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Ford v. Where Are We?: The Revival of the Sliding Scale to Govern the Supreme Court's New "Relating To" Personal Jurisdiction

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FORD v. WHERE ARE WE?: THE REVIVAL OF THE SLIDING
SCALE TO GOVERN THE SUPREME COURT’S NEW
“RELATING TO” PERSONAL JURISDICTION

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INTRODUCTION

In each of its first six personal jurisdiction cases since 2011, the Supreme Court systematically imposed new restrictions on personal jurisdiction, encumbering plaintiffs in their search for justice.¹ So, in early 2021, when the Court heard its seventh case, *Ford Motor Co. v. Montana Eighth Judicial District Court*, it faced quite the conundrum: the correct outcome was obvious, but it appeared foreclosed by the Court's ever-narrowing case law.² In two consolidated cases, the question posed to the Court was whether the exercise of personal jurisdiction over Ford was appropriate in Minnesota and Montana.³

For the uninitiated, personal jurisdiction comes in two forms: general and specific.⁴ Which form of personal jurisdiction a defendant is subject to in a given state—and thus the types of claims the defendant could face there—depends on the defendant's contacts with that state.⁵ Corporate defendants are subject to general jurisdiction only when their contacts with the forum state are such that they are “essentially at home” in that state⁶—that is, only in their state of incorporation and the state where the corporation has its principal place of business.⁷ Similarly, an individual defendant

1. See, e.g., Michael H. Hoffheimer, *The Stealth Revolution in Personal Jurisdiction*, 70 FLA. L. REV. 499, 501-03 (2018); Erwin Chemerinsky, *Chemerinsky: Two End-of-Term Decisions Close the Courthouse Doors to Those Who Have Been Injured*, AM. BAR ASS'N J. (July 6, 2017, 8:30 AM), https://www.abajournal.com/news/article/chemerinsky_again_closing_the_courthouse_doors [<https://perma.cc/CN66-P3G9>] (“The court has again effectively closed the courthouse door to those who have been injured.”).

2. See 141 S. Ct. 1017 (2021).

3. *Id.* at 1022-24.

4. See, e.g., *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915, 919 (2011).

5. See, e.g., *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316-17 (1945).

6. *Goodyear*, 564 U.S. at 919.

7. See *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). The Court has “not foreclose[d] the possibility” of “exceptional case[s]” where a corporation could be “at home” in other states. *Id.* at 139 n.19 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952)). The scholarly reaction to the Supreme Court's introduction of the “essentially at home” standard to govern general jurisdiction for corporate defendants in 2011 was swift and wide-ranging. Compare, e.g., Patrick J. Borchers, J. McIntyre Machinery, *Goodyear*, and *the Incoherence of the Minimum Contacts Test*, 44 CREIGHTON L. REV. 1245, 1276 (2011) (arguing that the “essentially at home” test “may well prove troublesome in future cases”), with Carol Andrews, *Another Look at General Personal Jurisdiction*, 47 WAKE FOREST L. REV. 999, 1082 (2012)

is subject to general jurisdiction in her home state, that in which she is domiciled.⁸ If a state can exercise general jurisdiction over a defendant, its courts can entertain “any and all claims against them.”⁹

A defendant’s contacts to the forum need not be as extensive for a court to exercise specific jurisdiction,¹⁰ but a defendant—corporate or individual—must still deliberately “reach out beyond [their] state” and into the forum in some capacity.¹¹ Even when the nonresident defendant has reached out, the forum state may only exercise specific jurisdiction over suits that “arise out of or relate to the defendant’s contacts with the forum.”¹² Courts traditionally read this language as a unit, requiring some sort of causal link between the defendant’s connections to the forum and the plaintiff’s cause of action.¹³

The two cases in *Ford* were products liability lawsuits with similar facts. The suits arose from car accidents in Minnesota and Montana, brought in those respective states by plaintiffs domiciled there.¹⁴ Ford’s contacts with Minnesota and Montana were robust: the company incessantly advertised in those states,¹⁵ sold cars to

(arguing that the “at home” standard “give[s] courts a better starting point for general jurisdiction analysis”).

8. See *Daimler*, 571 U.S. at 137 (quoting *Goodyear*, 564 U.S. at 924). An individual defendant is also subject to general jurisdiction in the state where she was served process, or “tagged.” See *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 619, 628 (1990).

9. See *Goodyear*, 564 U.S. at 919.

10. See, e.g., *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021) (“Specific jurisdiction ... covers defendants less intimately connected with a State [than those covered by general jurisdiction].”).

11. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985); see also *Walden v. Fiore*, 571 U.S. 277, 285 (2014) (quoting *Burger King*, 471 U.S. at 479-80).

12. *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017) (quoting *Daimler*, 571 U.S. at 127).

13. See, e.g., *Ford*, 141 S. Ct. at 1034 (Gorsuch, J., concurring) (“Typically, courts have read th[e] ... phrase [‘arise out of or relate to’] as a unit requiring at least a but-for causal link between the defendant’s local activities and the plaintiff’s injuries.”); James Juo, *Have You Considered Ford Lately? How to “Relate to” Specific Personal Jurisdiction*, 50 COLO. LAW., 18, 19 (“Traditionally, the phrase [‘arise out of or relate to’] ... require[d] some causal connection to the injuries suffered.”).

14. *Ford*, 141 S. Ct. at 1023. The car involved in the Minnesota accident was a 1994 Crown Victoria, and the car involved in the Montana accident was a 1996 Explorer. *Id.*

15. See, e.g., *id.* at 1022 (“Ford engages in wide-ranging promotional activities, including television, print, online, and direct-mail advertisements.”); *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019) (“Ford’s advertising contacts include direct mail advertise-

dealerships licensed to sell Fords in those states (including the same models as those involved in the respective suits),¹⁶ and had certified repair and replacement services in those states.¹⁷ Nonetheless, general jurisdiction was off the table; Ford was “at home” in Delaware and Michigan.¹⁸ The focus necessarily then turned to specific jurisdiction. But both cars at issue were originally sold in other states, only making their way to the fora through subsequent consumer-to-consumer second-hand sales.¹⁹ The cars also were neither manufactured nor designed in Minnesota or Montana.²⁰ Ford’s connections to the states and the respective lawsuits lacked any direct causal link.²¹

Thus, Ford fell into a gray area between general and specific jurisdiction. Ford possessed an abundance of contacts with the forum states—but not enough to render it “at home”—and those contacts bore a resemblance to the causes of action—but held no causal link.²² A determination that Ford would not be subject to personal jurisdiction in these states, though, seems ridiculous. The

ments to Minnesotans and national advertising campaigns that reach the Minnesota market. Ford’s marketing contacts include a 2016 ‘Ford Experience Tour’ in Minnesota, a 1966 Ford Mustang built as a model car for the Minnesota Vikings, a ‘Ford Driving Skills for Life Free National Teen Driver Training Camp’ in Minnesota, and sponsorship of multiple athletic events in Minnesota.”).

16. See *Bandemer*, 931 N.W.2d at 748 (“Ford’s contacts include sales of more than 2,000 1994 Crown Victoria cars—and, more recently, about 200,000 vehicles of all kinds in 2013, 2014, and 2015—to dealerships in Minnesota.”); *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 2019 MT 115, ¶ 17, 443 P.3d 407, 414 (“Ford has thirty-six dealerships in Montana.... It sells automobiles, specifically Ford Explorers—the kind of vehicle at issue in this case—and parts in Montana.”).

17. See *Ford*, 141 S. Ct. at 1023 (“Ford’s own network of dealers offers an array of maintenance and repair services[.]... [Ford] provides [Montana residents] with certified repair, replacement, and recall services.”) (internal quotations omitted); *Bandemer*, 931 N.W.2d at 748 (“Ford has ... certified mechanics ... in Minnesota.”).

18. *Ford*, 141 S. Ct. at 1022. For a discussion of Justice Gorsuch’s concurrence, which seemed to advocate for a relaxation of the “at home” standard such to potentially bring general jurisdiction over Ford back on the table under these facts, see discussion *infra* Part I.B.3.

19. *Ford*, 141 S. Ct. at 1023. The Crown Victoria was originally sold in North Dakota, and the Explorer was originally sold in Washington. *Id.*

20. *Id.* The Crown Victoria and Explorer were designed in Michigan and manufactured in Canada and Kentucky, respectively. *Id.*

21. *Id.* at 1029 (“[The plaintiffs] did not in fact establish, or even allege, [any] causal links.”). Justice Alito nonetheless found causation. *Id.* at 1033-34 (Alito, J., concurring); see also discussion *infra* Part I.B.2.

22. See discussion *infra* Part I.B.2.

reason why courts are concerned with the quantity and quality of a defendant’s contacts with the forum state in determining the propriety of personal jurisdiction is to ensure “that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”²³ Ford’s contacts with Montana and Minnesota being what they were, it would have been absurd to say that it was unjust or offensive to any notion of fairness that Ford defend the suits in those states.²⁴ Particularly absurd because the Supreme Court assumed that personal jurisdiction was proper in this type of case all the way back in 1980 in *World-Wide Volkswagen Corp. v. Woodson*,²⁵ where it said that similarly situated global car company Audi would be subject to personal jurisdiction in Oklahoma under a comparable set of facts.²⁶

The *Ford* Court agreed, unanimous in its determination,²⁷ though split in its reasoning.²⁸ The *Ford* majority bifurcated the “aris[ing] out of or relat[ing] to” requirement, meaning that, for specific jurisdiction to be proper, a claim could either “arise out of” or “relate to” a defendant’s contacts with the forum state, the latter not requiring causation.²⁹ The majority, however, did not clearly define

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

24. *Cf. Ford*, 141 S. Ct. at 1032 (Alito, J., concurring) (“Can anyone seriously argue that requiring Ford to litigate these cases in Minnesota and Montana would be fundamentally unfair?”).

