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Personal Jurisdiction: A "Shoe" in Doctrine?—Bandemer v. Ford Co., 931 N.W.2D 744 (Minn. 2019)

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**PERSONAL JURISDICTION: A “SHOE” IN DOCTRINE?—
BANDEMER V. FORD CO., 931 N.W.2D 744 (MINN. 2019).**

Kevin Deno[‡] & John-Paul Dees[#]

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I. INTRODUCTION

In *Bandemer v. Ford Motor Company*,¹ the Minnesota Supreme Court recognized specific personal jurisdiction over Ford Motor Company because the “substantial connection between the defendant Ford, the forum Minnesota, and the claims brought . . . suffice[d] to establish specific personal jurisdiction over the company.”² The court held that a Minnesota court had specific personal jurisdiction over Ford because of its targeted advertising, sales, and marketing in the state.³

This Paper begins with a brief history of Minnesota’s approach to personal jurisdiction and the underlying justifications that led to the *Bandemer* decision.⁴ The facts and procedural history of *Bandemer* follow.⁵ The analysis of this Paper considers two opposing opinions. The first opinion argues that *Bandemer*, on its face, is consistent with *International Shoe*,⁶ as well as the evolution of personal jurisdiction analysis.⁷ Additionally, the decision in *Bandemer* supports the efficiency of the court.⁸ Next, the second opinion argues that the court erred in granting specific personal jurisdiction because Ford’s contacts with Minnesota were not targeted actions, but general conduct.⁹ This analysis focuses on the first three factors in Minnesota’s five-pronged test for satisfying federal due process.

This Paper was researched and written prior to the Supreme Court’s decision in *Bandemer* on March 25, 2021. As such, the Supreme Court’s decision and analysis are not considered in this Paper. However,

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³ *Bandemer v. Ford Co.*, 931 N.W.2d 744 (Minn. 2019).

⁴ *Id.* at 755.

⁵ *Id.*

⁶ See discussion *infra* Sections II.A, II.B.

⁷ See discussion *infra* Section III.A.

⁸ *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945).

⁹ See discussion *infra* Parts IV-V.

¹⁰ See FED. R. CIV. P. 1 (“These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”).

¹¹ See *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017) (requiring more than general connections for specific personal jurisdiction).

the Supreme Court ultimately held that Ford was properly subject to specific personal jurisdiction in Minnesota and Montana.¹⁰

II. HISTORY

Personal jurisdiction is one of several mechanisms guiding civil procedure that plays a critical “role in many civil disputes in the United States.”¹¹ When a “defendant resides in, [or] is incorporated or headquartered in . . . the particular state where the suit is brought, personal jurisdiction generally is found to exist and is unproblematic.”¹² However, problems generally “arise when a plaintiff sues the defendant in a state other than the one in which the defendant is located.”¹³

A. *Brief Overview of General Personal Jurisdiction and Specific Personal Jurisdiction*

Personal jurisdiction over a defendant requires proper service to the “defendant in the state in which the court sits, and the defendant needs to voluntarily appear in court.”¹⁴ Personal jurisdiction is commonly established through either general personal jurisdiction¹⁵ or specific personal jurisdiction.¹⁶ “General [personal] jurisdiction may be amenable to narrowly defined categories, [however] specific [personal] jurisdiction is not.”¹⁷ Additionally, personal jurisdiction can be waived, and if a defendant appears in court without objecting to the court’s exercise of personal jurisdiction,

¹⁰ *Ford Motor Co. v. Montana Eighth Judicial District Court et al.*, 141 S. Ct. 1017, 1032 (2021) (holding that the connection between the claims and Ford’s in state activities were sufficient for the exercise of specific personal jurisdiction in both Minnesota and Montana).

¹¹ Robert E. Pfeffer, *A 21st Century Approach to Personal Jurisdiction*, 13 U. N.H. L. REV. 65, 66 (2015).

¹² *Id.*

¹³ *Id.*

¹⁴ *Personal Jurisdiction*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/personal_jurisdiction [<https://perma.cc/CP5T-9JFN>].

¹⁵ *General Jurisdiction*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A court’s authority to hear a wide range of cases, civil or criminal, that arise within its geographic area.”). General jurisdiction is also known as all-purpose jurisdiction.

¹⁶ *Specific Personal Jurisdiction*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“Jurisdiction based on a person’s minimum contacts with the forum state when the claim arises out of or is related to those contacts.”). Specific personal jurisdiction is also known as conduct-linked jurisdiction.

¹⁷ Brief for Civil Procedure Professors as Amici Curiae Supporting Respondents at 1, *Ford Motor Co. v. Bandemer*, 140 S. Ct. 916 (2020) (Nos. 19-368 & 19-369), 2020 WL 1902363, at *1 [hereinafter Brief for Civil Procedure Professors].

“then the court will assume that the defendant is waiving any challenge to personal jurisdiction.”¹⁸

General personal jurisdiction is properly asserted by a court over an out-of-state corporation “when the corporation’s affiliations with the State in which suit is brought are so constant and pervasive ‘as to render it essentially at home in the forum State.’”¹⁹ An individual is “at home” in the state that is his or her domicile,²⁰ whereas a corporation is “at home” in its state of incorporation “and in the state that is [its] principal place of business.”²¹

Specific personal jurisdiction considers two factors: (1) “the extent of the contacts,” which must comport with the requirements dictated within the forum’s long-arm statute;²² and (2) “the relation between defendants’ contacts” and the forum state.²³ In a case involving specific personal jurisdiction, each claim must be evaluated using the aforementioned factors.²⁴ Furthermore, a single or occasional action within a state might be sufficient to establish personal jurisdiction if the action is sufficiently related to the suit.²⁵ In practice, “specific [personal] jurisdiction has been a far more flexible inquiry into the relationship among the forum, the defendant, and the dispute.”²⁶

Additionally, the relationship between the forum, the defendant, and the dispute requires an analysis of the defendant’s rights in relation to the Due Process Clause of the Fourteenth Amendment.²⁷ The Due Process

¹⁸ *Personal Jurisdiction*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/personal_jurisdiction [<https://perma.cc/CP5T-9JFN>]; FED. R. CIV. P. 12(b)(2).

