the cases discussed above, however, contained holdings that were aligned with the approach advanced in this Note. *Hood*, for example, could be explained by the two factors discussed above. There, the “relate to” inquiry was triggered on account of AAC’s extensive contacts with the forum state and the fact that those contacts were essentially the same as the out-of-state conduct that caused the plaintiff’s injury.<sup>303</sup> Once the “relate to”<sup>304</sup> inquiry was triggered, only a look at the location of the injury and the extent to which the plaintiff was forum shopping was necessary. In *Hood*, the plaintiff was injured in Colorado and could not plausibly be said to be forum shopping, since he was a “Colorado resident.”<sup>305</sup> Thus, jurisdiction over AAC for Hood’s claim was proper under *Bristol-Myers Squibb* and *Ford Motor Co.*

*Ayla, LLC* focused on an analysis of whether the defendant purposefully directed its contacts at residents of the forum state.<sup>306</sup> Yet a focus on the location of the injury and the extent to which the plaintiff was forum shopping more easily explains a proper exercise of jurisdiction. The “relate

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296. *Ford Motor Co.*, 141 S. Ct. at 1026.

297. *Id.* at 1031.

298. *LNS Enters. LLC v. Cont’l Motors, Inc.*, 22 F.4th 852, 864 (9th Cir. 2022).

299. *Ford Motor Co.*, 141 S. Ct. at 1028.

300. *See LNS Enters. LLC*, 22 F.4th at 864.

301. *Ford Motor Co.*, 141 S. Ct. at 1026.

302. *LNS Enters. LLC*, 22 F.4th at 864.

303. *See supra* Part II.A.1.

304. *Ford Motor Co.*, 141 S. Ct. at 1026.

305. *See Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1219 (10th Cir. 2021).

306. *See Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 983 (9th Cir. 2021).

to<sup>307</sup> analysis was implicated on account of the defendant's extensive contacts with the forum (the United States as a whole) that were directed at serving a market for the product at issue there.<sup>308</sup> Under the "relate to" umbrella, it was clear that the defendant was subject to jurisdiction in the United States—the injury occurred there, and the plaintiffs were residents of that forum.<sup>309</sup> There was no forum shopping at play—the plaintiffs were suing in the most natural forum, the one in which they lived and were injured.<sup>310</sup> Jurisdiction was proper in *Ayla, LLC* under an analysis of these two factors.

Finally, *Canaday* is also more easily explained by the location factor and the forum-shopping factor.<sup>311</sup> In *Canaday*, the "relate to"<sup>312</sup> inquiry was triggered for the out-of-state plaintiffs' claims because the defendant's extensive conduct with the Tennessee plaintiffs mirrored its conduct with the nonresident plaintiffs in other states.<sup>313</sup> In that sense, *Canaday* is comparable to *Bristol-Myers Squibb*—in both cases, the nonresident plaintiffs were injured outside of the forum state and did not reside in the forum state.<sup>314</sup> Thus, the Sixth Circuit properly held that jurisdiction over their claims was erroneous.<sup>315</sup> Although the out-of-state plaintiffs were likely opting into the claim as a matter of convenience,<sup>316</sup> that convenience cannot outweigh fairness to defendants in the realm of personal jurisdiction.<sup>317</sup> Were convenient litigation such a concern, the plaintiffs were free to collectively file their claim in the state where the defendant was subject to general jurisdiction.<sup>318</sup> Likewise, the dissent's declaration that the involvement of federal substantive law effectively precluded the argument that any individual state could claim a paramount interest in overseeing the adjudication was misplaced. Although federal law would be consistently applied no matter the forum, the "interstate federalism" inquiry cannot end with the substance of the law. For example, *Ford Motor Co.* also emphasized the importance of "providing [forum-state] residents with a convenient forum for redressing injuries inflicted by out-of-state actors."<sup>319</sup> Allowing Tennessee to exercise jurisdiction for the nonresident plaintiffs would prevent the forums where the nonresident plaintiffs reside from doing so.