25. 444 U.S. 286, 297 (1980).

26. *See id.* at 297-98 (“[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over [such] a corporation.”). In *World-Wide Volkswagen*, similar to in *Ford*, a car was purchased in one state, New York, and moved by consumers to a different state, Oklahoma, where the plaintiffs got into an accident and subsequently brought a products liability suit. *See id.* at 288.

27. The decision was 8-0; Justice Barrett took no part in the proceedings. *Ford*, 141 S. Ct. at 1022, 1032.

28. In addition to the majority opinion consisting of five justices, Justices Alito and Gorsuch authored concurrences, with Justice Thomas joining the latter. *Id.* at 1032-39. See *infra* Part I.B for a discussion of each of the three opinions.

29. *Ford*, 141 S. Ct. at 1026 (emphasis omitted) (“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.”).

a justiciable test to govern this new “relat[ing] to” specific jurisdiction,³⁰ nor did it delineate its limits.³¹

This Note proposes a test to govern “relating to” specific jurisdiction, a variation on a theme to those familiar with the doctrine: a “sliding scale” approach to contacts and relatedness, accompanied by a separate assessment of reasonableness factors the Supreme Court has outlined in previous cases³² to serve as a check on the sliding scale. Part I of this Note explains the “sliding scale” approach, its unpleasant first interaction with the Court, and its revival by the *Ford* majority. Part II defines this Note’s proposed test and demonstrates its consistency with Supreme Court precedent. Finally, Part III applies this Note’s proposed approach to hypothetical fact patterns falling within the traditional general-specific personal jurisdiction gray area that raise questions that could mark the next developments of “relating to” jurisdiction doctrine.

I. THE SLIDING SCALE AND ITS RELATIONSHIP WITH THE COURT

Professor William M. Richman offered the sliding scale to deal with the precise gray area question the Court faced in *Ford* and will certainly face again in the future:

[W]hether jurisdiction is proper in a case that falls between [general and specific jurisdiction,] where the defendant has

30. See *id.* at 1034 (Gorsuch, J., concurring) (lamenting that the majority decision has left the needed relationship between the defendant’s contacts with the forum and the cause of action to invoke “relat[ing] to” jurisdiction “far from clear”); 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) (“[T]he Court fails to tell us how the assessment [between ‘arise out of’ and ‘relate to’] is made. At what point are contacts sufficient to invoke the ‘relates to’ test?” (footnotes omitted)).

31. See *Ford*, 141 S. Ct. at 1033-34 (Alito, J., concurring) (“[T]he Court assures us that ‘relate to’ ... ‘incorporates real limits’ ... without any indication what those limits might be.” (citations omitted)); *id.* at 1035 (Gorsuch, J., concurring) (“The majority promises that its new test ‘does not mean anything goes,’ but that hardly tells us what does.”).

32. The Court has outlined these factors in cases like *Asahi Metal Industry Co. v. Superior Court of Cal.*, 480 U.S. 102 (1987), *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), and *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957). For a list of these factors and an explanation of how they will interact with the sliding scale in the context of this Note’s proposed test, see *infra* notes 128-36 and accompanying text.

substantial contacts with the forum, but not so many as to justify general jurisdiction, and where the plaintiff’s cause of action does not arise out of the defendant’s forum activities, although it is not totally unrelated to them.³³

The approach proposes blending the requirements of general and specific jurisdiction. General and specific jurisdiction sit at “the two opposite ends of [the] sliding scale.”³⁴ For cases falling between these two ends, the scale weighs “two key variables”: the “extent of the defendant’s forum contacts” and the “proximity of the connection between those contacts and the plaintiff’s claim.”³⁵ The stronger the defendant’s contacts to the forum, the weaker the proximity between the contacts and plaintiff’s claim can be, until you reach the general jurisdiction end of the scale.³⁶ Conversely, weaker forum contacts require a stronger connection between those contacts and the cause of action, leading to the specific jurisdiction end of the scale.³⁷

33. William M. Richman, *A Sliding Scale to Supplement the Distinction Between General and Specific Jurisdiction*, 72 CALIF. L. REV. 1328, 1337 (1984) (review essay). Because lack of personal jurisdiction is a waivable defense, see Fed. R. Civ. P. 12(b)(2), at least one state, Pennsylvania, has tried to solve the traditional jurisdictional gray area problem (with respect to corporate defendants) by requiring nonresident corporations to consent to general personal jurisdiction in the state when registering to do business there. See 42 PA. STAT. AND CONS. STAT. § 5301(a)(2)(i) (West 1981). The Supreme Court recently granted certiorari to determine whether this practice violates due process. See *Mallory v. Norfolk S. Ry. Co.*, 142 S. Ct. 2646 (2022). As an aside, it is not entirely clear whether this practice is unique to Pennsylvania, see *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 564 (Pa. 2021) (saying that “the precise issue ... may be peculiar to Pennsylvania” (emphasis added)), but recent scholarship on the issue suggests that it is. See Charles W. “Rocky” Rhodes, *The Roberts Court’s Jurisdictional Revolution Within Ford’s Frame*, 51 STETSON L. REV. 157, 168 n.71 (2022) (“[Pennsylvania’s] registration statute is unique as the only provision in the nation that explicitly specifies amenability to general jurisdiction is the consequence of registration.”); Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 CARDOZO L. REV. 1343, 1366 (2015) (“Only one state, Pennsylvania, actually purports to directly address the jurisdictional consequences of registering to do business.”).

34. Richman, *supra* note 33, at 1345.

35. *Id.*

36. *Id.*

37. *Id.* For a visualization of Professor Richman’s sliding scale, see *id.* at 1341.

A. *Bristol-Myers Squibb Co. v. Superior Court of California: A Bad First Impression*

Bristol-Myers Squibb Co. v. Superior Court of California marked the Supreme Court's first run-in with the sliding scale.³⁸ In that case, the plaintiffs brought a mass tort suit in California state court against pharmaceutical giant Bristol-Myers over personal injuries allegedly caused by the company's blood-thinning drug Plavix.³⁹ Of the 678 plaintiffs in the suit, 592 of them were not California residents.⁴⁰ With Bristol-Myers not "at home" in California,⁴¹ the question was whether the California court could exercise specific personal jurisdiction over Bristol-Myers with respect to the claims of the non-California plaintiffs.⁴²

Bristol-Myers's contacts with California were unquestionably extensive.⁴³ The relationship between those contacts and the non-residents' claims, however, was not as strong. Although the company sold Plavix in California,⁴⁴ the Plavix the nonresidents ingested was not sold in California, nor was it manufactured, developed, labeled, or packaged there.⁴⁵ The nonresidents also did not obtain Plavix via any California doctor or source, nor did they suffer or get treated for any injuries from the drug in California.⁴⁶ Like in *Ford*, there was no causal link.⁴⁷

The California Supreme Court, using a version of the sliding scale, found there was personal jurisdiction over Bristol-Myers as to the nonresident claims.⁴⁸ Given the wide-ranging nature of

38. See 137 S. Ct. 1773 (2017).

39. See *id.* at 1778.

40. *Id.*

41. See *id.* at 1778, 1780. Bristol-Myers is incorporated in Delaware and has its principal place of business in New York. *Id.* at 1777.

42. See *id.* at 1779.

43. *Id.* at 1778. The company had five of its research facilities in California (employing around 160 employees), and between 2006 and 2012, the company sold 187 million pills of Plavix in California, raking in over \$900 million (accounting for just over 1 percent of the company's nationwide sales revenue). *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. See *supra* notes 19-21 and accompanying text (discussing the lack of a causal link in *Ford*); see also *supra* note 13 and accompanying text (discussing the traditional reading of "arise out of or relate to" as requiring some sort of causal link for specific jurisdiction to lie).

48. *Bristol-Myers*, 137 S. Ct. at 1778-79.

Bristol-Myers’s contacts with the forum,⁴⁹ the California court said it could exercise specific jurisdiction “based on a less direct connection between [Bristol-Myers]’s forum activities and plaintiffs’ claims than might otherwise be required.”⁵⁰ The court concluded that the nonresident claims showed a sufficient connection to Bristol-Myers’s forum contacts because those claims were borne out of the same allegedly defective product and misleading marketing of that product that gave rise to the California plaintiffs’ claims (over which specific jurisdiction was uncontroverted).⁵¹ The court also cited the company’s research and development activity for other drugs in the forum.⁵²

1. Majority Opinion

The United States Supreme Court overturned the decision in an opinion authored by Justice Alito.⁵³ He said the California Supreme Court’s use of the sliding scale was “difficult to square with [the U.S. Supreme Court’s] precedents” and that it “resemble[d] a loose and spurious form of general jurisdiction.”⁵⁴ According to Justice Alito, the “danger” of the sliding scale—as used by the California Supreme Court—was that it allowed a finding that specific jurisdiction was present “without identifying any adequate link between the State and the nonresidents’ claims.”⁵⁵ “What [was] needed—and what [was] missing [in the case],” he explained, “[was] a connection between the forum and the specific claims at issue.”⁵⁶ Because of that, the nonresident claims did not “arise out of or relate to the defendant’s contacts with the forum,” and thus the California Supreme Court incorrectly concluded that personal jurisdiction existed.⁵⁷ However, despite his strong language against the sliding scale—strong to the point some read the opinion as marking the

49. *See supra* note 43 and accompanying text.