¹⁹ *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). A foreign corporation is either a literal corporation located in a foreign country or a corporation that is headquartered or domiciled in a sister-state of the United States. *See generally Goodyear Dunlop Tires*, 564 U.S. 915.

²⁰ STEPHEN C. YEAZELL & JOANNA C. SCHWARTZ, *CIVIL PROCEDURE* 85 (Rachel E. Barkow et al. eds., 10th ed. 2019); *see also Domicile*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home . . .” or “[t]he residence of a person or corporation for legal purposes.”).

²¹ YEAZELL & SCHWARTZ, *supra* note 20 at 85; *see also Corporate Domicile*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The place considered by law as the center of corporate affairs, where the corporation’s functions are discharged; the legal home of a corporation, usu[ally] its state of incorporation or the state in which it maintains its principal place of business.”).

²² YEAZELL & SCHWARTZ, *supra* note 20 at 85; JOHN T. CROSS, LESLIE W. ABRAMSON & ELLEN E. DEASON, *CIVIL PROCEDURE CASES, PROBLEMS, AND EXERCISES* 68 (4th ed. 2016).

²³ YEAZELL & SCHWARTZ, *supra* note 20, at 85.

²⁴ *Id.* at 86.

²⁵ *Id.*; *see also Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)).

²⁶ Brief for Civil Procedure Professors, *supra* note 17, at 1.

²⁷ CROSS, ABRAMSON & DEASON, *supra* note 22, at 68.

Clause establishes the boundaries for the exercise of personal jurisdiction.²⁸ However, state legislatures have tightened these limitations through their own long-arm statutes.²⁹ These long-arm statutes allow plaintiffs to serve process on non-resident defendants who are not physically present within the forum state.³⁰

There are two types of long-arm statutes: laundry-list long-arm statutes and due process long-arm statutes.³¹ Essentially, laundry-list long-arm statutes list activities that the forum state's legislature decided will subject non-resident defendants to the forum's jurisdiction.³² If the defendant's conduct falls within the parameters of the laundry-list long-arm statute, then a plaintiff may serve the defendant with process.³³ Yet, even if the court can exercise jurisdiction over a non-resident defendant through the laundry-list long-arm statute, this exercise may fail because exercising jurisdiction may not comply with the Due Process Clause's notions of fair play and substantial justice.³⁴ Thus, laundry-list long-arm statutes utilize a two-step analysis to exercise jurisdiction; first checking the statute's listed activities, then checking for constitutional due process.³⁵

Conversely, due process long-arm statutes permit courts to exercise personal jurisdiction over non-resident defendants to limits allowed by the Due Process Clause of the Fourteenth Amendment.³⁶ For example, California's code states, "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."³⁷ Other states have more verbose statutes, like Rhode Island's:

Every foreign corporation, every individual not a resident of this state or his executor or administrator, and every partnership or association, composed of any person or persons, not such residents, that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island, and the courts of this state shall hold such foreign corporations and such nonresident individuals or their executors or administrators, and such partnerships or associations

²⁸ *Id.*

²⁹ *See id.* ("It is left to local legislatures within each state to grant power to its courts to exercise specific personal jurisdiction through long-arm statutes.")

³⁰ *Id.*

³¹ *Id.* at 68–69.

³² *See* CROSS, ABRAMSON & DEASON, *supra* note 22, at 68.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 70 ("Analysis under the due process long-arm and constitutional long-arm is identical.")

³⁶ *Id.* at 69.

³⁷ CAL. CIV. PROC. CODE § 410.10 (2018).

amenable to suit in Rhode Island in every case not contrary to the provisions of the constitution or laws of the United States.³⁸

By having a due process long-arm statute, states reduce the two-step analysis of long-arm statutes into a single step because the due process analysis operates under these statutes as required by a constitutional analysis.³⁹ Like long-arm statutes, even if the non-resident defendant has contacts with the forum state, the defendant can establish that jurisdiction is unreasonable by showing it violates notions of fair play and substantial justice.⁴⁰ To determine if a defendant has made this showing, courts analyze five factors, including the litigation’s burden on the defendant, the plaintiff’s interest in the litigation, the forum state’s interest in the claim, an efficient resolution to the issues resulting from the claim, and the maintenance of interstate social policies.⁴¹

Like California and Rhode Island, Minnesota exercises specific personal jurisdiction over non-resident defendants through a long-arm statute.⁴² Minnesota’s statute states that:

As to the cause of arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over any foreign corporation or a nonresident individual, or the individual’s personal representative, in the same manner as if it were a domestic corporation or the individual were a resident of this state. This section applies if, in person or through an agent, the foreign corporation or nonresident individual: (1) owns, uses or possesses any real property situated in this state; or (2) transacts any business within the state⁴³

Unlike California or Rhode Island, Minnesota exercises specific personal jurisdiction over non-resident defendants through a laundry-list long-arm statute with enumerated acts.⁴⁴ However, even though Minnesota exercises jurisdiction over non-resident defendants through a laundry-list

³⁸ 9 R.I. GEN. LAWS ANN. § 9-5-33 (2018).

³⁹ See CROSS, ABRAMSON & DEASON, *supra* note 22, at 70 (“Analysis under the due process long-arm and constitutional long-arm is identical.”).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See MINN. STAT. § 543.19, subdiv. 1 (2018) (stating that Minnesota’s long-arm statute operates through a list of enumerated acts and under the Due Process Clause of the Fourteenth Amendment).

