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Montgomery v. Airbus Helicopters, Inc.: Oklahoma's Ostensible Destruction of Stream-of-Commerce Personal Jurisdiction*

I. Introduction

Interstate and international commerce drive the economy.¹ Consequently, many products travel a multistate or multinational distribution channel before reaching consumers.² When these products injure a consumer, the consumer may want to seek a remedy in court. In order for the court to render a binding judgment over the manufacturers and distributors who may be responsible for the consumer's injury, the manufacturers and distributors must be subject to the court's personal jurisdiction.³

There are several ways to establish personal jurisdiction over a nonresident party: consent, service within the forum state, or through the party's contacts with the forum state.⁴ The stream-of-commerce theory describes a particular contact capable of subjecting a party to a forum's personal jurisdiction. When a party places its products into a distribution channel seeking to serve a state's economy or consumers, the party is forging a contact capable of subjecting it to the state's personal jurisdiction.⁵

* J.D. Candidate, University of Oklahoma College of Law, 2021. Special thank you to Professor Steven S. Gensler for his insight, guidance, and mentorship throughout this Note's drafting. And thank you to Allyson Shumaker and Michael F. Waters for their conscientious editing of this Note. All errors, of course, are my own.

1. The United States imported over \$2.5 trillion worth of goods in 2019. Consumer goods composed nearly \$654 billion—over 25%—of imported goods. Press Release, Bureau of Econ. Analysis & U.S. Census Bureau, U.S. International Trade in Goods & Services: November 2020, at pt. A, exhibits 1, 6 (Jan. 7, 2021), <https://www.bea.gov/sites/default/files/2021-01/trad1120.pdf>.

2. See Mihir Torsekar, *Intermediate Goods Imports in Key U.S. Manufacturing Sectors*, U.S. INT'L TRADE COMM'N, https://usitc.gov/research_and_analysis/trade_shifts_2017/specialtopic.htm#_ftnref28 (last visited Jan. 17, 2021) (discussing the proliferation of supply-chain globalization).

3. See *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (“[P]ersonal jurisdiction . . . is an ‘essential element of the jurisdiction of a district . . . court,’ without which the court is ‘powerless to proceed to an adjudication.’” (quoting *Emps. Reinsurance Corp. v. Bryant*, 299 U.S. 374, 382 (1937))).

4. See *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 880–81 (2011) (plurality opinion) (explaining that if the defendant is not served in the forum state and does not consent, then due process requires that it “purposefully avail[] itself” to the forum state).

5. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980).

Before *Montgomery v. Airbus Helicopters, Inc.*,⁶ an Oklahoman injured by a product could rely on the stream-of-commerce theory to establish a manufacturer's or distributor's contact with Oklahoma. But in *Montgomery*, the Oklahoma Supreme Court ostensibly eliminated the stream-of-commerce theory as a basis for establishing Oklahoma's personal jurisdiction. With sparse explanation and questionable interpretations of recent U.S. Supreme Court cases, the court declared, "[S]tream of commerce is no longer the analysis this [c]ourt will use to determine specific personal jurisdiction."⁷

This Note will scrutinize *Montgomery*'s ostensible destruction of the stream-of-commerce theory and explain why the uncertainty *Montgomery* leaves behind is particularly troubling. Part II of this Note describes the stream-of-commerce theory's development. Part III discusses *Montgomery*'s facts, analysis, and holding. Part IV examines *Montgomery*'s missteps and suggests two interpretations of the stream-of-commerce theory's current status in Oklahoma. Then, Part V proposes two ways the Oklahoma Supreme Court can resolve *Montgomery*. Finally, Part VI encourages Oklahoma courts to interpret *Montgomery* narrowly.

II. Development of the Stream-of-Commerce Theory

Personal jurisdiction is a constitutional protection housed in the Due Process Clause.⁸ Due process requires that a party have certain ties or connections to a forum state as a prerequisite to the forum state's power to render a binding judgment over it.⁹ These ties or connections may be established when a party creates contacts with, or reaches out to, the forum state.¹⁰ Contacts between a party and the forum state can create general

6. 2018 OK 17, 414 P.3d 824.

7. *Id.* ¶ 37, 414 P.3d at 834.

8. *See Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779 (2017) ("It has long been established that the Fourteenth Amendment limits the personal jurisdiction of state courts.").

9. *Walden v. Fiore*, 571 U.S. 277, 283 (2014); *see also* U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . ."). The Fourteenth Amendment's Due Process Clause generally controls both federal and state personal jurisdiction analyses because federal personal jurisdiction is predominantly coextensive with the state's personal jurisdiction where the federal court is located. *See* FED. R. CIV. P. 4(k)(1)(A) ("Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located . . .").

10. *Walden*, 571 U.S. at 284.

jurisdiction (“all-purpose jurisdiction”)¹¹ or specific jurisdiction (“case-linked jurisdiction”).¹² Contacts-based specific jurisdiction has three distinct requirements: (1) the party reached out to the forum state, (2) the lawsuit “arise[s] out of or relate[s] to” that act, and (3) the forum’s exercise of personal jurisdiction would not be unfair or unreasonable.¹³

The stream-of-commerce theory describes a particular way a party can reach out to the forum state, thereby subjecting it to the forum’s specific personal jurisdiction.¹⁴ This Note, accordingly, will focus on due process’s requirements for a forum to assert specific personal jurisdiction over a party based on that party’s contacts with the forum state.

A. Emergence of Minimum Contacts

Courts’ power to exercise personal jurisdiction was restricted initially to the territorial boundaries of the state where the court was located.¹⁵ Courts, consequently, could only exercise personal jurisdiction over people who were located within the state or who owned property there.¹⁶ But territorial personal jurisdiction quickly proved unworkable because courts needed more power to exercise personal jurisdiction over nonresidents as interstate travel and commerce became commonplace.¹⁷

*International Shoe Co. v. Washington*¹⁸ revolutionized courts’ ability to exercise personal jurisdiction over nonresidents by adding contacts as a

11. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (explaining that general jurisdiction, or “all-purpose jurisdiction,” allows a court to hear any claim asserted against a party).

12. *See id.* (explaining that specific jurisdiction limits the court’s adjudicatory authority to claims connected to a party’s contacts with the forum state).

13. *See Bristol-Myers*, 137 S. Ct. at 1780 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)).

14. *See Goodyear*, 564 U.S. at 920 (holding that a stream-of-commerce contact cannot establish general personal jurisdiction).

15. *Pennoyer v. Neff*, 95 U.S. 714, 720 (1877) (“The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established.”).

16. *See id.* at 728 (explaining that a person must be served in the state or have his or her property attached to be subject to a court’s personal jurisdiction).

17. *See Hanson v. Denckla*, 357 U.S. 235, 250–51 (1958) (noting the need for personal jurisdiction over nonresidents due to “technological progress” and “increased . . . flow of commerce between States”); *see also* Michael Vitiello, *Due Process and the Myth of Sovereignty*, 50 U. PAC. L. REV. 513, 521 (2019) (attributing the expansion of states’ jurisdictional power to the “development of modern transportation”).