50. *Bristol-Myers Squibb Co. v. Superior Ct.*, 377 P.3d 874, 889 (Cal. 2016).

51. *See id.* at 888.

52. *Id.* at 889.

53. *Bristol-Myers*, 137 S. Ct. at 1777.

54. *Id.* at 1781.

55. *Id.*

56. *Id.*

57. *Id.* at 1780-84 (alterations omitted) (emphasis omitted) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)).

sliding scale's demise⁵⁸—Justice Alito “[did] not identify the precise adverse consequences of the sliding-scale approach.”⁵⁹

To be sure, the decision did not solely emanate from any specific disdain toward the sliding scale; there were other considerations doing work under the hood. After discussing the necessary analysis of the quantity and quality of a defendant's contacts in the personal jurisdiction puzzle, Justice Alito discussed the “variety of interests” a court must consider in determining whether it may exercise personal jurisdiction, identifying “the burden on the defendant” as “the primary concern.”⁶⁰ This burden not only includes the practical concerns of having to litigate in the forum, but notably, “it also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question.”⁶¹ Justice Alito did not elucidate further as to what role this played in deciding the case,⁶² but it is not difficult to see why the majority would think California had “little legitimate interest”⁶³ in adjudicating the nonresident plaintiffs' claims: (1) they were nonresidents, so California had no inherent interest in providing them compensation; (2) all the nonresidents suffered and were treated for their injuries in other states, so California had no compensation interest in the form of providing remedy for any injuries within its borders; and (3) all the nonresidents ingested the medicine in other states, so there was no conduct by any of those plaintiffs that California would have an interest in regulating.⁶⁴ In her dissent, Justice Sotomayor called this worry that California was

58. See Rhodes, *supra* note 33, at 180 n.153 (describing *Bristol-Myers* as “rejecting the possibility of a sliding scale between general and specific jurisdiction”); Alexandra Wilson Albright, *Personal Jurisdiction*, 30 APP. ADVOC. 9, 32 (2017) (“The United States Supreme Court [in *Bristol-Meyers*] clearly rejected the sliding scale standard.”); see also Levi M. Klinger-Christiansen, Comment, *The Nexus Requirement After Bristol-Myers: Does “Arise Out of or Relate to” Require Causation?*, 50 SETON HALL L. REV. 1145, 1169 (2020) (“[Justice Alito’s] opinion clearly did not look favorably on the [sliding scale] approach and certainly invalidated its use in a non-causal context.”).

59. Hoffheimer, *supra* note 1, at 519.

60. *Bristol-Myers*, 137 S. Ct. at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

61. *Id.*

62. See Hoffheimer, *supra* note 1, at 518.

63. *Bristol-Myers*, 137 S. Ct. at 1780.

64. See *id.* at 1778; *infra* notes 101-02 and accompanying text (cataloguing the potential “significant interests at stake” for forum states exercising personal jurisdiction and explaining what facts implicate those interests).

seeking to exercise jurisdiction over claims it had no manifest interest in adjudicating—as opposed to any contempt toward the sliding scale—the “animating concern” behind the majority’s decision.⁶⁵

2. *Justice Sotomayor’s Dissent*

Justice Sotomayor alone would have upheld the California Supreme Court’s exercise of jurisdiction.⁶⁶ After addressing Bristol-Myers’s abundant contacts with California, she turned to relatedness.⁶⁷ Rather than require those claims to “arise out of or relate to” Bristol-Myers’s forum contacts (like the majority), she said the nonresident’s claims need only “relate to” those contacts for specific jurisdiction to be invoked.⁶⁸ The nonresident plaintiff’s claims “concern[ed] conduct materially identical to acts the company took in California.”⁶⁹ Justice Sotomayor said the Court’s personal jurisdiction jurisprudence “require[d] no connection more direct than that.”⁷⁰

Justice Sotomayor then turned to the reasonableness of jurisdiction.⁷¹ She explained that the defendant would not be burdened by having to defend the nonresident claims in California because it already had to litigate identical claims from the California plaintiffs.⁷² She also noted the plaintiffs’ “interest in obtaining convenient and effective relief” would be furthered by allowing the consolidation of these claims to minimize court costs.⁷³ Finally, Justice Sotomayor presented the two reasons why she thought California was interested in providing a forum for the nonresidents’ claims: joining the nonresidents to the lawsuit would vindicate California’s purported interests in (1) “facilitat[ing] the efficient adjudication

65. *Bristol-Myers*, 137 S. Ct. at 1788 (Sotomayor, J., dissenting).

66. *Id.* at 1789.

67. *Id.* at 1786.

68. *Id.* (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). Justice Sotomayor defined “relat[ing] to” as “ha[ving] a ‘connection with.’” *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

69. *Id.*

70. *Id.*

71. *Id.* at 1786-87.

72. *Id.* at 1786.

73. *Id.* at 1786-87 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)).

of the residents' claims" and (2) "allow[ing] [California] to regulate more effectively the conduct of ... nonresident corporations like Bristol-Myers."⁷⁴

Although this Note disagrees with Justice Sotomayor's conclusion that California was interested in adjudicating these claims,⁷⁵ her analytical framework was the right one: first, determine the quantity of the defendant's forum contacts; second, analyze relatedness; and third, assess reasonableness.⁷⁶ This Note's proposed standard employs the same structure.⁷⁷

Justice Sotomayor was also right that the majority's decision turned on considerations of reasonableness—that jurisdiction would be unreasonable because California was not interested in providing a forum for the nonresident claims—rather than relatedness.⁷⁸ This vindication comes from the *Ford* Court, which distinguished *Ford* from this case solely based on facts showing jurisdiction was reasonable because the forum states in *Ford* were interested in adjudicating the cases, whereas California, in this case, was not.⁷⁹

*B. Ford Motor Co. v. Montana Eighth Judicial District Court:
The Sliding Scale's Tacit Revival*

Although the *Ford* Court never directly mentioned the sliding scale,⁸⁰ this Note refers to *Bristol-Myers* as the Court's "first" encounter with the sliding scale (as opposed to its only encounter with it) because the *Ford* decision clearly marks a "de facto adoption of the sliding scale approach."⁸¹ Because of "the reach of Ford's Montana and Minnesota contacts,"⁸² the majority lowered the requisite relatedness to find specific jurisdiction from causation to

74. *Id.* at 1787. *But see infra* notes 157-64 and accompanying text (explaining why the interests Justice Sotomayor suggests cannot be considered valid forum state interests attributable to California).

75. *See infra* notes 157-64 and accompanying text.

76. *See Bristol-Myers*, 137 S. Ct. at 1784-87 (Sotomayor, J., dissenting).

77. *See infra* Part II.A.

78. *See Bristol-Myers*, 137 S. Ct. at 1788 (Sotomayor, J., dissenting) (calling this "[t]he majority's animating concern"); *see also supra* note 65 and accompanying text.

79. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1031 (2021); *see also infra* notes 101-02 and accompanying text.

80. *See Ford*, 141 S. Ct. at 1022-32.

81. Borchers et al., *supra* note 30, at 13.

82. *Ford*, 141 S. Ct. at 1029.

a non-causal “relationship” or “connection.”⁸³ Justices Alito and Gorsuch, both concurring in the judgment, would each have preferred different solutions than a sliding scale,⁸⁴ but this Note posits that their respective alternatives may not entirely solve their respective doctrinal gripes with the majority’s approach.⁸⁵

1. *Majority Opinion*

Justice Kagan authored the majority opinion and concluded that Ford was subject to specific jurisdiction in the forum states.⁸⁶ After running through Ford’s “veritable truckload of contacts with Montana and Minnesota,” the discussion turned to what the requisite relationship between those contacts and the plaintiffs’ claims should be for personal jurisdiction over Ford to be proper.⁸⁷ Here, the majority split the “arise out of or relate to” requirement⁸⁸ and did away with requiring a causal link in specific jurisdiction cases.⁸⁹ As the majority put it, “[t]he 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.”⁹⁰

The majority concluded that Ford’s forum contacts—its ads, licensed dealerships, the sales of Ford vehicles, and its certified repair and replacement services—sufficiently “related to” the plaintiffs’ claims.⁹¹ According to the majority, what “underscore[d] the aptness of finding jurisdiction”—that is, what justified demanding only that the plaintiffs’ claims “relate to” Ford’s forum contacts—was “the reach of Ford’s Montana and Minnesota contacts.”⁹² In other words, the majority did precisely what the sliding scale

83. *Id.* at 1032.

84. *See id.* at 1032-39.

85. *See* discussion *infra* Part I.B.2-3.

86. *Ford*, 141 S. Ct. at 1022, 1032.

87. *Id.* at 1023-24, 1031.