⁴³ *Id.*

⁴⁴ See CAL. CIV. PROC. CODE § 410.10 (2018) (stating California’s due process long-arm statute without listing enumerated acts); 9 R.I. GEN. LAWS ANN. § 9-5-33 (2018) (stating Rhode Island’s due process long-arm statute without listing enumerated acts).

long-arm statute, due process concerns still apply.⁴⁵ Accordingly, the Minnesota Supreme Court has held that the state's long-arm statute allows Minnesota courts to exercise specific personal jurisdiction only as far as the Due Process Clause of the Fourteenth Amendment allows.⁴⁶ Furthermore, the Minnesota Supreme Court applies federal case law to analyze the long-arm statute because federal decisions govern the statute's federal questions.⁴⁷ Thus, this mandate requires a history of federal case law's analysis of specific personal jurisdiction and long-arm statutes before Minnesota's analysis begins.⁴⁸

B. *Evolution of the Personal Jurisdiction Doctrine*

The applicable federal law concerning specific personal jurisdiction begins with *Pennoyer v. Neff*.⁴⁹ In *Pennoyer*, the claim involved a suit against a non-resident defendant who was not personally served with process.⁵⁰ Instead, the plaintiff used constructive service through publication, and the defendant did not appear in court to defend the lawsuit.⁵¹ Accordingly, the court issued a default judgment, and a sheriff seized and sold the

⁴⁵ See CROSS, ABRAMSON & DEASON, *supra* note 22, at 70 ("Even if the defendant's activities satisfy the long-arm statute, it is still possible that exercising jurisdiction over the nonresident defendant nevertheless will fail because of a due process violation.")

⁴⁶ *Valaspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992).

⁴⁷ *Id.* at 411; see also *Atkinson v. U.S. Operating Co.*, 129 Minn. 232, 233, 152 N.W. 410, 410 (1915) ("we simply apply federal case law" when examining Minnesota's long-arm statute).

⁴⁸ See *id.*

⁴⁹ *Pennoyer v. Neff*, 95 U.S. 714, 715 (1877). This case marked the advent of personal jurisdiction within the common law and remained the controlling authority regarding personal jurisdiction doctrine prior to *International Shoe*. *Id.* at 733-34. *Pennoyer* held, to establish personal jurisdiction, a defendant "must be brought within its jurisdiction by services of process within the State, or by [the defendant's] . . . voluntary appearance." *Id.* at 733. Beyond the caselaw, the Federal Rules of Civil Procedure (FRCP) are also central to the development of personal jurisdiction jurisprudence as they "govern civil proceedings in United States district courts." *Federal Rules of Civil Procedure*, U.S. FED. CTS., <https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure> [<https://perma.cc/8Y3X-VPPJ>]. The Rules Enabling Act of 1934 authorized the Supreme Court to create the FRCP. See 28 U.S.C. §§ 2071-2077. "[T]he rulemaking process was [then] delegated by the Court to committees of the Judicial Conference, the policy-making body of the U.S. Courts." *How the Rulemaking Process Works*, U.S. FED. CTS., <https://www.uscourts.gov/rules-policies/about-rulemaking-process/how-rulemaking-process-works> [<https://perma.cc/7YL2-LXQJ>]. Presently, committees of the Judicial Conference engage in an ongoing analysis of the function and impact of the federal rules. *Id.* As a result of this ongoing analysis, a committee may decide to propose a change to the rules, which invokes several review steps before submission to the Supreme Court for consideration and approval of any recommended changes. *Id.* Today, the process for challenging personal jurisdiction is codified under the FRCP. See FED. R. CIV. P. 12(b)(2).

⁵⁰ *Pennoyer*, 95 U.S. at 716-17.

⁵¹ *Id.*

defendant’s land to satisfy the judgement.⁵² The defendant appealed the decision.⁵³

Pennoyer determined that service of process solely provided through publication offended principles of due process.⁵⁴ In its analysis, the Court reasoned that “[p]rocess from the tribunals of one State cannot run into another State, and summon a party there domiciled to respond to proceedings against him.”⁵⁵ Like processes sent to defendants out of state, processes published in periodicals cannot establish personal jurisdiction over a non-resident defendant and do not create an obligation for the defendant to appear in court.⁵⁶ Instead, service of process alongside publication, or the defendant’s voluntary appearance within the forum state, create personal jurisdiction under a due process analysis.⁵⁷

Present-day personal jurisdiction jurisprudence stems from the decision in *International Shoe Company v. State of Washington*.⁵⁸ There, the defendant, International Shoe Company, was a Delaware company with an office in St. Louis, Missouri.⁵⁹ At issue in the case was the company’s use of salespeople in Washington.⁶⁰ International Shoe used salespeople in Washington by shipping products to them, having them display and sell those products, and then compensating them with a commission for the sale of those products.⁶¹ In addition, International Shoe reimbursed its Washington salespeople for renting offices and storefronts in the state.⁶² Washington sued International Shoe for its failure to contribute to an unemployment fund as required by Washington statute.⁶³

The holding of *International Shoe* established the beginning of the minimum contacts test, which requires certain minimum contacts between the defendant and the forum state to maintain a suit.⁶⁴ The notion behind the test contends that so long as the defendant-corporation has minimum contacts with the forum state, a court can properly exercise personal

⁵² *Id.* at 719. *Pennoyer* determined that service of process solely provided through publication (such as newspaper ads) offended principles of due process.

⁵³ *Id.* at 715.

⁵⁴ *See id.* at 714 (“A personal judgment is without any validity, if it be rendered by a State court in an action upon a money-demand against a non-resident of the State, who was served by publication of summons, but upon whom no personal service of process within the State was made, and who did not appear . . .”).