18. 326 U.S. 310 (1945).

basis for personal jurisdiction.¹⁹ *International Shoe* concluded that due process is satisfied when a court exercises personal jurisdiction over a party that has “certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”²⁰ But the Court did not explain which acts constitute “minimum contacts” with the forum state. The Court instead suggested that the act’s “nature and quality and . . . circumstances” determined whether it was sufficient to subject a party to the forum’s personal jurisdiction.²¹ These amorphous minimum-contacts guideposts led to a question the Court still grapples with today: which acts constitute minimum contacts with a forum state?

The answer, under current law, is that minimum contacts requires a party to have reached out to the forum state attempting to exercise personal jurisdiction over it.²² When the Court established this requirement in *Hanson v. Denckla*,²³ it explained that the minimum-contacts analysis centers on a party’s *choice* to reach out to the forum state.²⁴ A party manifests this choice by “purposefully avail[ing] itself of the privilege of conducting activities within the forum State.”²⁵ A contact, in other words, is a party’s volitional act of reaching out to the forum state.

There are many different ways a party can reach out to the forum state. Courts have recognized physical presence in the forum state;²⁶ correspondence,²⁷ negotiations, and commercial interactions with the forum

19. See Adam N. Steinman, *Access to Justice, Rationality, and Personal Jurisdiction*, 71 VAND. L. REV. 1401, 1408 (2018) (noting that “*International Shoe* revolutionized the constitutional contours of personal jurisdiction” with its “new constitutional standard” of minimum contacts).

20. *Int’l Shoe*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

21. *Id.* at 318.

22. See *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (explaining that due process limitations “principally protect the liberty of the nonresident defendant” and therefore the contact must be created by the “defendant *himself*”).

23. 357 U.S. 235, 253 (1958).

24. See Richard D. Freer, *Justice Black Was Right About International Shoe, but for the Wrong Reason*, 50 U. PAC. L. REV. 587, 593 (2019) (explaining that *Hanson* established that “there can be no personal jurisdiction without the defendant’s volitional engagement of the forum”).

25. *Hanson*, 357 U.S. at 253.

26. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (noting that physical presence in the forum state is a contact between the party and the forum state).

27. *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957).

state's residents,²⁸ and circulating magazines in the forum state²⁹ as acts of reaching out. Intentional torts, moreover, are considered acts of reaching out when a party's tortious conduct targets the forum state and the party knows the brunt of the conduct's effects will be felt there.³⁰ Courts even accept overtly commercial internet activity as an act of reaching out.³¹ Soon after *Hanson*, courts began to recognize that placing products into the stream of commerce with the intent to serve the forum state's market is an act of reaching out to that forum.

B. Stream-of-Commerce Theory of Personal Jurisdiction

The stream-of-commerce theory is the Illinois Supreme Court's brainchild, introduced in *Gray v. American Radiator & Standard Sanitary Corp.*³² In *Gray*, the court determined that Illinois could exercise personal jurisdiction over a nonresident party whose valves were used in an appliance that was sold to and then injured the plaintiff in Illinois.³³ The court reasoned that if a party chooses to "sell its products for ultimate use in another State, it is not unjust to hold it answerable there for any damage caused by defects in those products" because the party presumably contemplated its products' use in that state.³⁴

The stream-of-commerce theory was created to fill a gap in personal jurisdiction doctrine. The Illinois Supreme Court recognized that, by placing products into a distribution channel bound for Illinois, manufacturers and distributors could sell their products for ultimate use in Illinois without establishing contacts subjecting them to its personal jurisdiction.³⁵ To close this gap, the court treated placing products into a distribution channel—the stream of commerce—as an act of reaching out to the state where the products are sold to consumers.³⁶

28. *Burger King*, 471 U.S. at 479–80.

29. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).

30. *Calder v. Jones*, 465 U.S. 783, 789–90 (1984).

31. *See, e.g., Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1125–26 (W.D. Pa. 1997).

32. 176 N.E.2d 761 (Ill. 1961).

33. *Id.* at 762, 767.

34. *Id.* at 766.

35. *See id.* ("[I]t should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this State.")

36. *See id.* ("[T]he use of such products in the ordinary course of commerce is sufficient contact with this State to justify a requirement that [the party] defend here.")

The U.S. Supreme Court first explored the stream-of-commerce theory in *World-Wide Volkswagen Corp. v. Woodson*.³⁷ There, an automobile retailer sold a car in New York to the plaintiffs, who then drove it into Oklahoma where they were injured in a car accident.³⁸ Oklahoma could not exercise personal jurisdiction over the car's retailer and wholesaler, the Court explained, because there was no act by which the *defendants* reached out to Oklahoma.³⁹ The defendants had not solicited business from, advertised in, or sold cars to Oklahoma's market.⁴⁰ But if the defendants had been seeking to serve Oklahoma's market, then subjecting them to Oklahoma's personal jurisdiction would not have offended due process.⁴¹ *World-Wide Volkswagen* established that placing products into the stream of commerce with the intent to serve the forum state's market is a contact capable of subjecting a party to the forum's personal jurisdiction.

The Court's next stream-of-commerce discussion, in *Asahi Metal Industry Co. v. Superior Court*,⁴² generated two primary stream-of-commerce tests: (1) stream of commerce "plus" and (2) "pure" stream of commerce.⁴³ The difference between these tests centers on the acts that constitute reaching out to the forum state.

Justice O'Connor's plurality opinion concluded that merely placing a product into a distribution channel does not constitute reaching out to the forum state.⁴⁴ The plurality opinion's stream-of-commerce-plus test instead required that the party place its products into a distribution channel *and* do "something more" demonstrating an intent to serve the forum state's market.⁴⁵ The "something more" could be specifically designing a product for the forum state's market, advertising in the forum state, or establishing channels of communication with the forum state's consumers.⁴⁶

37. 444 U.S. 286 (1980).

38. *Id.* at 288, 299.

39. *See id.* at 295.

40. *Id.*

41. *See id.* at 297–98 (noting that due process is not offended if a forum asserts personal jurisdiction over a party who "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" (citing *Gray*, 176 N.E.2d at 766)).

42. 480 U.S. 102 (1987).

43. Justice Stevens, however, advocated for a third test focused on the "the volume, the value, and the hazardous character of the [products]." *Id.* at 122 (Stevens, J., concurring).

44. *Id.* at 112 (plurality opinion).

45. *Id.* at 111–12.

46. *Id.* at 112.