88. *Id.* at 1026. Justice Brennan was the first on the Court to argue the “arise out of or relate to” requirement be split. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 425 (1984) (Brennan, J., dissenting).

89. *See Ford*, 141 S. Ct. at 1026 (“[A] causation-only approach finds no support in this Court’s requirement of a ‘connection’ between a plaintiff’s suit and a defendant’s activities.” (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1776 (2017))).

90. *Id.*

91. *Id.* at 1026-29.

92. *Id.* at 1029.

proposes: it inversely shifted the threshold requirement for the relationship between the plaintiff's claims and the defendant's contacts with the forum *in response to the extent of those contacts*.⁹³ The majority lowered the relatedness necessary because Ford's contacts in the fora were so great.⁹⁴ In so doing, the majority breathed life back into the sliding scale that the Court had just "pilloried" in *Bristol-Myers*.⁹⁵

It should also be noted that while its desertion of the causation requirement grabbed the headlines,⁹⁶ equally as important to the majority's decision was the reasonableness of jurisdiction. Rather than analyze reasonableness as a separate piece of the puzzle, the majority sprinkled its reasonableness discussion throughout its relatedness inquiry.⁹⁷ But this did not make the message that jurisdiction was reasonable any less clear: the burden on Ford having to litigate the cases in the forum states was negligible, and Montana and Minnesota were interested in adjudicating these cases.⁹⁸ With respect to Ford's burden, the Court concluded that because Ford "conduct[s] so much business in Montana and Minnesota,"⁹⁹ that burden "can hardly be said to be undue."¹⁰⁰

93. See *supra* notes 33-37 and accompanying text (describing the sliding scale).

94. See *Ford*, 141 S. Ct. at 1028-29; Borchers et al., *supra* note 30, at 15 ("The [*Ford*] majority ... appeared to adopt a sliding scale; the greater the volume of contacts, the more likely they are related to the claim.")

95. Borchers et al., *supra* note 30, at 7-8 ("[The *Ford* Court] inevitably rekindled discussion of a sliding-scale analysis, although it probably will not be called that after the term was pilloried in [*Bristol-Myers*]." (footnote omitted)); see also 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, 600 (2022) ("[T]he [*Ford*] Court appears to recognize a sliding scale (though it will never call it that, given the rejection of the term in *Bristol-Myers*).")

96. See, e.g., Zachary Tripp, Pravin R. Patel, Brian Liegel & Elaina Aquila, *Supreme Court Holds that "But-For" Causation Is Not Required for Specific Jurisdiction*, AM. BAR. ASS'N. (Apr. 8, 2021), https://www.americanbar.org/groups/business_law/publications/blt/2021/04/but-for-causation/ [<https://perma.cc/BF5U-GYSY>]; *The Supreme Court Rejects "Causation-Only" Test for Specific Jurisdiction*, CROWELL (Mar. 26, 2021), <https://www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Supreme-Court-Rejects-Causation-Only-Test-for-Specific-Jurisdiction> [<https://perma.cc/25X8-WQR8>].

97. See *Ford*, 141 S. Ct. at 1026-30.

98. See *id.*

99. *Id.* at 1029.

100. *Id.* at 1030 (internal quotation marks omitted) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

Doctrinally significant, the facts implicating Montana and Minnesota’s interests are what distinguish this case from *Bristol-Myers*. Ford argued that the *Bristol-Myers* decision foreclosed the possibility of personal jurisdiction in the case, but the *Ford* majority explained why it did not: “[T]he [*Ford*] plaintiffs [we]re residents of the forum States. They used the allegedly defective products in the forum States. And they suffered injuries when those products malfunctioned in the forum States.”¹⁰¹ These facts illustrate the “significant interests at stake” for Montana and Minnesota: compensation of their residents, ensuring dangerous defective machinery is not being driven on their roads, and providing recompense for injuries suffered within their borders.¹⁰² Accordingly, the “exercise of jurisdiction is *so* reasonable” in *Ford*.¹⁰³

A quick pit stop is necessary to make a broader doctrinal point. Although the *Ford* majority intertwined its reasonableness and relatedness analyses,¹⁰⁴ it makes more sense to conceptualize forum state interests—and thus the distinction between *Ford* and *Bristol-Myers*—solely as a matter of reasonableness. Whether a state is interested in adjudicating a case has no direct bearing on whether a defendant’s contacts with that state are related to a given cause of action. A state may very well be interested in providing a forum in a case where, for example, one of its residents leaves the state and suffers injury at the hands of a defendant who has no connection whatsoever to that state. The fact that the state is interested in having that case litigated in its courts makes no difference—or, at least, *should* make no difference—as to whether those claims bear any relationship to that defendant’s contacts to that state (which, in this example, happen to be nonexistent). With that, we return to *Ford*.

The overriding assurance the *Ford* majority made is that its creation of “relating to” specific jurisdiction “does not mean anything goes.”¹⁰⁵ This new noncausal specific jurisdiction “incorporates real limits, as it must to adequately protect defendants foreign to a

101. *Id.* at 1031.

102. *Id.* at 1030.

103. *Id.* (emphasis added); *see also id.* at 1029 (“[A]llowing jurisdiction in these cases treats Ford fairly.”).

104. *See id.* at 1026-30.

105. *Id.* at 1026.

forum.”¹⁰⁶ However, as Justices Alito and Gorsuch correctly pointed out in their respective concurrences, the majority did not make clear what those “real limits” entail.¹⁰⁷

2. Justice Alito’s Concurrence

Justice Alito agreed that specific jurisdiction over Ford existed but disagreed with the majority’s bifurcation of the “arise out of or relate to” requirement,¹⁰⁸ disapproving of their “pars[ing of] th[e] phrase as though [they] were dealing with language of a statute.”¹⁰⁹ His chief concern was that the majority announced limits to its new “relating to” jurisdiction without actually identifying what those limits were.¹¹⁰

Justice Alito said that *Ford* “c[ould] and should [have] be[en] decided without any alteration or refinement” of the Court’s jurisprudence.¹¹¹ However, notwithstanding the veracity of this statement, scholars were quick to note that Justice Alito’s solution did not come without doctrinal “alteration” and “refinement” of its own.¹¹²

Justice Alito argued the Court should have retained a causation requirement.¹¹³ And to satisfy that requirement he wished to preserve, Justice Alito found a causal link between the suits and Ford’s forum activities, but only a “rough causal connection,”¹¹⁴ one that was “causal in a broad sense of the concept.”¹¹⁵ He said that it was “reasonable to infer” that the cars in question would not have been

106. *Id.*

107. *See id.* at 1033-34 (Alito, J., concurring); *id.* at 1035 (Gorsuch, J., concurring).

108. *See id.* at 1033 (Alito, J., concurring) (“[Splitting the ‘arise out of or relate to’ requirement] is unnecessary and, in my view, unwise.... Recognizing ‘relate to’ as an independent basis for specific jurisdiction risks needless complications.”).

109. *Id.* (internal quotation marks omitted) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979)).

110. *See id.* at 1033-34 (“[T]he Court assures us that ‘relate to’ ... ‘incorporates real limits’ ... without any indication what those limits might be.”).

111. *Id.* at 1032.

112. *See* Borchers et al., *supra* note 30, at 13 (“Justice Alito’s causation requirement is just as much a ‘refinement’ of the case law as the majority’s splitting of the ‘arise out of or relate to’ phrase.”).

113. *Ford*, 141 S. Ct. at 1033-34 (Alito, J., concurring).

114. *Id.* at 1034.

115. *Id.* at 1033.

on the roads in Minnesota and Montana had Ford been an unknown brand that had no contacts with the fora and that the purpose of Ford’s forum contacts was to put more Fords on the roads there.¹¹⁶ It is difficult to argue with this conclusion, but a standard forged by “broad[ening the] sense of the concept”¹¹⁷ of causation could just as quickly devolve into no standard at all. After all, at a certain level of generality, a limitless number of events can be said to bear a “rough causal connection”¹¹⁸ to another.¹¹⁹ Although Justice Alito is correct that the majority’s approach lacks clear limits (and this Note accordingly proposes a test with limits), his approach may not solve that problem.

3. Justice Gorsuch’s Concurrence

Justice Gorsuch, similar to Justice Alito, criticized the majority’s splitting of the “arising out of or relating to” requirement.¹²⁰ Specifically, he took issue with the majority’s characterization of the requisite relatedness between Ford’s forum contacts and the plaintiffs’ claims as a “relationship,” “affiliation,” and “connection.”¹²¹ Justice Gorsuch complained this “assortment of nouns” leaves the necessary relatedness to confer “relating to” jurisdiction “far from clear.”¹²²

Rather than solve the traditional jurisdictional gray-area problem by extending specific jurisdiction past the causal barrier as the majority did, it seems Justice Gorsuch would instead argue to extend general jurisdiction by relaxing the “at home” standard for general jurisdiction over corporations.¹²³ But if the argument against the majority’s new “relating to” jurisdiction is that there is a lack of

116. *Id.*

117. *See id.*

118. *Id.* at 1034. Justice Alito argued that requiring a “sort of rough causal connection” would “limit[] the potentially boundless reach of ‘relat[ing] to’ jurisdiction. *Id.*”

119. *See id.* (Gorsuch, J., concurring) (“As every first year law student learns, a but-for causation test isn’t the most demanding. At a high level of abstraction, one might say any event in the world would not have happened ‘but for’ events far and long removed.”).