⁵⁵ *Id.* at 715.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Pfeffer, *supra* note 11, at 68.

⁵⁹ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 313 (1945).

⁶⁰ *Id.*

⁶¹ *Id.* at 313–14.

⁶² *Id.* at 314.

⁶³ *Id.* at 311.

⁶⁴ *See* Pfeffer, *supra* note 11, at 69.

jurisdiction without upsetting the “traditional concepts of fair play and substantial justice.”⁶⁵

Furthermore, the Court held that International Shoe received legal benefits and protections from Washington, and could have relied upon Washington’s courts if it needed to enforce a right through legal action.⁶⁶ The Court began its minimum contacts analysis by recognizing that presence within a state for jurisdictional purposes had been established by continuous and systematic contact.⁶⁷ However, the Court also conceded that a corporate agent’s presence within the state and isolated activity by those agents is not enough to establish personal jurisdiction over a corporation.⁶⁸ In these instances, litigation outside the corporation’s home state would be unreasonably burdensome and costly, thus breaking with due process.⁶⁹ Second, the Court indicated that when a corporation avails itself of the privileges and legal benefits within a state, service of process over this corporation complies with due process.⁷⁰ Therefore, service of process to International Shoe was proper because it sought the protections of Washington’s laws. Furthermore, the operations of its salespeople created sufficient contacts with Washington to comply with due process notions of fair play and substantial justice.⁷¹

In subsequent decisions, “the court essentially took the position that so long as the chosen forum was an arguably sensible place to litigate, given the connection between the forum and the parties . . . jurisdiction would be valid.”⁷² In *McGee v. International Life Insurance Company*, the Court considered whether the residence of one party to a business contract in a forum state created jurisdiction over the other non-resident party to that contract.⁷³ Here, a California resident, the plaintiff, bought life insurance from Empire Mutual Insurance Company, an Arizona business.⁷⁴ International Life Insurance Co., the defendant, later acquired the contract from Empire Mutual Insurance.⁷⁵ The California resident paid his

⁶⁵ *Int’l Shoe*, 326 U.S. at 320.

⁶⁶ *See id.* (indicating International Shoe “received the benefits and protection of the laws of the state, including the right to resort to the courts for enforcement of its rights”).

⁶⁷ *Id.* at 317.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 319.

⁷¹ *Id.* at 320.

⁷² Pfeffer, *supra* note 11, at 72–73; *see also* McGee v. Int’l Life Ins. Co., 355 U.S. 220, 220 (1957) (holding that exercising personal jurisdiction over an insurance company incorporated in Texas was appropriate because the life insurance company refused to pay out a policy to a deceased resident of California after it specifically targeted the forum state and solicited business from the resident there).

⁷³ *McGee*, 355 U.S. at 220.

⁷⁴ *Id.* at 221.

⁷⁵ *Id.* at 222.

premiums from his home in California to International Life Insurance’s offices in Texas by mail.⁷⁶ When the contract’s payment came into effect, International Life Insurance refused to pay the California resident.⁷⁷

In its holding, the Court stated that if the forum state’s contacts arise from a contract with a substantial connection to that state, due process is validated.⁷⁸ Therefore, exercising personal jurisdiction over a defendant company incorporated in another state was appropriate because California “ha[d] a manifest interest in providing effective means of redress for its residents when their insurers refuse[d] to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State to hold it legally accountable.”⁷⁹ The Court found a substantial connection to the forum state through the premiums mailed from California, the contract’s enactment in California, and the resident’s death in California.⁸⁰ Thus, these activities created the minimum contacts required with the forum state and did not offend due process.⁸¹

However, the Court limited this expansion in *Hanson v. Denckla*.⁸² In *Hanson*, the Florida court considered a situation similar to *McGee* in that the claim involved acquiring jurisdiction over a trust execution that originated in Delaware.⁸³ After executing a trust in Delaware, a woman then executed a will in Florida involving the trust before dying there.⁸⁴ The Florida Supreme Court held that the court’s jurisdiction covered the trustees, who were the non-residents.⁸⁵ However, a Delaware court claimed that the Florida court did not have jurisdiction over the non-residents.⁸⁶

The Supreme Court affirmed the Delaware court’s decision.⁸⁷ In their holding, the Justices stated that a court could not require defendants to defend a claim unless they have both minimal contacts with the forum state and the defendants purposefully availed themselves of the forum state

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 224.

⁷⁹ *Id.* at 223.

⁸⁰ *Id.* at 221–22.

⁸¹ *Id.* at 222.

⁸² *See Hanson v. Denckla*, 357 U.S. 235 (1958) (stating that a defendant cannot be required to defend itself in a different state unless the defendant has minimal contacts with that state and the defendant purposefully availed itself to the state’s privileges by conducting activities in the forum state).

⁸³ *Compare McGee*, 355 U.S. at 221 (handling an insurance sale that transpired in California between a California resident and an Arizona company that later sold the account to a Texas Company), *with Hanson*, 357 U.S. at 238 (implicating a probate dispute over a trust that was executed in Delaware but subject to a will sworn out in Florida after the testator moved there).

⁸⁴ *Hanson*, 357 U.S. at 240.

⁸⁵ *Id.* at 238.