Justice Brennan's concurring opinion, in contrast, determined that a party reaches out to the forum state when there is a "regular and anticipated flow of products from manufacture to distribution to retail sale" and the party "is aware that the final product is being marketed in the forum State."⁴⁷ The concurring justices argued that a party placing its products into the stream of commerce in that manner ultimately benefits from that act.⁴⁸ So it is not an undue burden to force it to litigate any harms resulting from that act in the state where the product was sold to consumers.⁴⁹

The Court's next, and most recent, stream-of-commerce discussion took place in *J. McIntyre Machinery, Ltd. v. Nicastro*,⁵⁰ and it also failed to muster a consensus as to the acts required to establish a contact with the forum state. In *McIntyre*, an English manufacturer sold its metal-shearing machines to an American distributor, intending for those machines to be sold throughout the United States.⁵¹ One of its machines injured the plaintiff in New Jersey.⁵²

Justice Kennedy's plurality opinion endorsed Justice O'Connor's stream-of-commerce-plus test and clarified that the party's contact must be with the specific state attempting to exercise personal jurisdiction over it.⁵³ For New Jersey to exercise personal jurisdiction over the manufacturer, therefore, its distribution scheme must have targeted New Jersey's market or consumers.⁵⁴ The plurality opinion concluded that New Jersey could not exercise personal jurisdiction over the manufacturer because the manufacturer's distribution scheme targeted the United States as a whole—not the State of New Jersey specifically.⁵⁵

Justice Ginsburg's dissenting opinion argued that New Jersey could exercise personal jurisdiction over the manufacturer because its nationwide distribution scheme was an act of reaching out to every state where its

47. *Id.* at 117 (Brennan, J., concurring).

48. *Id.*

49. *Id.*

50. 564 U.S. 873 (2011).

51. *Id.* at 878, 886 (plurality opinion).

52. *Id.* at 878.

53. *Id.* at 884–85.

54. *See id.* at 884 ("The question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct.")

55. *Id.* at 886–87.

machines were sold to consumers.⁵⁶ The plurality opinion troubled the dissenting justices because under the plurality opinion's analysis, a foreign manufacturer could evade personal jurisdiction in the United States simply by targeting the U.S. market as a whole.⁵⁷

Uncomfortable with the strong stances taken by the plurality opinion and the dissenting opinion, Justice Breyer's concurring opinion determined that precedent alone decided this case.⁵⁸ Justice O'Connor's stream-of-commerce-plus test was not satisfied because there was no additional conduct demonstrating the manufacturer's intent to reach out to New Jersey's market.⁵⁹ Justice Brennan's pure-stream-of-commerce test, moreover, was not satisfied because the few machines that had been sold in New Jersey did not amount to a "regular and anticipated flow" of products.⁶⁰

To this day, the Court has failed to agree on which acts establish that a party has reached out to a forum state in stream-of-commerce cases. Lower courts, unsurprisingly, are also split.⁶¹ Despite the chasm of disagreement among lower courts, the Oklahoma Supreme Court appears to be the only court to refuse to apply any stream-of-commerce test to establish personal jurisdiction over nonresidents.

56. *See id.* at 898, 905 (Ginsburg, J., dissenting) (arguing that New Jersey's personal jurisdiction was proper because the product's arrival in New Jersey was not "random[] or fortuitous[]"—it resulted from a "deliberat[e]" distribution scheme targeting every state).

57. *See id.* at 893. The plurality opinion did note, however, that Congress may have the ability to activate national contacts-based personal jurisdiction, which would authorize any federal court to exercise personal jurisdiction over a foreign party based on the party's contacts with the United States. *See id.* at 885 (plurality opinion). *See generally* William S. Dodge & Scott Dodson, *Personal Jurisdiction and Aliens*, 116 MICH. L. REV. 1205 (2018) (advocating for a "national-contacts approach" to establish personal jurisdiction over foreign parties).

58. *McIntyre*, 564 U.S. at 887, 892–93 (Breyer, J., concurring).

59. *Id.* at 888–89.

60. *Id.*

61. *Compare* *Knox v. MetalForming, Inc.*, 914 F.3d 685, 691 (1st Cir. 2019) (treating Justice Breyer's *McIntyre* concurrence as binding and noting agreement with the D.C. Circuit, Fifth Circuit, and Federal Circuit), *with* *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 780 (3d Cir. 2018) (rejecting the pure-stream-of-commerce test and explaining that the Third Circuit follows the *Asahi* and *McIntyre* pluralities' stream-of-commerce-plus test), *and* *Monge v. RG Petro-Mach. (Grp.) Co.*, 701 F.3d 598, 619–20 (10th Cir. 2012) (declining to choose between stream-of-commerce tests).

III. *Montgomery v. Airbus Helicopters, Inc.*

A. *Facts & Procedural History*

The Oklahoma Supreme Court's dismissal of *Montgomery v. Airbus Helicopters, Inc.* for lack of personal jurisdiction hinged on the defendants' contacts with Oklahoma.⁶² The case arose from an air-ambulance crash in Oklahoma City, which resulted in the deaths of two Oklahomans: the helicopter's pilot and the flight nurse.⁶³ Anke Montgomery (the pilot's widow), EagleMed, L.L.C. (the air-ambulance service), and Starr Indemnity and Liability Co. (EagleMed's insurer) brought tort claims in an Oklahoma court against Airbus Helicopters, Inc. (the helicopter's vendor), Honeywell International, Inc. (the helicopter engine's manufacturer), and Soloy, L.L.C. (the engine-conversion kit's manufacturer).⁶⁴ The plaintiffs alleged that a defect in the helicopter's air-intake system had allowed ice to invade the compressor, leading to an engine flameout and subsequent crash.⁶⁵

Airbus and Soloy moved the court to dismiss the complaint for lack of personal jurisdiction, arguing that they had no contacts subjecting them to Oklahoma's personal jurisdiction.⁶⁶ Neither Airbus nor Soloy, they contended, had sought to do business in Oklahoma by reaching out to its market or consumers, including EagleMed's air-ambulance base in Oklahoma.⁶⁷ Airbus, indeed, had delivered the helicopter to EagleMed in Texas—not Oklahoma.⁶⁸ And Airbus's communications with EagleMed had been directed to EagleMed's principal place of business in Kansas.⁶⁹ Soloy, similarly, had sent its engine-conversion kit to EagleMed's principal place of business in Kansas.⁷⁰ The plaintiffs argued that Oklahoma nonetheless could exercise personal jurisdiction over Airbus and Soloy because they had sold their products knowing that EagleMed would use

62. 2018 OK 17, ¶ 1, 414 P.3d 824, 825.

63. *Id.* ¶ 2, 414 P.3d at 825–26.

64. *Id.* ¶¶ 4, 11, 414 P.3d at 826–27.

65. *Id.* ¶ 3, 414 P.3d at 826.

66. *Id.* ¶¶ 12, 14, 414 P.3d at 827–28. Honeywell did not raise the defense of lack of personal jurisdiction, waiving the argument. *Id.* ¶ 12, 414 P.3d at 827.

67. *Id.* ¶ 14, 414 P.3d at 828.

68. *Id.* ¶ 5, 414 P.3d at 826. Airbus is a Delaware corporation, and its principal place of business is in Texas. *Id.* ¶ 4, 414 P.3d at 826.

69. *Id.* ¶ 9, 414 P.3d at 827.