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307. *Ford Motor Co.*, 141 S. Ct. at 1026.

308. *See supra* Part II.A.2.

309. *See supra* Part II.A.2.

310. *See supra* Part II.A.2.

311. *Cf. Vallone v. CJS Sols. Grp., LLC*, 9 F.4th 861 (8th Cir. 2021).

312. *Ford Motor Co.*, 141 S. Ct. at 1026.

313. *See supra* Part II.A.4.

314. *Compare Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1782 (2017), with *Canaday v. Anthem Cos.*, 9 F.4th 392, 394–95 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 2777 (2022) (mem.).

315. *See Canaday*, 9 F.4th at 396–97.

316. *See id.* at 400–01.

317. *See supra* Parts I.C, III.A.

318. *See Canaday*, 9 F.4th at 400–01.

319. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1030 (2021) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)).

Thus, the Sixth Circuit's focus on the location factor and the forum-shopping factor properly explains the outcome of *Canada*.

Other cases reveal a struggle with the admittedly unclear interplay between the location and forum-shopping factors. In *Martins*, the injury did not occur in Rhode Island—a fact that the court properly focused on while dismissing the claim.<sup>320</sup> Instead, the injury physically occurred in Connecticut and implicated Connecticut's substantive law.<sup>321</sup> So, of course, Connecticut had an interest in overseeing the adjudication of that dispute.<sup>322</sup> But the argument that Rhode Island had a more compelling interest in overseeing the resolution of this case is strong—the case concerned one of its citizens who ultimately ended up dying within its borders as a result of his injuries.<sup>323</sup> Indeed, those facts also indicated that the decedent's estate was not engaged in forum shopping—the decedent lived in Rhode Island, previously used the allegedly defective product in Rhode Island, and died as a result of his injuries in Rhode Island.<sup>324</sup> Thus, given that all of these considerations point toward a proper exercise of jurisdiction in Rhode Island, the court's holding that jurisdiction was improper solely because the injury occurred outside of the forum state would seemingly make the location factor determinative of the “relate to”<sup>325</sup> analysis. *Ford Motor Co.* and *Bristol-Myers Squibb* preclude that possibility.<sup>326</sup> So, the court's decision not to exercise jurisdiction was improper in *Martins*—weighed equally, the location of the injury and the extent to which the plaintiffs were attempting to buy into the forum indicate that jurisdiction should have been proper in Rhode Island.

The analysis is similarly complicated for the Lanham Act cases discussed above.<sup>327</sup> Under an analysis of these two factors, however, both *NBA Properties, Inc.* and *Getagadget, L.L.C.* should have been summarily dismissed. In those cases, plaintiffs literally bought themselves into the forum by purchasing the allegedly infringing product in the forum state to establish jurisdiction there.<sup>328</sup> Although the court in *NBA Properties, Inc.* properly rejected the need for a “direct causal inquiry,”<sup>329</sup> the court's holding was improper because it failed to come to grips with Justice Kagan's guarantee that the “relate to” test “incorporates real limits.”<sup>330</sup> Even if the plaintiffs were incorporated in the forum state or had their principal places of

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320. *See Martins v. Bridgestone Ams. Tire Operations, LLC*, 266 A.3d 753, 756 (R.I. 2022).

321. *Id.*

322. *See supra* Part III.A.

323. *See supra* Part II.A.4; *see also Adams v. Aircraft Spruce & Specialty Co.*, 284 A.3d 600, 621 (Conn. 2022).

324. *See Martins*, 266 A.3d at 755–56.

325. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1026 (2021).

326. *See supra* Part III.A.

327. *See supra* Parts II.A.2, II.A.5.

328. *See NBA Props., Inc. v. HANWJH*, 46 F.4th 614, 617 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 577 (2023) (mem.); *Getagadget, L.L.C. v. Jet Creations, Inc.*, No. 19-51019, 2022 WL 964204, at \*1 (5th Cir. Mar. 30, 2022) (per curiam).