⁸⁶ *Id.*

⁸⁷ *Id.* at 256.

by accepting the benefits of the forum state's legal protections.⁸⁸ The Court determined the Florida court erred in its decision because "[t]he settlor's execution in Florida of her power of appointment cannot remedy the absence of such an act in this case."⁸⁹ Furthermore, Florida did not acquire jurisdiction over the non-resident party solely by being the "center of gravity" for the claim and the most convenient location for litigation.⁹⁰

Subsequently, the Court further explained its definition of "minimum contacts" in *World-Wide Volkswagen Corp. v. Woodson*.⁹¹ The Court held that personal jurisdiction over a non-resident defendant requires contacts between the defendant and the forum state that are not happenstance.⁹² The plaintiffs, two automobile drivers who were New York residents, were hurt in a car accident in Oklahoma during a road trip.⁹³ They then filed a claim in Oklahoma state court against World-Wide Volkswagen Corporation, a car distributor and retailer that was incorporated and had a principal place of business in New York.⁹⁴

The Court in *World-Wide Volkswagen* recognized that *International Shoe* "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable."⁹⁵ The predictability outlined in *International Shoe* allows a corporation that "purposefully avails itself of the privilege of conducting activities within the forum State . . . [to have] clear notice that it is subject to suit there, and [] act to alleviate the risk of burdensome litigation."⁹⁶

However, the Court did not endorse the notion that the mere predictability of a vehicle traveling to another state should render a motor-vehicle dealership or manufacturer subject to personal jurisdiction in a foreign-state to which that vehicle traveled.⁹⁷ Rather, the decision in *World-Wide Volkswagen* represented the evolution of personal jurisdiction jurisprudence requiring contacts, ties, or relations with the forum state constituting more than mere collateral financial benefits.⁹⁸ So, while it may

⁸⁸ See *id.* at 253 ("[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.").

⁸⁹ *Id.* at 254.

⁹⁰ *Id.*

⁹¹ See generally *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

⁹² *Id.* at 287.

⁹³ *Id.* at 288.

⁹⁴ *Id.* at 289.

⁹⁵ *Id.* at 297.

⁹⁶ *Id.*; see also *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

⁹⁷ *World-Wide Volkswagen*, 444 U.S. at 297-99 ("But there is no such or similar basis for Oklahoma jurisdiction . . . [t]here is no evidence of record that any automobiles distributed by World-Wide are sold to retail customers outside this tristate area.").

⁹⁸ *Id.* at 299.

be foreseeable that a vehicle purchased from World-Wide Volkswagen might end up in Oklahoma, foreseeability alone is insufficient to establish personal jurisdiction under the Due Process Clause.⁹⁹

The Court has reinforced the idea that a defendant must have minimum contacts with the forum state in other cases. For specific jurisdiction, the Court established that a defendant’s general connections with a forum state is insufficient.¹⁰⁰ Rather, the controversy must arise from, or relate to, a defendant’s contacts with a forum state and the controversy must produce a substantial connection between the defendant and forum state.¹⁰¹ Also, the Court has held that specific personal jurisdiction does not exist when the suit lacks a connection between the forum state and the main controversy, even if the defendant conducts business in the state unconnected to the controversy within the State.¹⁰² Likewise, the Court held that mere injury to a forum state does not establish personal jurisdiction,¹⁰³ nor does the mere presence of a chattel in the forum state establish personal jurisdiction over the chattel’s owner.¹⁰⁴ To denote this connection, the Court applied a standard mandating that conduct gives rise to or relates to the claim.¹⁰⁵

The *World-Wide Volkswagen* holding reemerged in the plurality opinion in *Asahi Metal Industry Co. v. Superior Court of California*.¹⁰⁶ *Asahi* was a case involving arguably stronger contacts than *World-Wide Volkswagen* because the non-resident had actual knowledge, or should have had actual knowledge, that at least some of its component products were being directly sold to the forum state of California.¹⁰⁷ *Asahi* had two holdings, a plurality opinion and a majority opinion.¹⁰⁸ The plurality opinion did not believe actual knowledge of a product’s entrance into the stream of commerce in a specific state sufficed to create personal jurisdiction, but would require evidence that the non-resident defendant advertised in the

⁹⁹ *Id.* at 295.

¹⁰⁰ *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017).

¹⁰¹ *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (stating that specific personal jurisdiction must arise from the defendant’s conduct with the forum); *see also Walden v. Fiore*, 571 U.S. 277, 284 (2014) (mandating the existence of a substantial connection between the forum state and defendant’s suit-related conduct for personal jurisdiction).

¹⁰² *See Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915, 923 (2011) (stating sales within a forum state does not grant personal jurisdiction over an unrelated controversy).

¹⁰³ *Walden*, 571 U.S. at 290.

¹⁰⁴ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296 (1980).

¹⁰⁵ *Daimler AG v. Bauman*, 571 U.S. 117, 134 (2014); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Helicopteros Nacionales de Colombia*, 466 U.S. at 414–16.

¹⁰⁶ 480 U.S. 102 (1987).

¹⁰⁷ *Id.*; *see also Pfeffer*, *supra* note 11 at 99–100; *see generally World-Wide Volkswagen*, 444 U.S. at 297–99.

¹⁰⁸ *Pfeffer*, *supra* note 11, at 99–101.

forum state or designed the product for the forum state.¹⁰⁹ The majority opinion in *Asahi* held that “even if minimum contacts existed in . . . [*Asahi*], it would be unreasonable to allow California to exercise jurisdiction.”¹¹⁰ *Asahi* represents an additional evolution in personal jurisdiction jurisprudence regarding non-resident defendants. Foreseeable minimum sufficient contacts must exist with the forum state, and the contacts must constitute purposeful direction toward the forum state in the form of specific advertising or product development targeting that specific state.¹¹¹ Additionally, courts still perform an analysis as to the fairness of defending a claim in the forum in question.¹¹²

In modern long-arm statute cases, the Court has analyzed whether a product’s entrance into a forum’s stream of commerce satisfies the analysis required by the Fourteenth Amendment’s Due Process Clause. For example, in *J. McIntyre Machine, Ltd. v. Nicastro*, the United States Supreme Court discussed whether New Jersey’s exercise of jurisdiction violated due process.¹¹³ There, the in-state resident injured his hand in a metal-shearing machine produced in England by J. McIntyre Machinery, Ltd., a company incorporated and operated in England.¹¹⁴ At no time did petitioner engage in any activities in New Jersey that revealed an intent to invoke or benefit from the protection of its laws.¹¹⁵ The evolution of personal jurisdiction under *McIntyre* reaffirms the requirement that contacts be specifically targeted to the forum state, thus availing the party of its jurisdiction.¹¹⁶ The Court found that the New Jersey Supreme Court violated J. McIntyre Machinery’s due process because the company, in using a United States distributor, did not expect its products to be purchased by residents of the forum state.¹¹⁷ However, if J. McIntyre Machinery had expected this outcome, then the exercise would have complied with due

¹⁰⁹ *Asahi Metal*, 480 U.S. at 103-04; see also Pfeffer, *supra* note 11, at 99-100.