70. *Id.* ¶ 7, 414 P.3d at 826. Soloy is a Washington corporation, and its principal place of business is in Washington. *Id.* ¶ 4, 414 P.3d at 826.

them in Oklahoma.⁷¹ The trial court rejected the plaintiffs' argument and granted Airbus's and Soloy's motions to dismiss, holding that Oklahoma lacked personal jurisdiction over them.⁷² The Oklahoma Court of Civil Appeals affirmed, and the Oklahoma Supreme Court granted certiorari.⁷³

B. The Court's Analysis & Decision

The issue before the Oklahoma Supreme Court was whether Airbus and Soloy had established contacts subjecting them to Oklahoma's personal jurisdiction.⁷⁴ The court immediately took general personal jurisdiction off the table because neither defendant was incorporated in Oklahoma nor maintained its principal place of business there.⁷⁵ Then, the court set forth the requirements for an Oklahoma court to exercise specific personal jurisdiction: (1) the defendant "purposefully directed activities" at Oklahoma, (2) the claims "arise out of or relate to those activities," and (3) exercising jurisdiction would not be unreasonable or "offend the traditional notions of substantial justice and fair play."⁷⁶ Because Oklahoma's long-arm statute is coextensive with the Due Process Clause's limitations on personal jurisdiction, the court evaluated these requirements through the lens of the Due Process Clause.⁷⁷

The court began its analysis by recounting two recent U.S. Supreme Court cases: *Bristol-Myers Squibb Co. v. Superior Court* and *Walden v. Fiore*.⁷⁸ *Bristol-Myers*, the court noted, held that personal jurisdiction may

71. *Id.* ¶¶ 8, 14, 414 P.3d at 826, 828.

72. *Id.* ¶ 13, 414 P.3d at 828.

73. *Id.*

74. *Id.* ¶ 1, 414 P.3d at 825.

75. *Id.* ¶¶ 4, 16, 414 P.3d at 826, 828–29. A corporation is subject to a forum's general jurisdiction when its affiliations with the forum state are "so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). A corporation is considered "at home" in its state of incorporation and in its principal place of business. *Id.* at 137 (quoting *Goodyear*, 564 U.S. at 924).

76. *Montgomery*, ¶ 16, 414 P.3d at 829.

77. *Id.* ¶ 18, 414 P.3d at 829; *see also* U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . ."); 12 OKLA. STAT. § 2004(F) (Supp. 2018) ("A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States.").

78. *Montgomery*, ¶¶ 19–26, 414 P.3d at 829–31 (first discussing *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017); and then discussing *Walden v. Fiore*, 571 U.S. 277 (2014)).

be exercised consistent with the Due Process Clause only when the defendant's contacts with the forum state are connected to the particular claims asserted against it.⁷⁹ The court concluded that *Bristol-Myers* required it to overturn its precedents approving of personal jurisdiction under the "totality of the contacts" and "stream of commerce" approaches, which lacked an explicit connection requirement.⁸⁰ The court then observed that *Walden* had concluded that a defendant's relationship with a third party, standing alone, does not subject it to a forum's personal jurisdiction.⁸¹ Airbus's and Soloy's relationship with EagleMed, therefore, did not subject them to Oklahoma's personal jurisdiction.⁸² Similarly, the court explained, a plaintiff's unilateral activity in the forum state does not subject the defendant to that forum's personal jurisdiction.⁸³ EagleMed's unilateral decision to operate the helicopter in Oklahoma, therefore, did not subject Airbus or Soloy to Oklahoma's personal jurisdiction.⁸⁴

After discussing Oklahoma's "stream of commerce" approach, which this Note explains in detail below,⁸⁵ the court briefly discussed the U.S. Supreme Court's similarly titled stream-of-commerce theory.⁸⁶ Because the Court had not discussed the stream-of-commerce theory in *Bristol-Myers* or *Walden*, those cases, the court concluded, "presumptively, at least implicitly, reject[ed] such analysis."⁸⁷ Conflating Oklahoma's "stream of commerce" approach with the similarly titled—but completely different—stream-of-commerce theory, the court viewed them both as "stream of commerce" analyses and declared, "[S]tream of commerce is no longer the analysis this [c]ourt will use to determine specific personal jurisdiction."⁸⁸ The court also, without further explanation, cited two cases remanded in light of *Bristol-Myers* as supporting its conclusion.⁸⁹ The court then

79. *Id.* ¶ 22, 414 P.3d at 830.

80. *See id.* ¶ 36, 414 P.3d at 833.

81. *Id.* ¶ 26, 414 P.3d at 830–31.

82. *Id.* ¶ 36, 414 P.3d at 833.

83. *Id.* ¶ 36, 414 P.3d at 834.

84. *Id.*

85. *See infra* Section IV.B.1.

86. *Montgomery*, ¶¶ 32–35, 414 P.3d at 832–33.

87. *Id.* ¶ 27, 414 P.3d at 831.

88. *Id.* ¶ 37, 414 P.3d at 834 (internal quotation marks omitted).

89. *Id.* ¶ 36, 414 P.3d at 834 (first citing *Murco Wall Prods., Inc. v. Galier*, 138 S. Ct. 982 (2018) (mem.); and then citing *Simmons Sporting Goods, Inc. v. Lawson*, 138 S. Ct. 237 (2017) (mem.)).

affirmed the trial court's dismissal of the action for lack of personal jurisdiction.⁹⁰

IV. Montgomery Was Right Until It Went Wrong

Part IV sets forth *Montgomery's* missteps and advances two interpretations of the stream-of-commerce theory's current status in Oklahoma. Section IV.A addresses what *Montgomery* got right: it recognized that *Bristol-Myers* abrogated Oklahoma's "totality of the contacts" personal jurisdiction approach. Section IV.B explains where *Montgomery* went wrong: in overturning Oklahoma's "stream of commerce" approach, it conflated that approach with the stream-of-commerce theory used throughout the rest of the United States. The court, therefore, inadvertently eliminated *any* use of stream of commerce to establish personal jurisdiction in Oklahoma.

A. Bristol-Myers Abrogated Oklahoma's "Totality of the Contacts" Approach

Montgomery correctly concluded that *Bristol-Myers* had abrogated Oklahoma's "totality of the contacts" approach to specific personal jurisdiction.⁹¹ *Bristol-Myers* clarified that specific personal jurisdiction does not exist unless a defendant's contacts with the forum state are connected to the claims the plaintiff asserts against it.⁹² *Bristol-Myers*, accordingly, rejected California's "sliding scale" approach, which allowed the connection requirement of specific personal jurisdiction to be satisfied by a defendant's wide-ranging contacts with the forum state even when they were unrelated to the underlying controversy.⁹³ The Court explained that this type of analysis is not consistent with due process because it "resembles a loose and spurious form of general jurisdiction."⁹⁴

Similar to California's "sliding scale" approach, Oklahoma's "totality of the contacts" approach did not require a connection between the

90. *Id.* ¶ 38, 414 P.3d at 834.

91. *Id.* ¶ 27, 414 P.3d at 831.

92. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017) ("What is needed—and what is missing here—is a connection between the forum and the specific claims at issue.")

93. *See id.* ("Under the [sliding-scale] approach, the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims.")