329. *NBA Props., Inc.*, 46 F.4th at 626 n.18.

330. *Ford Motor Co.*, 141 S. Ct. at 1026.

business there, they were expressly forum shopping by establishing personal jurisdiction on their own terms and by their own dime.<sup>331</sup> Although it could be said that the injury occurred in the forum state when the defendant made the allegedly infringing product available for purchase there,<sup>332</sup> the fact that the forum-shopping factor strongly points in the other direction requires dismissal of these claims. Permitting jurisdiction in these scenarios would be entirely unfair to defendants because a prospective plaintiff could simply purchase an allegedly infringing product in whichever forum is most convenient to them and force the defendant to travel there to defend themselves.<sup>333</sup> In cases in which the plaintiff purchases a product in their state of residence, it may be argued that the state whose residents suffered injuries because of the allegedly infringing products would have more of an interest in adjudicating the dispute than a state where an out-of-state plaintiff manufactured jurisdiction there.<sup>334</sup> Still, more than that single purchase should be required—manufacturing jurisdiction this way, regardless of whether it is done in the plaintiff’s home state or not, subjects defendants to personal jurisdiction in whichever state the plaintiff chooses. Thus, the forum-shopping factor strongly indicates that these claims should have been dismissed.

Finally, one case placed too much emphasis on extraneous factors. *Cox*, reconciling Oregon precedent with the Supreme Court’s recent relatedness holdings, had the opportunity to overturn its precedent to fully conform with *Ford Motor Co.*’s relatedness test. Yet it continued to place primary focus on foreseeability instead of the location of the injury and the plaintiff’s forum shopping.<sup>335</sup> But although foreseeability can operate as a trigger for the relatedness inquiry, it should not be determinative of how that inquiry is carried out<sup>336</sup>—in both *Bristol-Myers Squibb* and *Ford Motor Co.*, the “nature and quality” of the defendants’ forum activities could be said to “permit a determination that it was ‘reasonably foreseeable’ that the defendant would be sued in [the forum state] for the type of claim at issue.”<sup>337</sup> Yet those two cases came to opposite conclusions.<sup>338</sup> Instead, the location of the injury and the extent to which the plaintiff was forum shopping, as discussed above, properly explain the difference between *Ford Motor Co.*

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331. See *NBA Props., Inc.*, 46 F.4th at 617; *supra* Part II.A.5.

332. See *NBA Props., Inc.*, 46 F.4th at 617; *supra* Part II.A.5.

333. See *supra* Part III.A.

334. See *supra* Part III.A. In *Getagadget, L.L.C.*, the plaintiff was a resident of the forum state. See *Getagadget, L.L.C. v. Jet Creations, Inc.*, No. 19-51019, 2022 WL 964204, at \*1 (5th Cir. Mar. 30, 2022) (per curiam).

335. *Cox v. HP Inc.*, 492 P.3d 1245, 1257–60 (Or. 2021).

336. See *Adams v. Aircraft Spruce & Specialty Co.*, 284 A.3d 600, 624 (Conn. 2022) (“The notion that the case linkage necessary to support specific jurisdiction can be established through the defendant’s connections to a third party’s litigation (actual or hypothetical) cannot be reconciled with the holding in *Bristol-Myers*.”).

337. *Cox*, 492 P.3d at 1257 (quoting *Robinson v. Harley-Davidson Motor Co.*, 316 P.3d 287 (Or. 2013), *overruled in part by Cox v. HP Inc.*, 492 P.3d 1245 (Or. 2021)); accord *supra* Part II.A.3.