120. *Id.* at 1034-36.

121. *Id.* at 1034.

122. *Id.* at 1034-35.

123. *See id.* at 1034 (“If it made sense to speak of a corporation having one or two ‘homes’ in 1945, it seems almost quaint in 2021 when corporations with global reach often have massive operations spread across multiple States.”).

clarity,¹²⁴ it should be noted that the more relaxed, pre-“at home” standard for general jurisdiction over corporations—the “continuous and systematic” contacts test—was itself notoriously unclear.¹²⁵ Also unclear is why any solution to the jurisdictional gray-area problem should be solely limited to suits involving corporate defendants, even if cases falling into the gray area involving individual defendants are less common.

II. DEFINING THE REVIVED SLIDING SCALE’S “REAL LIMITS” TO SQUARE IT WITH COURT PRECEDENT

First, the *Ford* decision necessitates a slight semantic tweak of the traditional sliding scale. General jurisdiction and specific jurisdiction marked the two opposite ends of Professor Richman’s sliding scale,¹²⁶ but because the *Ford* Court held *Ford* was subject to *specific* jurisdiction in Montana and Minnesota in a case *falling within* those two opposite ends,¹²⁷ this can no longer be the case. Rather, the ends of the sliding scale must now be general jurisdiction at one extreme and specifically *causal* “*arising out of*” specific jurisdiction at the other, with the noncausal “relating to” specific jurisdiction making up the space in between.

With that linguistic edit in mind, this Section fleshes out this Note’s proposed sliding scale-plus-reasonableness factors approach to govern “relating to” jurisdiction. Section II.A first sets forth the reasonableness factors courts would consider. Then, Section II.A shows how those factors fit into the proposed approach by arranging the approach’s methodological steps and explaining how the

124. See *id.* at 1034-35 (“[T]he majority’s new test risk[s] adding new layers of confusion to our personal jurisdiction jurisprudence.”).

125. See, e.g., Borchers et al., *supra* note 30, at 16 (“[T]he pre-*Goodyear* tests for ‘continuous and systematic’ contacts, which [Justice Gorsuch’s desired] search for additional corporate homes would likely resemble, were also unclear.”); Andrews, *supra* note 7, at 1001 (“[C]ourts and commentators for decades labored to apply [the] vague ‘continuous and systematic’ standard.”); PETER HAY, PATRICK J. BORCHERS, SYMEON C. SYMEONIDES & CHRISTOPHER A. WHYTOCK, CONFLICT OF LAWS 381-82 (6th ed. 2018) (“[The ‘continuous and systematic’ standard] left open important questions. One obvious one [wa]s the definition of those terms. The words themselves ... d[id] not lend themselves to any bright-line test.... Unfortunately, as one might expect with a lack of clear ... Supreme Court guidance, conflicting authorities abounded[, and] lower courts [were] left at sea.”).

126. See *supra* note 34 and accompanying text.

127. See *Ford*, 141 S. Ct. at 1032.

sliding scale inquiry and the reasonableness factors interact (including how the factors can limit “relating to” jurisdiction). Finally, Section II.A presents practical and doctrinal rationales for the proposed setup. Sections II.B and II.C apply the proposed approach to *Bristol-Myers* and *Ford*, respectively, and display the approach’s consistency with both decisions.

A. Recommending the Reasonableness Factors as the Revived Scale’s “Real Limits,” with Rationales

Regarding what the “real limits” of “relating to” jurisdiction should be, this Note proposes that the Court employ reasonableness factors it has outlined in prior personal jurisdiction cases. A court should consider: (1) the forum state’s interest in adjudicating the case,¹²⁸ (2) the burden on the defendant to litigate in the forum,¹²⁹ (3) the burden on the plaintiff to go to the defendant’s home or a more obvious state to litigate,¹³⁰ (4) the location of the crucial evidence and witnesses,¹³¹ and (5) “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.”¹³²

These factors should be a separate element of “relating to” jurisdiction, enlisted only *after* first analyzing the two variables of the sliding scale. Thus, the running order for courts in evaluating whether “relating to” jurisdiction exists would be as follows: (1) identify the defendant’s forum contacts to determine how close a relationship between those contacts and the plaintiff’s claim the

128. See, e.g., *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 113 (1987) (plurality opinion); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957).

129. See, e.g., *Asahi*, 480 U.S. at 113 (plurality opinion); *Burger King*, 471 U.S. at 477; *World-Wide Volkswagen*, 444 U.S. at 292; *McGee*, 355 U.S. at 223.

130. See, e.g., *McGee*, 355 U.S. at 223 (outlining the query as being whether it would “severe[ly] disadvantage” the plaintiff by requiring travel to “a distant State” or if they “could not afford the cost of bringing an action in a foreign forum”); *World-Wide Volkswagen*, 444 U.S. at 292 (characterizing this factor as “the plaintiff’s interest in obtaining convenient and effective relief”).

131. See, e.g., *McGee*, 355 U.S. at 223.

132. *Burger King*, 471 U.S. at 477 (internal quotations omitted) (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

sliding scale demands; (2) appraise the relationship between those contacts and the plaintiff's claim to determine if it meets the requisite relatedness to satisfy the sliding scale theory; then, if the sliding scale theory was satisfied, or it was a close case, (3) assess reasonableness. If, after step two, a court determined the sliding scale theory was clearly *not* satisfied, then there would be no need to proceed to step three: the case would be over—there would be no “relating to” jurisdiction.¹³³

There are three canons to outline the authority this Note gives (and does not give) the reasonableness factors within its proposed test, all consistent with how the Supreme Court has utilized reasonableness formulations in “arising out of” jurisdiction cases past. First (and hinted at in the preceding paragraph), the reasonableness factors cannot on their own create jurisdiction in a case where the defendant's contacts with the forum are not of sufficient quantity and quality to fall within the province of the sliding scale.¹³⁴ Second, when a court is on the fence as to whether a case falls within the sliding scale's ambit, the reasonableness factors may tip the scale in either direction.¹³⁵ Finally, even when it is obvious that the requirements of the sliding scale are satisfied, the reasonableness factors, if they reveal that jurisdiction would be so *unreasonable*, can defeat jurisdiction on their own.¹³⁶

Explicitly adopting the reasonableness factors in this way serves three important goals. The first is administrability. The Court is

133. See *infra* note 134 and accompanying text (explaining that the reasonableness factors do not have the power to create “relating to” jurisdiction by themselves in a case that fails the sliding scale inquiry).

134. See *World-Wide Volkswagen*, 444 U.S. at 294 (“Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.”); *supra* note 133 and accompanying text.

135. See *Burger King*, 471 U.S. at 477 (“[Reasonableness] considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.”).

136. See *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 113-16 (1987) (plurality opinion); *id.* at 116 (Brennan, J., concurring in part and concurring in the judgment) (explaining that considerations of reasonableness may defeat jurisdiction if they show that the forum's exercise of jurisdiction would skirt the “minimum requirements inherent in the concept of fair play and substantial justice” (internal quotation marks omitted)).

concerned with the justiciability of its tests at the lower levels.¹³⁷ Cogently spelling out the steps and factors a lower court is to follow in determining whether they can exercise “relating to” jurisdiction will undoubtedly make those courts’ jobs easier. The *Ford* majority’s failure to clearly demonstrate the steps courts should take in this respect did not go unnoticed by scholars.¹³⁸ Adopting the reasonableness factors also makes clear two doctrinal details the *Ford* Court left very much in flux: (1) precisely *how* the reasonableness of “relating to” jurisdiction is to be assessed and (2) that these factors are a separate element of “relating to” jurisdiction.¹³⁹ In essence, this Note’s approach forges a workable sliding scale while saving a place for the reasonableness factors more generally.

Second, employing the reasonableness factors as a check on the sliding scale quells concerns that have kept courts from adopting the sliding scale approach in the past. One of the arguments¹⁴⁰ against the “melt[ing] together” of general jurisdiction and (causal) specific jurisdiction that the sliding scale proposes is that it would “severely weaken[] the defendant’s ability to anticipate the jurisdictional consequences of its conduct.”¹⁴¹ Because the sliding scale “considers all of a defendant’s contacts with a forum in determining the appropriate level of relatedness that must exist between a claim and a defendant’s contacts,” the argument goes, a defendant with abundant contacts with a forum “would have to compensate ... by giving up some of its ability to predict what types of claims it may be sued for in the forum.”¹⁴² Thus, the traditional sliding scale risks

137. See, e.g., *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1034 (2021) (Alito, J., concurring) (“doubt[ing] that the lower courts will find” the majority opinion “terribly helpful” in determining whether they can exercise “relating to” jurisdiction over a defendant).

138. See Borchers et al., *supra* note 30, at 20 (calling the “[m]ost frustrating” part of the *Ford* majority opinion its “lack of attention to methodology”).

139. See Freer, *supra* note 95, at 603; Borchers et al., *supra* note 30, at 20-21.

140. For this argument in full, see Linda Sandstrom Simard, *Meeting Expectations: Two Profiles for Specific Jurisdiction*, 38 IND. L. REV. 343, 366 (2005).

141. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 583 (Tex. 2007) (quoting Simard, *supra* note 140, at 366); see also *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1078-79 (10th Cir. 2008) (“By eliminating the distinction between contacts that are sufficient to support any suit and those that require the suit be related to the contact, it also undermines the rationale for the relatedness inquiry: to allow a defendant to anticipate his jurisdictional exposure based on his own actions.” (citing Simard, *supra* note 140, at 366)).

142. Simard, *supra* note 140, at 366.

undermining the “underlying rationale[s]” of general and specific jurisdiction, which are “predicated largely upon the concept of expectation.”¹⁴³

However, because the reasonableness factors can deprive a court of jurisdiction on their own under this Note’s proposed approach, a defendant knows the inquiry into whether it can be haled into a state’s courts under a “relating to” jurisdiction theory does not end with the determination that the sliding scale theory is satisfied.¹⁴⁴ A court would also analyze reasonableness, looking at, among other things, whether the defendant’s conduct’s effects give rise to a forum state interest and the location of the witnesses and evidence that can attest to the effects of that conduct.¹⁴⁵ The *Ford* majority specifically discussed the direct correlation between reasonableness and predictability; where jurisdiction is reasonable, it is also predictable.¹⁴⁶ So, the reasonableness factors, as the sliding scale’s “real limits,” operate as an extra—and constitutionally adequate—layer of protection for defendants’ jurisdictional expectations. Put another way, by allowing a defendant to anticipate the jurisdictional consequences of its conduct through the lens of *both* (1) the sliding scale theory *and* (2) the reasonableness factors, this Note’s proposed test sufficiently “allows [a defendant] to ‘structure [its] primary conduct’ to lessen or even avoid the costs of state-court litigation.”¹⁴⁷

Finally, and most importantly, adopting the reasonableness factors in this capacity creates a test for assessing “relating to” jurisdiction that produces results consistent with the Court’s decisions in *Bristol-Myers* and *Ford*. Consider the following illustrations.

B. Applying the Revived Sliding Scale to Bristol-Myers

First up: applying this Note’s sliding scale-plus-reasonableness factors approach to the facts of *Bristol-Myers*. The prefatory finding is that there is no causal link between Bristol-Myers’s forum

143. *Id.*

144. *See supra* notes 128-36 and accompanying text.

145. *See supra* notes 128-32 and accompanying text.

146. *See Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1030 (2021) (“Precisely because th[e] exercise of jurisdiction is so reasonable, it is also predictable.”).

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

contacts and the nonresident plaintiffs’ claims.¹⁴⁸ This precludes any “arising out of” discussion and brings the case into the realm of “relating to.” The next step is to run through the sliding scale’s two inquiries—the breadth of forum contacts and the relationship between those contacts and the claims at issue. With respect to the first question, as both the U.S. and California Supreme Courts concluded, Bristol-Myers’s contacts with the forum were extraordinarily strong.¹⁴⁹ This conclusion—based on the company’s five research facilities in the forum and its drug sales in the state exceeding \$900 million in revenue from 2006 to 2012¹⁵⁰—slides the case extremely close to the “general jurisdiction” end of the scale, immensely lowering the requisite relatedness between those contacts and the nonresident claims needed to find jurisdiction.

With respect to relatedness, Bristol-Myers’s conduct in California certainly “relates to” the nonresident claims, albeit somewhat tenuously. Bristol-Myers’s forum contacts mirror its conduct in other states the claims causally “arose out of.” The company engaged in the *exact same conduct*—marketing, shipping, and selling Plavix to customers—in California that it did in the other states.¹⁵¹ Although, to be sure, this relationship could be stronger, it is nevertheless sufficient to clear the low relatedness bar set by the breadth of Bristol-Myers’s forum contacts. The sliding scale theory is satisfied here.

From there, the analysis turns to the reasonableness factors. The first factor, whether the forum state has an interest in adjudicating this case, was discussed above in Part I.A.1.¹⁵² To recap, California clearly had no valid interest here. The plaintiffs at issue were *non-Californians* who suffered all their injuries *outside of California*;¹⁵³ California’s compensation interest was thus implicated neither on the basis of plaintiff state citizenship nor on the state’s desire to recompense any injuries felt within its borders.¹⁵⁴ Further, none of the plaintiffs ingested Plavix in California,¹⁵⁵ so California’s

148. See *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1778-80 (2017).

149. See *id.* at 1777-78.

150. *Id.* at 1778; *supra* note 43 and accompanying text.

151. See *Bristol-Myers*, 137 S. Ct. at 1778.

152. See *supra* notes 60-64 and accompanying text.

153. *Bristol-Myers*, 137 S. Ct. at 1778.

154. See *supra* note 64 and accompanying text.

155. *Bristol-Myers*, 137 S. Ct. at 1778.

regulatory interest in ensuring that dangerous defective medicine was not being used within its borders also failed to materialize.¹⁵⁶

Justice Sotomayor's two arguments for why California *was* interested in adjudicating the nonresident claims¹⁵⁷ are both untenable. With respect to her first argument—her appeal to California's purported interest in “facilitat[ing] the efficient adjudication of the residents' claims”¹⁵⁸—recall that the “interest in obtaining the most efficient resolution of controversies” is not an interest of *any one state*; rather, it is the interest of “the interstate judicial system” *as a whole*.¹⁵⁹ “[T]he interstate judicial system's interest”¹⁶⁰ is *its own* reasonableness factor, distinct from the forum state's interest in adjudicating the suit at hand.¹⁶¹ So her first argument falls. This Note must also reject Justice Sotomayor's second argument—that California has a valid interest in “allow[ing] [itself] to regulate more effectively the conduct of ... nonresident corporations like Bristol-Myers”¹⁶²—because this will *always* be the case. The logic is cyclical: a forum state will *always* be able to “regulate more effectively the conduct of”¹⁶³ *any defendant* if it can exercise personal jurisdiction over them. This cannot then operate as a basis for supporting a finding of jurisdiction. If *every single case* has, in effect, an already-built-in valid state interest, the reasonableness factors will not be able to “adequately protect defendants foreign to a forum.”¹⁶⁴

If the reasonableness factors are to have any bite, valid state interests cannot be nebulous. A court's state-interest inquiry should accordingly home in on the three valid, concrete interests the *Ford* majority identified.¹⁶⁵ Because none of those interests are implicated

156. See *supra* note 64 and accompanying text.

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

158. *Id.*

159. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985) (internal quotation marks omitted) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

160. *Id.*

161. See *supra* notes 128-32 and accompanying text.

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

163. *Id.*

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

165. A court should ask: (1) Is the plaintiff a resident of the forum State, meaning the forum State has a compensation interest? (2) Was the plaintiff injured in the forum State, giving rise to a compensation interest? (3) Did the plaintiff use the allegedly defective product in the forum State (or something analogous, if a different type of case), meaning the forum has

here, California has no valid interest in adjudicating this case. This heavily weighs against jurisdiction.

The second factor—the burden on the defendant litigating in the forum—weighs in favor of finding jurisdiction. Bristol-Myers Squibb is a pharmaceutical behemoth;¹⁶⁶ it would face no real practical burden litigating in California, to say nothing of the fact that it was already in California litigating the resident claims.

The third factor—the burden on the plaintiffs to go to the defendant’s home or a more obvious state to litigate—does not tell us much. To be sure, the most obvious and convenient states for these plaintiffs to bring their respective claims would be their respective home states. For some of these nonresident plaintiffs (certainly those living east of the Mississippi), litigating in the states where Bristol-Myers is “at home”—Delaware or New York¹⁶⁷—very well may also be less burdensome since those states are closer to them than is California. This factor, however, is also impacted by the fact that this was a mass tort suit. For some of these plaintiffs, litigating in California would have been more convenient (notwithstanding geographical considerations) because they could have pooled funds and spent less money litigating the case. In short, this factor is a wash.

The fourth factor—the location of witnesses and evidence—clearly counsels against jurisdiction. The crucial witnesses and evidence here were those that could testify to the status of the allegedly defective medicine and the injuries the plaintiffs suffered. These witnesses and pieces of evidence would be in the states where the plaintiffs received and ingested the medicine, which in the case of *every single* nonresident plaintiff was *not California*.¹⁶⁸

The fifth factor is something of a catch-all that will not always play a substantial role, but it does here. There are very real concerns that the nonresident plaintiffs were forum shopping in this case, trying to sue in California as they viewed it as plaintiff-

a regulatory interest? *See id.* at 1030-31; *supra* notes 101-02 and accompanying text. The exhaustivity of this list will, one would imagine, be the subject of future litigation.

166. *See, e.g., Bristol-Myers*, 137 S. Ct. at 1777.

167. *Id.*

168. *See, e.g., supra* notes 45-46 and accompanying text.

friendly.¹⁶⁹ It is undoubtedly in “the shared interest of the several States” to prevent litigants from forum shopping, “furthering [the] fundamental substantive social polic[y]”¹⁷⁰ of encouraging fair litigation practices. And although it could be said that consolidating the nonresident and resident claims into one suit would further “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies,”¹⁷¹ the very palpable, very serious unease over forum shopping here completely overpowers and nullifies that point. This factor thus weighs against the nonresident plaintiffs as well.