94. *Id.*

defendant's contacts with the forum state and the claims asserted against it.⁹⁵ In *Hough v. Leonard*, for example, the Oklahoma Supreme Court upheld personal jurisdiction over nonresident oil-well investors in a fee-agreement dispute despite the fact that "each individual contact made by the nonresidents may not be sufficient standing alone to maintain[] minimum contacts."⁹⁶ The court determined that the investors nonetheless were subject to Oklahoma's personal jurisdiction because one of them had unrelated leasehold interests in Oklahoma and they had reached out to *other* Oklahomans regarding the same well.⁹⁷ In other words, the court exercised personal jurisdiction based on the investors' wide-ranging, unrelated contacts with Oklahoma.⁹⁸ *Hough* illustrates that *Montgomery* correctly abrogated the "totality of the contacts" approach because it did not adhere to due process's requirement that the defendant's contacts with the forum state must be connected to the particular claims asserted against it.

B. *Montgomery Mishandled the Stream-of-Commerce Theory*

Although *Montgomery* correctly overturned Oklahoma's "totality of the contacts" approach,⁹⁹ it mistakenly rejected any use of stream of commerce to establish personal jurisdiction. First, Section IV.B.1 explains that the widely used stream-of-commerce theory and Oklahoma's "stream of commerce" approach are completely different. Second, Section IV.B.2

95. See, e.g., *Guffey v. Ostonakulov*, 2014 OK 6, ¶ 26, 321 P.3d 971, 980 ("The totality of [d]efendant's contacts with Oklahoma constitute more than sufficient minimum contacts for the exercise of [personal] jurisdiction to be reasonable . . ."); *Hough v. Leonard*, 1993 OK 112, ¶ 13, 867 P.2d 438, 444 ("While each individual contact made by the nonresidents may not be sufficient standing alone to maintain[] minimum contacts, the totality of the contacts [is] sufficient to exercise personal jurisdiction over the non-residents.").

96. *Hough*, ¶ 13, 867 P.2d at 444.

97. *Id.* The court also observed that the defendants had entered into a contract over the phone with an Oklahoma company that then hired the plaintiff as a subcontractor. *Id.* But the court seemed to think that the identity of the party that initiated that phone call was irrelevant. *Id.* ("Regardless of who initiated the contact, the non-residents could have refused to enter into a contract and thereby alleviated the risk of defending a suit commenced in Oklahoma."). A contract alone, however, does not automatically establish minimum contacts with the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985). The essential questions that needed to be asked and answered were (1) what acts led to and flowed from entering into the contract and (2) did those acts constitute reaching out to the forum state. See *id.* at 479–80.

98. See *Hough*, ¶ 13, 867 P.2d at 444 ("[T]he totality of the contacts [is] sufficient to exercise personal jurisdiction over the non-residents.").

99. See *supra* Section IV.A.

demonstrates that the authority *Montgomery* relied on does not support rejecting the widely used stream-of-commerce theory. Third, Section IV.B.3 observes that *Montgomery*'s stream-of-commerce discussion was unnecessary—and, thus, dictum—because *Montgomery* was not a stream-of-commerce case. Finally, Section IV.B.4 suggests that *Montgomery* conflated Oklahoma's "stream of commerce" approach with the stream-of-commerce theory, resulting in the latter's inadvertent demise.

1. Stream-of-Commerce Theory v. Oklahoma's "Stream of Commerce" Approach

The stream-of-commerce theory is different from Oklahoma's "stream of commerce" approach. The stream-of-commerce theory describes one way a party can reach out to a state. The theory explains that a party reaches out to a state when it places its products in a distribution channel with the intent to serve the state's market.¹⁰⁰ The stream-of-commerce theory, in other words, is merely a means of establishing that a party has reached out to the forum state. It does not satisfy the separate connection requirement or fairness requirement for exercising specific personal jurisdiction.¹⁰¹

Oklahoma's "stream of commerce" approach, by contrast, is a comprehensive personal jurisdiction analysis that sets forth when an Oklahoma court may exercise specific personal jurisdiction over a party—not merely when a party has reached out to Oklahoma. This approach worked similarly to Oklahoma's "totality of the contacts" approach because it did not require a connection between the defendant's act of placing its products into the stream of commerce and the particular claims asserted against it.¹⁰² Indeed, Oklahoma's "stream of commerce" approach simply looked to whether the products arrived in Oklahoma as a result of the defendant's purposeful acts and whether exercising jurisdiction over the defendant would be fair.¹⁰³ Similar to Oklahoma's "totality of the contacts"

100. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881–82 (2011) (plurality opinion); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980).

101. *See, e.g., Align Corp. v. Boustred*, 421 P.3d 163, 172–73 (Colo. 2017) (affirming personal jurisdiction over Align because Align placed goods into the stream of commerce, the plaintiff's injuries arose out of that act, and asserting personal jurisdiction over Align is not unfair).

102. *See Montgomery v. Airbus Helicopters, Inc.*, 2018 OK 17, ¶ 27, 414 P.3d 824, 831 (noting that the court's precedents using the "totality of contacts" and "stream of commerce" approaches worked similarly to the "sliding scale" approach rejected in *Bristol-Myers*).

103. *State ex rel. Edmondson v. Native Wholesale Supply*, 2010 OK 58, ¶¶ 25–26, 237 P.3d 199, 209.

approach and California's "sliding scale" approach, this approach did not survive *Bristol-Myers* because it did not require a connection between a defendant's contacts with the forum state and the particular claims asserted against it.

In sum, the stream-of-commerce theory is a way to establish that a party has reached out to the forum state. Oklahoma's "stream of commerce" approach, by contrast, is a comprehensive personal jurisdiction analysis that was abrogated by *Bristol-Myers* because it did not require a connection between a defendant's act of reaching out to the forum state and the particular claims asserted against it. Though the court correctly overturned this approach in light of *Bristol-Myers*, it wrongly relied on *Bristol-Myers* and other caselaw to do away with the widely used stream-of-commerce theory as well.

2. *Walden and Bristol-Myers Did Not Affect the Stream-of-Commerce Theory*

Despite the Oklahoma Supreme Court's conclusion that the U.S. Supreme Court's silence in *Walden* and *Bristol-Myers* as to the stream-of-commerce theory amounted to "presumptively, at least implicitly, rejecting such analysis,"¹⁰⁴ neither case's facts called for the stream-of-commerce theory to establish each defendant's contact with the forum state. *Walden* involved Nevada plaintiffs suing a Georgia defendant in a Nevada court based on his alleged violation of their Fourth Amendment rights and his filing of a false affidavit in connection with seizing their cash.¹⁰⁵ The predicate facts for application of the stream-of-commerce theory—i.e., a product, a manufacturer, or a distributor—were not present. *Bristol-Myers*, similarly, presented no need to use the stream-of-commerce theory because the parties agreed that the defendant had extensive, direct contacts with the forum state (California).¹⁰⁶ The defendant, indeed, maintained five research and laboratory facilities and employed over 400 people in California.¹⁰⁷ The Court's silence in those cases, therefore, was just silence.