338. See *supra* Parts I.B–C.

and *Bristol-Myers Squibb*<sup>339</sup> and, in turn, resolve this case. In *Cox*, the “relate to”<sup>340</sup> inquiry was properly triggered by virtue of the defendant’s extensive contacts with the forum state that served a market for the service at issue—evaluation and testing services of generators—even though the specific generator that gave rise to the claim was not evaluated by the defendant in the forum state.<sup>341</sup> After that, a focus on whether the litigation was foreseeable was inapposite. The injury occurred in Oregon, and Oregon’s connection to the claims eliminated the specter of forum shopping—the relatedness inquiry should have ended there.<sup>342</sup>

The Oregon Supreme Court nonetheless emphasized that, although *Ford Motor Co.* did not explicitly mention foreseeability, “much of the Court’s reasoning aligns with this court’s emphasis in *Robinson* that “[t]he animating principle behind the relatedness requirement is the notion of a tacit quid pro quo that makes litigation in the forum reasonably foreseeable.”<sup>343</sup> Such an emphasis was misguided. The “animating principle”<sup>344</sup> behind the *Ford Motor Co.* decision was promoting the twin values of treating defendants fairly and protecting interstate federalism.<sup>345</sup> Both of those values, as discussed above, are properly and comprehensively appreciated by an analysis that focuses on the location of the injury and the extent to which the plaintiff is forum shopping.<sup>346</sup> The Supreme Court of Oregon’s focus on foreseeability was perhaps a product of its attempt to make its own precedent as consistent as possible with the U.S. Supreme Court’s new relatedness test. And to its credit, it recognized that its own precedent was “unduly narrow” and disavowed certain aspects of those holdings.<sup>347</sup> Yet its disavowal did not go far enough. The court should have recognized that the differences between *Bristol-Myers Squibb* and *Ford Motor Co.*, which did *not* include foreseeability, outlined the proper bounds of *Ford Motor Co.*’s “relate to”<sup>348</sup> test.

#### CONCLUSION

This Note argues that once the “relate to”<sup>349</sup> inquiry is implicated, the only two factors that matter are the location of the injury and the extent to which

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339. See, e.g., *Cox*, 492 P.3d at 1258 (“Oregon’s connection to HP’s claims may eliminate the specter of ‘forum-shopping,’ which is a consideration that *Ford Motor Co.* emphasized in distinguishing *Bristol-Myers*.” (quoting *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1031 (2021))).

340. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1026 (2021).

341. *Cox*, 492 P.3d at 1249–50.

342. See *id.* at 1258; *supra* Part II.A.3.

343. *Cox*, 492 P.3d at 1256 (alteration in original) (quoting *Robinson v. Harley-Davidson Motor Co.*, 316 P.3d 287, 300 (Or. 2013), *overruled in part by Cox v. HP Inc.*, 492 P.3d 1245 (Or. 2021)).

344. *Id.*

345. See *supra* Parts I.C, III.A.

346. See *supra* Part III.A.

347. *Cox*, 492 P.3d at 1255–56.

348. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1026 (2021).

349. *Id.*

the plaintiff was attempting to buy into the forum. Those two factors were the only two notable differences between *Bristol-Myers Squibb* and *Ford Motor Co.*, the Supreme Court's two holdings that directly implicate the relatedness inquiry of the personal jurisdiction analysis. Although the interplay between those two factors can at times be questionable, they help provide a more sensible doctrinal test than those that courts have focused on up to this point.

Justice Alito's prediction that courts would not find the Court's opinion in *Ford Motor Co.* "terribly helpful"<sup>350</sup> was correct, as indicated by a look at cases that analyzed the relatedness inquiry under *Ford Motor Co.*'s "relate to"<sup>351</sup> test. Courts could use some clarification from the Supreme Court as to those "real limits" that Justice Kagan spoke of in *Ford Motor Co.*<sup>352</sup> At this stage, however, the "relate to"<sup>353</sup> inquiry should only be employed when certain key factors are present. Then, narrowing the analysis to the two factors focused on above provides the courts with a more sensible doctrinal test that could be applied more easily to cases that are similar to *Bristol-Myers Squibb* and *Ford Motor Co.*

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350. *Id.* at 1034 (Alito, J., concurring).

351. *Id.* at 1026 (majority opinion).

352. *Id.*

353. *Id.*