Here, three of the reasonableness factors *entirely* weigh against jurisdiction, and only one weighs in favor. Yes, the defendant would not have faced any practical burden to defend the suit in the forum, but the forum state had *no interest* in adjudicating the suit, the crucial witnesses and evidence were *all elsewhere*, and the plaintiffs appeared to be forum shopping.¹⁷² The reasonableness factors weigh so heavily against jurisdiction here that it shows California exercising jurisdiction would violate the “minimum requirements inherent in the concept of fair play and substantial justice.”¹⁷³ As such, this is a case where the reasonableness factors defeat “relating to” jurisdiction even though the sliding scale theory is satisfied.¹⁷⁴

169. See *Ford*, 141 S. Ct. at 1031 (“[T]he [nonresident] plaintiffs [in *Bristol-Myers*] were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State.”).

170. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985) (internal quotation marks omitted) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

171. *Id.* (internal quotation marks omitted) (quoting *World-Wide Volkswagen*, 444 U.S. at 292); see also *Bristol-Myers*, 137 S. Ct. at 1787 (Sotomayor, J., dissenting) (arguing, in effect, this point, although incorrectly attributing this interest to California).

172. See *Bristol-Myers*, 137 S. Ct. at 1781-83.

173. *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 116 (1987) (Brennan, J., concurring in part and concurring in the judgment (internal quotation marks omitted)).

174. See *supra* note 136 and accompanying text; cf. *Asahi*, 480 U.S. at 105, 113-16 (plurality opinion); *id.* at 116 (Brennan, J., concurring in part and concurring in the judgment). In *Asahi*, the U.S. Supreme Court reversed the California Supreme Court’s exercise of personal jurisdiction over *Asahi*, a Japanese company, because after “[c]onsidering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State,” the U.S. Supreme Court concluded that “the exercise of personal jurisdiction by a California court over *Asahi* in this instance would be unreasonable and unfair.” *Id.* at 116 (plurality opinion); see also *id.* (Brennan, J., concurring in part and concurring in the judgment) (“This is one of those rare cases in which ‘minimum requirements inherent in the concept of ‘fair play and substantial justice’ ... defeat the reasonableness of jurisdiction even [though] the defendant has purposefully engaged in forum activities.” (quoting *Burger King*,

The factors limit the exercise of “relating to” jurisdiction, and this Note’s approach generates the same result the Court reached in *Bristol-Myers*.

And beyond the same result, their rationales are reconcilable too. Once *Bristol-Myers* is understood as turning on considerations of reasonableness, it is very easy to recognize Justice Alito’s vague appeal to there being no “connection” or “adequate link” between the claims and the forum (which may originally have been seen as a paean to relatedness) as based on reasonableness considerations as well.¹⁷⁵ The missing “adequate link” was a fact that would have given rise to a state interest: the harm occurring in California, the plaintiffs being California residents, or the plaintiffs ingesting the medicine in California.¹⁷⁶ If California had clearly been the most natural state to bring the suit or if there were witnesses and evidence to testify to the merits of the case in California, there likely would have been a sufficient “connection between the forum and the specific claims at issue.”¹⁷⁷

C. Applying the Revived Sliding Scale to Ford

Because there is no causal link between Ford’s contacts and the claims (nor any such allegation from the plaintiffs),¹⁷⁸ the only valid theory for specific jurisdiction is “relating to” jurisdiction. Enter the sliding scale. Like *Bristol-Myers*, and as discussed above, Ford’s forum contacts were vast.¹⁷⁹ Again, this case sits near the “general jurisdiction” end of the scale; the necessary relatedness between Ford’s forum contacts and the claims is thus very low.¹⁸⁰

Continuing the similarities with *Bristol-Myers*,¹⁸¹ Ford had forum contacts mirroring contacts it had in other states, and those contacts

471 U.S. at 477-78)).

175. See *Bristol-Myers*, 137 S. Ct. at 1781; *supra* notes 55-56 and accompanying text.

176. *Bristol-Myers*, 137 S. Ct. at 1781-82; see *supra* notes 101-02 and accompanying text (identifying facts that implicate valid forum state interests).

177. *Bristol-Myers*, 137 S. Ct. at 1781.

178. See *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1029 (2021) (“The plaintiffs here did not in fact establish, or even allege, [any] causal links.”).

179. See *id.* at 1031 (“Ford has a veritable truckload of contacts with Montana and Minnesota, as it admits.”); *Bristol-Myers*, 137 S. Ct. at 1777-78; *supra* notes 15-17 and accompanying text.

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

181. See *supra* note 151 and accompanying text.

in those other states furnished links in the respective chains leading to the plaintiffs' injuries.¹⁸² Ford sold the *exact same* models of cars in the forum states as it did in the other states which eventually made their way to the plaintiffs and allegedly caused their injuries.¹⁸³ These parallel contacts clearly "relate to" the claims, although similarly tenuously to how the parallel contacts did in *Bristol-Myers*.¹⁸⁴

Also "related to" the plaintiffs' claims were Ford's advertising and certified repair services in the forum states. The purpose of these contacts in the forum states was to encourage the residents of those states to become Ford drivers,¹⁸⁵ and Ford succeeded in this with respect to the plaintiffs.¹⁸⁶ And although the plaintiffs did not allege that their purchases of the cars—and, by extension, their injuries—causally "arose out of" Ford's advertising, six of the Justices explicitly noted that ads in a given state *could be* the reason why a resident of that state chooses to buy a Ford, whether that purchase be from a dealership or second-hand.¹⁸⁷ Ford's forum contacts

182. See *supra* note 16 and accompanying text.

183. See *supra* note 16 and accompanying text.

184. See *supra* note 151 and accompanying text (describing the parallel contacts in *Bristol-Myers*).

185. See *Ford*, 141 S. Ct. at 1028 ("[B]y making it easier to own a Ford, [Ford] encourage[s] Montanans and Minnesotans to become lifelong Ford drivers."); *id.* at 1033 (Alito, J., concurring) ("The whole point of [Ford's forum] activities was to put more Fords (including those in question here) on Minnesota and Montana roads.").

186. See *id.* at 1023 (majority opinion).

187. The six Justices were the five in the majority plus Justice Alito. See *id.* at 1022, 1029 ("[T]he owners of these cars might never have bought them, and so these suits might never have arisen, except for Ford's contacts with their home States. Those contacts might turn any resident of Montana or Minnesota into a Ford owner—even when he buys his car from out of state. He may make that purchase because he saw ads for the car in local media."); *id.* at 1033 (Alito, J., concurring) ("It is reasonable to infer that the vehicles in question here would never have been on the roads in Minnesota and Montana if they were some totally unknown brand that had never been advertised in those States."). The majority and Justice Alito also said that the existence of repair services in the state could play a role in the decision to buy a Ford. *Id.* at 1029 (majority opinion) ("[A]ny resident of Montana or Minnesota ... [, in deciding to purchase a Ford,] may [also] take into account a raft of Ford's in-state activities designed to make driving a Ford convenient there: that Ford dealers stand ready to service the car; that other auto shops have ample supplies of Ford parts; and that Ford fosters an active resale market for its old models."); *id.* at 1033 (Alito, J., concurring) ("It is [also] reasonable to infer that the vehicles in question here would never have been on the roads in Minnesota and Montana if they ... would not be familiar to mechanics in those States ... and could not have been easily repaired with parts available in those States.").

sufficiently “relate to” the claims. The low relatedness bar is surpassed; the sliding scale theory is satisfied.

Now to the reasonableness factors. As discussed above, the forum states were obviously interested in adjudicating the respective cases. “[T]he plaintiffs are residents of the forum States. They used the allegedly defective products in the forum States. And they suffered injuries when those products malfunctioned in the forum States.”¹⁸⁸ All three of these facts trigger valid state interests.¹⁸⁹

Like *Bristol-Myers*, any practical burden Ford—an international company—would face litigating in the forum states is minimal.¹⁹⁰ Conversely, it would have been burdensome for the plaintiffs to have to travel to Ford’s “homes” (Michigan or Delaware) to bring suit; it was obviously much more convenient for them to sue in the forum states, the states where they reside and were injured.¹⁹¹ The crucial evidence and witnesses that could attest to the alleged malfunctions of the vehicles and the extent of the plaintiffs’ injuries were all in the forum states where, again, the accidents occurred and the plaintiffs suffered their injuries.¹⁹² All these factors tell us as well that bringing these suits in the forum states would best vindicate “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies.”¹⁹³

All five factors reiterate the *Ford* majority’s message: “th[e] exercise of jurisdiction is so reasonable” in this case.¹⁹⁴ Here, the sliding scale theory is satisfied, and jurisdiction is reasonable. Thus, the exercise of “relating to” jurisdiction over Ford is appropriate.

This Note’s approach returns results congruent with the Court’s “relating to” jurisdiction precedents. The sliding scale may well have been “loose and spurious” as applied by the California Supreme Court in *Bristol-Myers*.¹⁹⁵ However, based on the foregoing

188. *Id.* at 1031 (majority opinion).

189. *See supra* notes 101-02 and accompanying text.

190. *See Ford*, 141 S. Ct. at 1029-30 (concluding that any burden on Ford “c[ould] ‘hardly be said to be undue’” because Ford “conduct[s] so much business in Montana and Minnesota” (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945))).

191. *See id.* at 1022, 1031 (“[E]ach of the plaintiffs brought suit in the most natural State [to do so].”).

192. *See id.* at 1023.

193. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-77 (1985) (internal quotations omitted) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

194. *Ford*, 141 S. Ct. at 1030 (emphasis added).

195. *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1781 (2017).

illustrations, this Note contends that employing the reasonableness factors as the “real limits” to the sliding scale’s application sufficiently tightens and authenticates the sliding scale approach.¹⁹⁶

III. THE SLIDING SCALE GOING FORWARD: APPLYING THIS NOTE’S APPROACH TO THE NEXT QUESTIONS THE COURT MAY FACE

For all the “relating to” jurisdiction questions the *Bristol-Myers* and *Ford* decisions answer, they pose just as many. Chief among those: how should lower courts determine if “relating to” jurisdiction is proper in the myriad of other categories of cases where there is some relationship—but no causation—between a defendant’s forum contacts and the plaintiff’s cause of action?

This Section tries the revived sliding scale’s hand at two such cases. The first case would be a very logical successor to *Ford* and *Bristol-Myers*: a case where a plaintiff brings suit in their home state after suffering injury away from home, in a different state.¹⁹⁷ The second is a variation on *Ford* offered by the *Ford* majority itself,¹⁹⁸ a case where *Ford* still sold and marketed its cars in Minnesota and Montana, but not the precise models involved in the respective suits.¹⁹⁹

A. Road Trip: Cases Where Plaintiffs Are Injured Away from Home

In *Bristol-Myers*, the plaintiffs were nonresidents and injured outside the forum, and jurisdiction was improper.²⁰⁰ In *Ford*, the plaintiffs were residents and injured inside the forum, and jurisdiction was proper.²⁰¹ This elicits the natural follow-up question, which post-*Ford* literature has been quick to raise²⁰²: is jurisdiction proper when the plaintiff is a resident but was injured outside the forum?

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

197. See *infra* Part III.A.

198. See *Ford*, 141 S. Ct. at 1028.

199. See *infra* Part III.B.

200. 137 S. Ct. at 1782-84.

201. 141 S. Ct. at 1031-32.

202. See, e.g., Borchers et al., *supra* note 30, at 21-24.

To answer, consider a slight variation on *Ford*. Assume all the facts remain the same as in *Ford* prime, except the Minnesota plaintiff drove his Ford into neighboring Iowa and was injured there. The sliding scale inquiry, remaining the same as well, is satisfied.

The focus turns to reasonableness. Although the injury occurred outside of the forum, two of the three state interests implicated in *Ford* prime arise in this variation as well: there still is a Minnesota resident plaintiff, and the car at issue was driven in Minnesota. To be sure, Minnesota has an interest in making sure that defective vehicles are not being driven on its roads, and Minnesota does not relinquish that interest just because it was lucky enough that the defect did not manifest within its borders.²⁰³ *Ford* is not burdened by litigating in Minnesota.²⁰⁴ Conversely, the Minnesota plaintiff would certainly have a much more difficult time litigating in *Ford*'s home states.²⁰⁵ The crucial evidence is split across Minnesota and Iowa. Witnesses and evidence in Minnesota are the best to testify to the pre-accident status of both the car and the plaintiff. The principal evidence and witnesses of the accident and defect in the car would be in Iowa. Iowa would also have evidence and witnesses to the plaintiff's injuries. If the plaintiff returned to Minnesota to recover from his injuries, then there would be evidence there as well. Allowing this case to be brought in Minnesota would also go toward vindicating “the interstate judicial system's interest in obtaining the most efficient resolution of controversies.”²⁰⁶

As this is a case where the sliding scale theory is satisfied, the only question is whether the factors show that “relating to” jurisdiction would be so unreasonable that they defeat jurisdiction on their own.²⁰⁷ That clearly is not the case here. Though not as reasonable as *Ford* prime, jurisdiction is still plenty reasonable in this variation. In fact, all five factors at least partially weigh in favor of jurisdiction: the forum is interested in adjudicating the case, the defendant will not be burdened by litigating in the forum, the

203. See *Ford*, 141 S. Ct. at 1030.

204. See *id.* at 1026.

205. See *id.* at 1030.

206. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-77 (1985) (internal quotations omitted) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)).

207. See *supra* notes 134-36 and accompanying text (outlining how the sliding scale and reasonableness factors interact).

plaintiff would be burdened by litigating elsewhere, the forum is home to roughly half of the crucial evidence and witnesses, and, consequently, it would be efficient to resolve the case in Minnesota.²⁰⁸

This is a quite straightforward answer in the affirmative under this Note's reworked sliding scale. However, because of the farrago of doctrine and methodology left behind by the *Bristol-Myers* and *Ford* Courts, the scholarly conclusion is that courts "do not have clear guidance" on how to confront "these very common fact patterns."²⁰⁹ The administrability of this Note's approach shines through here.

B. The Road Not Travelled by the Ford Majority

The *Ford* majority asked readers to contrast a case "in which Ford marketed the models [of cars driven by the plaintiffs] in only a different State or region" from the actual facts in the case, but explicitly "d[id] not address" such a hypothetical.²¹⁰ It seems appropriate to see how this Note's approach would address this possibility.

First, the sliding scale inquiry. The quantity of Ford's forum contacts changes ever so slightly in this variation. Because Ford no longer sells or markets the models of cars involved in the suits in the fora, the quantity of contacts necessarily decreases. But the decrease is marginal; Ford's forum contacts are still extensive.²¹¹ The copious contacts slide the case close to the general jurisdiction end of the scale, and the requisite relatedness is correspondingly lowered—just not quite as low as the relatedness demand was in *Ford* prime.²¹²

Changing more dramatically in this variation is the relatedness between Ford's contacts and the claims. There are no longer parallel contacts here. Ford sells cars in the forum states but not the same

208. See *supra* notes 128-32 and accompanying text.

209. Borchers et al., *supra* note 30, at 23.

210. *Ford*, 141 S. Ct. at 1028.

211. See *id.* at 1031 ("Ford has a veritable truckload of contacts with Montana and Minnesota, as it admits."); *supra* notes 15-17 and accompanying text. In Minnesota, for example, Ford loses in this hypothetical the roughly 2,000 1994 Crown Victoria cars it sold to dealerships there but retains, among other contacts, the 200,000 vehicles of all kinds it sold there from 2013 to 2015. See *supra* note 16.

212. See *supra* Part II.C.

models sold in the other states that causally gave rise to the claims. Although Ford’s sales of different models of cars in the fora still bear some relationship to sales of different models in different states, the relationship here is extremely flimsy.

However, Ford still advertises in the forum states and has its certified repair services there. While Ford may not market the specific models of cars involved in the suit, the purpose of these contacts is to encourage the residents of those states to become Ford drivers generally.²¹³ Ford succeeded here, and these contacts had the potential to play a “but-for” causal role in the injuries the plaintiffs incurred.²¹⁴

Ford’s forum contacts still “relate to” the claims in this variation, but the relationship is weaker than it was in *Ford* prime. The lack of parallel contacts makes this hypothetical a much closer case. Without the parallel contacts—even with Ford’s ads and repair services—it is difficult to conclusively say that the sliding scale theory is satisfied. Nor, however, could someone categorically conclude that it is not satisfied, given how low the relatedness demand is in response to the amplitude of Ford’s forum contacts. Here, the sliding scale could go either way; this is an on-the-fence case. To break the tie, this Note’s test turns to the reasonableness factors.

This variation is just as reasonable as *Ford* prime. The plaintiffs are still residents of the forum states, drove the defective cars in the forum states, and suffered their injuries in the forum states.²¹⁵ The rest of the reasonableness factors follow from there.²¹⁶ Like it was in *Ford* prime, the “exercise of jurisdiction is *so* reasonable” here.²¹⁷ The factors accordingly tip the scale in favor of finding jurisdiction, so “relating to” jurisdiction over Ford would be appropriate in this hypothetical.²¹⁸

213. See *Ford*, 141 S. Ct. at 1028 (“[B]y making it easier to own a Ford, [Ford] encourage[s] Montanans and Minnesotans to become lifelong Ford drivers.”); *id.* at 1033 (Alito, J., concurring) (“The whole point of [Ford’s forum] activities was to put more Fords (including those in question here) on Minnesota and Montana roads.”).

214. See *supra* note 187 and accompanying text.

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

216. See *supra* notes 190-93 and accompanying text for further articulation of the remaining reasonableness factors.

217. *Ford*, 141 S. Ct. at 1030 (emphasis added).

218. See *supra* note 135 and accompanying text.

CONCLUSION

The *Ford* Court reached the correct outcome, and its decision marks a momentous shift in the doctrine of personal jurisdiction. That decision, however, leaves behind not only the shiny new “relating to” jurisdiction for scholars to examine, but also a methodological mess through which the lower courts must sort.

A sliding scale approach to contacts and relatedness, coupled with a separate consideration of the reasonableness factors as the sliding scale’s “real limits,” is the best way to govern this new “relating to” era of the Court’s jurisprudence. It gives lower courts a workable analytical framework to follow and ensures that considerations of relatedness and reasonableness—which do separate work—are properly analyzed independently of one another. Most importantly, this approach yields results consistent with Court precedent,²¹⁹ ensuring that the exercise of “relating to” specific personal jurisdiction will lie only when it conforms to “traditional notions of fair play and substantial justice.”²²⁰

*Zois Manaris**

219. *See supra* Part II.B-C.

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

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