104. *Montgomery*, ¶ 27, 414 P.3d at 831.

105. *Walden v. Fiore*, 571 U.S. 277, 280–81 (2014).

106. *See Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1778 (2017) ("Five of [the defendant's] research and laboratory facilities, which employ a total of around 160 employees, are located there. . . . [The defendant] also employs about 250 sales representatives in [the forum] and maintains a small state-government advocacy office in [the forum].").

107. *Id.*

Although *Bristol-Myers* did not discuss the stream-of-commerce theory, the Oklahoma Supreme Court was not alone in thinking that *Bristol-Myers* had impacted it.¹⁰⁸ In *Bristol-Myers*, over 600 plaintiffs—most of whom were not California residents—brought state-law claims against the defendant based on injuries allegedly caused by one of its pharmaceutical drugs.¹⁰⁹ Confronted with a motion to quash service of summons for lack of personal jurisdiction,¹¹⁰ the plaintiffs raised a last-ditch argument that the defendant’s decision to contract with a California distributor for its national distribution scheme subjected it to California’s personal jurisdiction in this case.¹¹¹ But there was no evidence “[the defendant] engaged in relevant acts together with [the distributor] in California” and no evidence showing “how or by whom [the product] [the plaintiffs] took was distributed to the pharmacies that dispensed it to them.”¹¹² The plaintiffs’ stream-of-commerce argument, in other words, failed due process’s connection requirement because the plaintiffs did not show the drugs that had caused their injuries were distributed to their pharmacies by the defendant’s California distributor. The Court, indeed, implied that if the plaintiffs could prove that the drugs they had taken had been distributed to their pharmacies by the defendant’s California distributor, then the defendant’s acts leading to and flowing from its contract with that distributor might have subjected it

108. See, e.g., *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 780 (3d Cir. 2018) (differentiating between the pure-stream-of-commerce test and the court’s “deliberate targeting of the forum” requirement—which is essentially the *Asahi* plurality’s stream-of-commerce-plus test—and suggesting that *Bristol-Myers* rejected the pure-stream-of-commerce test); Richard A. Dean & Katya S. Cronin, *Bristol-Myers Squibb v. Superior Court: The Last Nail in the Coffin of Stream-of-Commerce Personal Jurisdiction*, FOR DEF., Jan. 2018, at 22, 25, <https://www.tuckerellis.com/webfiles/FTD-1801-Dean-Cronin.pdf> (arguing *Bristol-Myers* “dealt a fatal blow to the refrain that the new economic realities of globalization mean that a company with a national distribution network can be sued in any state”).

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

110. *Id.* at 1778.

111. *Id.* at 1783 (“In a last ditch contention, respondents contend that [Bristol-Myers] ‘decision to contract with a California company [McKesson] to distribute [Plavix] nationally’ provides a sufficient basis for personal jurisdiction.” (citing Transcript of Oral Argument at 32, *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017) (No. 16-466))).

112. *Id.* (citing *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874, 895 (Cal. 2016) (Werdegar, J., dissenting)).

to California's personal jurisdiction in this case.¹¹³ *Bristol-Myers*, therefore, did not impact the stream-of-commerce theory: it simply tells us that—as with all contacts—stream-of-commerce contacts must be connected to the claims asserted against the defendant.

Furthermore, the other authorities the Oklahoma Supreme Court cited in support of its decision, *Simmons Sporting Goods, Inc. v. Lawson*¹¹⁴ and *Murco Wall Products, Inc. v. Galier*,¹¹⁵ were remanded by the U.S. Supreme Court in light of *Bristol-Myers*¹¹⁶ because of their improper connection analyses—not their contacts analyses. In *Lawson I*, the Arkansas Court of Appeals analyzed “whether the defendant’s conduct connects him to the forum in a meaningful way” and upheld personal jurisdiction even though “the relation of the cause of action to the contacts is weak.”¹¹⁷ On remand, the *Lawson II* court agreed that its connection analysis in *Lawson I* was improper and dismissed for lack of personal jurisdiction.¹¹⁸ Similar to *Lawson I*, in *Galier* the Oklahoma Court of Civil Appeals conducted a “totality of the contacts” analysis and concluded that personal jurisdiction was proper without analyzing whether the defendant’s contacts were connected to the claims the plaintiff had asserted against it.¹¹⁹ Both *Lawson* and *Galier* were remanded to remedy connection defects, not contacts defects. Neither, therefore, supports rejecting the stream-of-commerce theory.

3. *Montgomery Was Not a Stream-of-Commerce Case*

There was no need for *Montgomery* to discuss—let alone abrogate—the stream-of-commerce theory to dismiss the plaintiffs’ complaint for lack of personal jurisdiction. It instead should have simply rejected the plaintiffs’ so-called stream-of-commerce argument as applied to the facts of the case. The plaintiffs had argued that Airbus and Soloy were both subject to Oklahoma’s personal jurisdiction through the stream-of-commerce theory

113. *Id.* (implying that evidence of connection between the defendant’s act of contracting with a forum distributor for its national distribution scheme and the claims asserted against it may have impacted the Court’s analysis).

114. 511 S.W.3d 883 (Ark. Ct. App. 2017).

115. No. 114,175 (Okla. Civ. App. Feb. 3, 2017) (unpublished).

116. *Murco Wall Prods., Inc. v. Galier*, 138 S. Ct. 982 (2018) (mem.); *Simmons Sporting Goods, Inc. v. Lawson*, 138 S. Ct. 237 (2017) (mem.).

117. *Lawson*, 511 S.W.3d at 887–88.

118. *Lawson v. Simmons Sporting Goods, Inc.*, 553 S.W.3d 190, 195–96 (Ark. Ct. App. 2018), *aff’d*, 569 S.W.3d 865 (Ark. 2019).

119. *Galier*, No. 114,175, ¶¶ 44–46.

because they knew that EagleMed would use the helicopter in Oklahoma.¹²⁰ But there were no stream-of-commerce contacts with Oklahoma because neither Airbus nor Soloy participated in a distribution channel that resulted in their products' sale there.¹²¹ Indeed, the helicopter ended up in Oklahoma only because EagleMed unilaterally chose to fly it there.¹²² This was insufficient to sustain personal jurisdiction under longstanding U.S. Supreme Court precedent. Recall that in *World-Wide Volkswagen Corp. v. Woodson*, the plaintiffs drove their car into Oklahoma after purchasing it in New York.¹²³ Even though it was “foreseeable that the purchasers of automobiles . . . may take [cars] to Oklahoma,” the Court nonetheless concluded that a consumer’s unilateral act of taking a product into the forum state does not subject defendants up the distribution chain to that forum’s personal jurisdiction through the stream-of-commerce theory.¹²⁴ The *Montgomery* court, therefore, should have affirmed the dismissal for lack of personal jurisdiction by simply adhering to *World-Wide Volkswagen*: mere knowledge that EagleMed would unilaterally choose to take the helicopter into Oklahoma after the point of sale did not subject Airbus and Soloy to Oklahoma’s personal jurisdiction through the stream-of-commerce theory.