¹¹⁰ *Asahi Metal*, 480 U.S. at 108; see also Pfeffer, *supra* note 11, at 100.

¹¹¹ Pfeffer, *supra* note 11, at 100.

¹¹² *Asahi Metal*, 480 U.S. at 102.

¹¹³ *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011); see generally *Asahi Metal*, 480 U.S. at 102; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-99 (1980).

¹¹⁴ *McIntyre*, 564 U.S. at 878.

¹¹⁵ *Id.* at 887; Pfeffer, *supra* note 11, at 115-17.

¹¹⁶ See *McIntyre*, 564 U.S. at 882 (“[T]ransmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.”); *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 335-36 (Minn. 2016) (concluding MoneyMutual targeted Minnesota through television advertisements and the use of internet Google AdWords advertisements).

¹¹⁷ *McIntyre*, 564 U.S. at 886.

process because the products would have entered the forum’s stream of commerce at the company’s direction, constituting purposeful ailment.¹¹⁸

The most recent case to take center stage in the evolving jurisprudence of specific personal jurisdiction is *Bristol-Myers Squibb Co. v. Superior Court*, where the Court held that specific personal jurisdiction over claims brought by a non-resident plaintiff was improper.¹¹⁹ Under *Bristol-Myers Squibb*, there must also be an affiliation between the forum state and the specific underlying claim at issue to support personal jurisdiction.¹²⁰ *Bristol-Myers Squibb* did not mention whether its holding would impact properly certified class action claims, but the majority stated the “decision does not prevent the California and out-of-state plaintiffs from joining together in a consolidated action in the States that have general jurisdiction over [Bristol-Myers Squibb].”¹²¹

With these cases in mind, the United States Supreme Court produced an analysis of due process under the Fourteenth Amendment through a factor-based test.¹²² If the factors weigh in the defendant’s favor, then the forum’s exercise of jurisdiction does not comply with the Due Process Clause.¹²³ The Minnesota Supreme Court has applied the same test when analyzing due process and long-arm statutes.¹²⁴

C. *Minnesota’s Adherence to Federal Due Process Standards*

While Minnesota’s long-arm statute is of the laundry-list variety, due process analysis still applies to the statute once a claim meets the activity criteria.¹²⁵ The Minnesota Supreme Court has stated that Minnesota’s long-arm statute extends Minnesota’s personal jurisdiction only “as far as the Due Process Clause of the federal constitution allows.”¹²⁶ Furthermore, “when

¹¹⁸ See *id.* at 881-82 (“This Court has stated that a defendant’s placing goods into the stream of commerce ‘with the expectation that they will be purchased by consumers in the forum State’ may indicate purposeful ailment.”).

¹¹⁹ *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1733, 1776 (2017).

¹²⁰ *Id.* at 1776-77.

¹²¹ *Id.* at 1783; see also Joan R. Camagong, *Applying Bristol-Myers Squibb to Class Actions*, AM. BAR ASS’N, <https://www.americanbar.org/groups/litigation/committees/products-liability/practice/2019/applying-bristol-myers-squibb-to-class-actions/> [https://perma.cc/9H58-6M6Y].

¹²² See CROSS, ABRAMSON & DEASON, *supra* note 22, at 70 (“Analysis under the due process long-arm and constitutional long-arm is identical.”).

¹²³ *Id.*

¹²⁴ See *Bandemer v. Ford Co.*, 931 N.W.2d 744, 749 (Minn. 2019) (listing the five factors that a Minnesota court must find to exercise specific personal jurisdiction over a company not *in personam*).

¹²⁵ See CROSS, ABRAMSON & DEASON, *supra* note 22, at 70 (stating even if the defendant’s activities satisfy the long-arm statute, it is still possible that exercising jurisdiction over the non-resident defendant will nevertheless fail because of a due process violation).

¹²⁶ *Valaspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992).

analyzing most personal jurisdiction questions, Minnesota courts may simply apply the federal case law.”¹²⁷

The Minnesota Supreme Court recently interpreted the aforementioned United States Supreme Court holdings in *Rilley v. MoneyMutual, LLC*.¹²⁸ First, the Minnesota Supreme Court established five factors for the defendant that include “(1) the quantity of contacts with the forum state; (2) the nature and quality of contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the convenience of all the parties.”¹²⁹ Courts use these factors to decide whether a defendant purposefully availed itself of the forum state and if its contacts sufficiently relate to the cause of action.¹³⁰ Second, when considering sufficient minimum contacts, the *Rilley* holding mandates that a court consider all of the defendant’s alleged contacts together, and not individually, through the totality of the circumstances.¹³¹ Finally, in *Juelich v. Yamazaki Maka Optonics Corp*, the Minnesota Supreme Court stated that the first three factors determine whether “minimum contacts” exist.¹³²

III. THE *BANDEMER* DECISION

A. *Factual and Procedural History*

In January 2015, Minnesota resident Adam Bandemer rode as a passenger in Eric Hanson’s 1994 Ford Crown Victoria on a Minnesota road.¹³³ Hanson, the driver, rear-ended a snowplow, causing the car to enter a ditch.¹³⁴ As a result of this crash, Bandemer allegedly suffered a severe brain injury due to the passenger-side airbag’s failure to deploy.¹³⁵ Bandemer also alleged that a manufacturing defect caused the vehicle’s airbag’s failure.¹³⁶

Bandemer “filed a complaint in district court alleging products liability, negligence, and breach of warranty claims against Ford.”¹³⁷ Subsequently, Ford moved to dismiss the claim for lack of personal jurisdiction because the used car involved in the accident was neither

¹²⁷ *Id.* at 411.