4. *The Source of Montgomery’s Missteps*

Montgomery’s missteps can be attributed to its conflation of Oklahoma’s “stream of commerce” approach with the stream-of-commerce theory. As discussed above, *Bristol-Myers* abrogated Oklahoma’s “stream of commerce” approach but had no impact on the stream-of-commerce theory widely used throughout the rest of the United States to establish that a party has reached out to the forum state.¹²⁵ Conflating these distinct concepts and blending them into an undifferentiated “stream of commerce” analysis

120. *Montgomery v. Airbus Helicopters, Inc.*, 2018 OK 17, ¶¶ 8, 14, 414 P.3d 824, 826, 828.

121. The court noted that the only contacts between EagleMed, Airbus, and Soloy occurred in Texas and Kansas. *Id.* ¶ 30, 414 P.3d at 832.

122. *Id.* ¶ 36, 414 P.3d at 834.

123. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 288 (1980). *See also supra* Section II.B.

124. *World-Wide Volkswagen*, 444 U.S. at 298.

125. *See supra* Sections IV.B.1–2.

resulted in language ostensibly eliminating any use of stream of commerce to establish personal jurisdiction in Oklahoma.¹²⁶

Although *Montgomery* repeatedly rejected any use of stream of commerce, its concluding paragraph contradicts those statements by indicating that the stream-of-commerce theory is still viable in Oklahoma. *Montgomery*'s final paragraph concludes that Oklahoma lacked personal jurisdiction over the defendants because they did not engage in any quintessential stream-of-commerce contacts with Oklahoma.¹²⁷ The court observed that the defendants "did not aim [their] products at the Oklahoma markets . . . [or] solicit business from Oklahoma markets and Oklahoma residents. Consequently, minimum contacts with the State of Oklahoma were insufficient."¹²⁸

The Oklahoma Supreme Court arguably still recognizes the constitutional validity of the stream-of-commerce theory because *Montgomery*'s final paragraph mentioned stream-of-commerce contacts that a plurality of the U.S. Supreme Court in both *Asahi* and *McIntyre* had listed as capable of satisfying due process requirements.¹²⁹ The court stated that the defendants had not established minimum contacts with Oklahoma because these quintessential stream-of-commerce contacts were not present.¹³⁰ *Montgomery*'s concluding paragraph, therefore, can be interpreted as preserving the stream-of-commerce theory as a basis for establishing Oklahoma's personal jurisdiction in fact patterns where the plaintiff can prove that these quintessential stream-of-commerce contacts exist.

126. See *Montgomery*, ¶ 37, 414 P.3d at 834 ("[S]tream of commerce is no longer the analysis this [c]ourt will use to determine specific personal jurisdiction."); *id.* ¶ 27, 414 P.3d at 831 (asserting that the omission of stream-of-commerce analysis in *Walden* and *Bristol-Myers* amounted to "presumptively, at least implicitly, rejecting such analysis"); *id.* ¶ 36, 414 P.3d at 833 (concluding that no stream-of-commerce test can establish Oklahoma's personal jurisdiction).

127. See *id.* ¶ 38, 414 P.3d at 834.

128. *Id.* (emphasis added).

129. See *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011) (plurality opinion) (explaining that the stream-of-commerce theory is satisfied when the "defendant can be said to have targeted the forum"); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1987) (plurality opinion) (stating that a product's placement into the stream of commerce plus "solicit[ing] business in [the forum state]" satisfies due process).

130. See *Montgomery*, ¶ 38, 414 P.3d at 834.

V. Resolving *Montgomery*

Despite there being room to argue that *Montgomery* only eliminated Oklahoma's "stream of commerce" approach, *Montgomery* has been uniformly interpreted as eliminating stream of commerce entirely.¹³¹ The Western District of Oklahoma, for example, observed that *Montgomery* "impl[ies] that any stream-of-commerce approach was abrogated by the [*Bristol-Myers*] decision."¹³² Moving forward, the Oklahoma Supreme Court has two options to resolve *Montgomery*'s contradictory treatment of the stream-of-commerce theory: (1) clarify that *Montgomery* rejected only Oklahoma's "stream of commerce" approach; or (2) explain that *Montgomery* also rejected the stream-of-commerce theory but did so for Oklahoma-specific reasons.

The court can resolve *Montgomery*'s internal contradiction by clarifying that when *Montgomery* discussed and rejected stream of commerce, it was referring to Oklahoma's "stream of commerce" approach. *Montgomery*, therefore, abrogated only Oklahoma's "stream of commerce" approach without impacting the stream-of-commerce theory. If the court intended to preserve the stream-of-commerce theory as a basis for Oklahoma's personal jurisdiction, then it must make that clear. Otherwise, *Montgomery* will likely continue to be read as eliminating any use of stream of commerce.¹³³

Alternatively, the court could explain that its decision to eliminate the stream-of-commerce theory was tied to its interpretation of the Oklahoma Constitution. Recall that Oklahoma's long-arm statute is coextensive with the limits of the U.S. Constitution and Oklahoma's Constitution.¹³⁴ Federal

131. See *Cagle v. Rexon Indus. Corp.*, No. CIV-18-1209-R, 2019 WL 1960360, at *8 (W.D. Okla. May 2, 2019); James M. Beck, *Another Domino Teetering—Stream of Commerce Personal Jurisdiction After BMS*, DRUG & DEVICE L. BLOG (Mar. 12, 2018), <https://www.druganddevicelawblog.com/2018/03/another-domino-teetering-stream-of-commerce-personal-jurisdiction-after-bms.html>; Gary Isaac, *Oklahoma High Court Rejects "Stream of Commerce" Doctrine as Basis for Specific Jurisdiction*, WASH. LEGAL FOUND. (July 27, 2018), <https://www.wlf.org/2018/07/27/wlf-legal-pulse/oklahoma-high-court-rejects-stream-of-commerce-doctrine-as-basis-for-specific-jurisdiction/>; Steven L. Boldt, *The Death of Stream of Commerce in Aviation Litigation*, AM. BAR ASS'N (Oct. 24, 2018), <https://www.americanbar.org/groups/litigation/committees/mass-torts/practice/2018/the-death-of-stream-of-commerce-in-aviation-litigation/>.

132. *Cagle*, 2019 WL 1960360, at *8.

133. See *supra* note 131 and accompanying text.

134. 12 OKLA. STAT. § 2004(F) (Supp. 2018) ("A court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States."). See also *supra* note 77 and accompanying text.

due process limits a state's power to assert personal jurisdiction.¹³⁵ But a state, like Oklahoma, can choose to impose due process requirements on its courts above and beyond what the U.S. Constitution provides.¹³⁶

If the court intended to eliminate the stream-of-commerce theory, then it must justify this choice with reasons tied to the Oklahoma Constitution. *Montgomery* ostensibly eliminated the stream-of-commerce theory under the guise of adhering to the U.S. Constitution's due process requirements as set forth in *Bristol-Myers*.¹³⁷ But as discussed above, *Bristol-Myers* was not a stream-of-commerce case, and it did not impact the stream-of-commerce theory.¹³⁸ The Oklahoma Supreme Court may impose additional limits on Oklahoma courts' ability to exercise personal jurisdiction by eliminating the stream-of-commerce theory, but it must provide an explanation tied to the Oklahoma Constitution.