¹²⁸ *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 321 (Minn. 2016).

¹²⁹ *Id.* at 328 (quoting *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 570 (Minn. 2004)).

¹³⁰ *Id.* at 332.

¹³¹ *Id.* at 337.

¹³² *Juelich*, 682 N.W.2d at 568.

¹³³ *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* Bandemer also named Hanson and Hanson’s father as defendants in a negligence claim that lies outside the scope of this Paper. *Id.*

designed, manufactured, nor originally sold in Minnesota.¹³⁸ However, Ford did not dispute the quantity of its contacts with Minnesota or the reasonableness of personal jurisdiction.¹³⁹

Ford moved for dismissal based on lack of personal jurisdiction, but Minnesota courts believed Ford had sufficient contacts with Minnesota, through its business practices, including advertising, sales, and data collection.¹⁴⁰ First, Ford sold more than two thousand 1994 Crown Victorias to Minnesotan dealerships and about two hundred thousand vehicles in total between 2013 and 2015.¹⁴¹ Second, various Ford advertising campaigns contacted Minnesotans through various mediums, including direct mail advertisements coupled with contacts relating to Ford’s national advertising campaigns.¹⁴² Ford’s marketing efforts also included a 2016 “Ford Experience Tour” in Minnesota, a 1966 Ford Mustang designed for the Minnesota Vikings, a “Ford Driving Skills for Life Free National Teen Driver Training Camp” held in Minnesota, and sponsorship of Minnesota athletic events.¹⁴³ Third, Ford collected data from its Minnesotan dealerships to further both redesigns and repairs.¹⁴⁴ Finally, Ford has employees, mechanics, service agents, franchises, and real property in Minnesota.¹⁴⁵

Initially, Ford’s registered agent for service of process received certified mail containing notice of the lawsuit, but certified mail is an improper form of service under the Minnesota Rules of Civil Procedure.¹⁴⁶ Ford alleged defective service in its answer, but subsequently moved for voluntary transfer of venue to Todd County, Minnesota, the county in which the Hansons resided.¹⁴⁷ Plaintiff then properly served “the summons and complaint on Ford Motor Company by process server delivering a copy of the summons and complaint to its registered agent for service.”¹⁴⁸

The motion then proceeded through the district court, appellate court, and eventually to the Minnesota Supreme Court.¹⁴⁹ The district court held that personal jurisdiction was appropriate.¹⁵⁰ However, Ford

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *See id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Bandemer v. Ford Motor Co.*, No. 77-CV-16-1025, 2017 WL 10185684, at *1 (Minn. Dist. Ct. May 25, 2017); *see also* MINN. R. CIV. P. 4.03(c).

¹⁴⁷ *Bandemer*, 2017 WL 10185684, at *1.

¹⁴⁸ *Id.*

¹⁴⁹ *Bandemer*, 931 N.W.2d at 748-49.

¹⁵⁰ *Id.* at 748.

appealed.¹⁵¹ Applying *Riley v. MoneyMutual*,¹⁵² the Minnesota Court of Appeals determined the district court did not err in its denial of Ford's motion to dismiss for lack of personal jurisdiction.¹⁵³ The court reasoned that Ford's marketing efforts in Minnesota formed a substantial connection between Ford, Minnesota, and the litigation.¹⁵⁴ Thus, Ford purposefully availed itself of Minnesota law, and Ford's contacts were sufficiently related to the alleged brain damage suffered from the alleged defect in the 1994 Crown Victoria's airbags.¹⁵⁵ Furthermore, the court rejected Ford's argument that Supreme Court precedent now requires a more direct connection between the defendant, the forum, and the litigation than the standard for connection stated in *Riley*.¹⁵⁶ Thereafter, Ford appealed to the Minnesota Supreme Court.¹⁵⁷

B. *The Minnesota Supreme Court's Decision*

The Minnesota Supreme Court affirmed the court of appeals, concluding "Ford's contacts alone [were] sufficient to support specific personal jurisdiction."¹⁵⁸ First, the court stated the standard for Minnesota's long-arm statute which "prevents personal jurisdiction over a non-resident defendant if it would 'violate fairness and substantial justice.'"¹⁵⁹ Then, as it had in *Valspar Corp. v. Lukken Color Corp.*,¹⁶⁰ the court stated that Minnesota's long-arm statute grants Minnesota courts personal jurisdiction only within the limits of the Due Process Clause of the United States Constitution.¹⁶¹ Additionally, section 543.19 of the Minnesota Statutes states that exercising personal jurisdiction is improper if it "offends traditional notions of fair play and substantial justice."¹⁶² Yet, a state attempting to exert personal jurisdiction "does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be

¹⁵¹ *Id.*

¹⁵² 884 N.W.2d 321 (Minn. 2016).

¹⁵³ *Bandemer*, 931 N.W.2d at 715.

¹⁵⁴ *Id.*

¹⁵⁵ *See id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 749.

¹⁵⁸ *Id.* at 755.

¹⁵⁹ *Id.* at 749 (quoting MINN. STAT. § 543.19, subdiv. 1(4)(ii) (2018)).