VI. Oklahoma Courts Should Interpret Montgomery Narrowly

Montgomery can be—and should be—interpreted as overturning only Oklahoma's "totality of the contacts" and "stream of commerce" approaches to personal jurisdiction. As for *Montgomery*'s repetitious rejections of stream of commerce generally, Oklahoma courts should recognize these statements for what they are: dicta. By interpreting *Montgomery* narrowly, the only change to Oklahoma's personal jurisdiction doctrine will be that Oklahoma courts will no longer evaluate whether they have personal jurisdiction based on an analysis that falls short of due process by failing to require a connection between the defendant's contacts with Oklahoma and the claims asserted against it.

Interpreting *Montgomery* narrowly, moreover, would preserve the stream-of-commerce theory as a basis for establishing Oklahoma's personal jurisdiction. *Montgomery*'s contradictory treatment of the stream-of-commerce theory calls the theory into question, but there is no reason to deny Oklahoma plaintiffs this avenue for establishing Oklahoma's personal jurisdiction over nonresident defendants until the Oklahoma Supreme Court

135. See *Walden v. Fiore*, 571 U.S. 277, 283 (2014) ("The Due Process Clause . . . constrains a State's authority to bind a nonresident defendant to a judgment of its courts.").

136. See, e.g., *Friedman v. Bloomberg L.P.*, 884 F.3d 83, 91 n.6 (2d Cir. 2017) ("Federal due process . . . does not compel a state to provide for jurisdiction . . . [It, instead,] *limits* the extent to which a state court may exercise jurisdiction . . .").

137. See *Montgomery v. Airbus Helicopters, Inc.*, 2018 OK 17, ¶ 36, 414 P.3d 824, 833.

138. See *supra* Section IV.B.2.

definitively tells us how *Montgomery* impacted the stream-of-commerce theory.

By broadly reading *Montgomery*'s rejections of stream of commerce, Oklahoma courts would deprive Oklahoma plaintiffs of the ability to bring certain products-liability lawsuits in Oklahoma courts and leave an exploitable gap in Oklahoma's personal jurisdiction doctrine. The stream-of-commerce theory came about as a solution to situations where the only contact a manufacturer or distributor had with the forum state was placing its products into a distribution channel seeking to serve that state's market.¹³⁹ A decade ago, in *State ex rel. Edmondson v. Native Wholesale Supply*, the Oklahoma Supreme Court aptly explained the stream-of-commerce theory's importance: Without the stream-of-commerce theory, actors up the distribution channel could "engag[e] in carefully structured transactions that ostensibly take place outside of the State," allowing actors to "purposefully . . . target [a product] at Oklahoma," "reap[] the economic benefits," and "evad[e]" Oklahoma's personal jurisdiction.¹⁴⁰

Edmondson elucidates the consequences of interpreting *Montgomery* broadly. In *Edmondson*, Native Wholesale Supply¹⁴¹ sold more than 100 million cigarettes over a fifteen-month period to a Muscogee Creek Nation retailer, which then sold the cigarettes to Muscogee Creek Nation's market and Oklahoma's market.¹⁴² Native Wholesale Supply argued it was not subject to Oklahoma's personal jurisdiction because it was targeting only the Muscogee Creek Nation's market.¹⁴³ But the court found this claim "disingenuous" because Muscogee Creek Nation's cigarette demand was such a small fraction of the total number of cigarettes sold that the cigarettes' "ultimate destination" could only be Oklahoma's market.¹⁴⁴ Native Wholesale Supply, therefore, had deliberately targeted Oklahoma's market through its cigarette-distribution scheme.¹⁴⁵ And this was Native

139. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980).

140. 2010 OK 58, ¶ 27, 237 P.3d 199, 209.

141. Native Wholesale Supply is a Sac and Fox Nation chartered corporation with its principal place of business in Seneca Nation. *Id.* ¶ 33, 237 P.3d at 210–11.

142. *Id.* ¶¶ 20–21, 237 P.3d at 208. Although Muscogee Creek Nation is located within the State of Oklahoma, contacts with Muscogee Creek Nation are not contacts with Oklahoma because contacts are analyzed "sovereign by sovereign." See *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion).

143. *Edmondson*, ¶ 22, 237 P.3d at 208.

144. *Id.* ¶¶ 21, 23–24, 237 P.3d at 208.

145. See *id.* ¶ 23, 237 P.3d at 208.

Wholesale Supply's only contact with Oklahoma.¹⁴⁶ Without the stream-of-commerce theory, Native Wholesale Supply would have successfully evaded Oklahoma's personal jurisdiction by funneling its cigarettes into Oklahoma through a nonresident intermediary.

Interpreting *Montgomery* broadly would open the door to manufacturers and distributors deliberately targeting Oklahoma's market, causing injury to Oklahomans, and escaping answering for their products' harms in Oklahoma courts by simply placing a nonresident intermediary between themselves and Oklahoma. Oklahoma courts, until instructed otherwise, should interpret *Montgomery* narrowly to allow Oklahoma plaintiffs to use the stream-of-commerce theory as a means of establishing that nonresident manufacturers and distributors have reached out to Oklahoma.

VII. Conclusion

The stream-of-commerce theory's status in Oklahoma matters. Oklahoma imported over \$7.5 billion worth of manufactured consumer goods in 2019.¹⁴⁷ Thus, litigation involving products manufactured by nonresidents is inevitable.

Oklahoma plaintiffs, nonresident manufacturers and distributors, lawyers, and judges need a clear explanation of *Montgomery*'s impact on the stream-of-commerce theory. *Montgomery*'s contradictory treatment of the stream-of-commerce theory and sparse explanation for its seemingly radical change to Oklahoma's personal jurisdiction doctrine beg the question of whether the Oklahoma Supreme Court actually intended to eliminate the stream-of-commerce theory. Without guidance from the Oklahoma Supreme Court, Oklahoma courts will wade through murky waters struggling to piece together *Montgomery*'s ostensible destruction of stream-of-commerce personal jurisdiction.

Morgan E. Vastag

146. *See id.* ¶¶ 19–20, 237 P.3d at 207–08 (discussing only Native Wholesale Supply's transactions with the Muscogee Creek Nation retailer).

147. Press Release, Bureau of Econ. Analysis & U.S. Census Bureau, Monthly U.S. International Trade in Goods and Services, December 2019, Supplement at exhibit 2a (Feb. 5, 2020), <https://www.census.gov/foreign-trade/Press-Release/2019pr/12/exh2as.pdf> (“U.S. General Imports of Goods by State, State of Destination, by NAICS-Based Product Code Groupings, Not Seasonally Adjusted: 2019”).