¹⁶⁰ 495 N.W.2d 408, 410-11 (Minn. 1992).

¹⁶¹ *Bandemer*, 931 N.W.2d at 749.

¹⁶² *Id.* at 749 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)); *see generally* MINN. STAT. § 542.19, subdiv. 1(4)(ii) (2020).

purchased by consumers in the forum State’ and those products subsequently injure forum consumers.”¹⁶³

To determine whether exercising personal jurisdiction over Ford would comport with federal due process, the court analyzed five factors.¹⁶⁴ These factors included (1) the quantity of Ford’s contacts with Minnesota, (2) the nature and quality of Ford’s contacts, (3) the connection of Ford’s contacts with Bandemer’s the cause of action—his brain injury resulting from the Crown Victoria’s defect, (4) Minnesota’s interest in the litigation, and (5) the convenience for Ford and Bandemer.¹⁶⁵ Through these factors the Minnesota Supreme Court sought to examine “reasonableness in light of traditional notions of fair play and substantial justice.”¹⁶⁶ The court then divided the first three factors into one category for a minimum contacts analysis.¹⁶⁷ It then used the last two factors to test for reasonableness, fair play, and substantial justice.¹⁶⁸

Through an analysis of the first two factors, the court determined that the court of appeals did not err when it held that the quality and quantity of contacts between Ford and Minnesota satisfied the requirements for personal jurisdiction.¹⁶⁹ The court relied on Ford’s marketing and data collection in Minnesota, which demonstrated that Ford placed its vehicles within Minnesota’s stream of commerce with the intent that Minnesotans would purchase them.¹⁷⁰ Furthermore, Ford collected data about sales at Minnesotan dealerships, sold more than two thousand 1994 Crown Victorias in Minnesota alongside two hundred thousand other vehicles, and conducted directed marketing in the state.¹⁷¹ Thus, the court found that the suit’s connection with Minnesota surpassed “the mere unilateral activity of those who claim some relationship with a non-resident defendant” because Ford targeted its sales at Minnesotans.¹⁷² Hence, Ford availed itself of Minnesota.¹⁷³

In an analysis of the connection between the cause of action and Ford’s contacts with Minnesota, the court determined the exercise of

¹⁶³ *Bandemer*, 931 N.W.2d at 749, 759 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)). States cannot exercise personal jurisdiction under the Due Process Clause unless the defendant has minimum contacts with that state and the suit comports with justice and fair play. See *Burger King*, 471 U.S. at 473; *Int’l Shoe*, 326 U.S. at 310.

¹⁶⁴ *Bandemer*, 931 N.W.2d at 749.

¹⁶⁵ See *id.* (listing the five factors that require examination to determine if an exercise of personal jurisdiction complies with federal due process).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 751.

¹⁷⁰ *Id.* at 750–51.

¹⁷¹ *Id.* at 751.

¹⁷² *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980)).

¹⁷³ *Id.*

personal jurisdiction was proper.¹⁷⁴ The court repeated its analysis from *Rilley*,¹⁷⁵ which stated that defendants solicited Minnesotans to purchase goods through targeted ads.¹⁷⁶ Therefore, like the ads in *Rilley*, Ford's marketing constituted a relevant contact with Minnesota for the minimum contacts analysis.¹⁷⁷

To support this analysis, the court maintained that replacing the "relating to"¹⁷⁸ standard with Ford's "giving rise to" standard would create an unwarranted shift in specific personal jurisdiction law.¹⁷⁹ The court rejected Ford's argument that *Bristol-Myers Squibb* mandates a "giving rise to" standard because (1) it interpreted the United States Supreme Court's language as buttressing the "relating to" standard,¹⁸⁰ and (2) the *Bristol-Myers Squibb* Court determined there were no connections between foreign plaintiffs and the forum state.¹⁸¹ Furthermore, the Minnesota Supreme Court determined that the United States Supreme Court consistently applied a "relating to" standard in *International Shoe* because it held Washington State's tax enforcement was sufficiently connected to International Shoe's presence in Washington to create personal jurisdiction.¹⁸² Furthermore, while the *World-Wide Volkswagen* Court found the foreseeability that a car might travel to Oklahoma failed to establish personal jurisdiction,¹⁸³ the Minnesota Supreme Court found that if Volkswagen had advertised, sold, and collected data in Oklahoma, as Ford had in Minnesota, then the United States Supreme Court would have found personal jurisdiction.¹⁸⁴ Thus, the Minnesota Supreme Court retained the "relating to" standard, finding Minnesota had personal jurisdiction over Ford.¹⁸⁵

¹⁷⁴ *Id.* at 755.

¹⁷⁵ *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 336–37 (Minn. 2016).

¹⁷⁶ *See Bandemer*, 931 N.W.2d at 751 (discussing how MoneyMutual's solicitation of Minnesotans to apply for unlawful loans allowed a suit to survive dismissal for lack of personal jurisdiction).

¹⁷⁷ *Id.*

¹⁷⁸ *Rilley*, 884 N.W.2d at 337.

¹⁷⁹ *Bandemer*, 931 N.W.2d at 752.

¹⁸⁰ *Id.* (citing *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017)). In *Bristol-Myers Squibb*, the Court held "[o]ur settled principles regarding specific jurisdiction control this case." 137 S. Ct. at 1781.

¹⁸¹ *Bandemer*, 931 N.W.2d at 752 (citing *Bristol-Meyers Squibb*, 137 S. Ct. at 178).

¹⁸² *Id.* at 753 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945)).

¹⁸³ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980).

¹⁸⁴ *See Bandemer*, 931 N.W.2d at 753 (declining to adopt Ford's rule that if a "particular vehicle was not designed, manufactured, or sold in Oklahoma . . . then it would not have mattered if the defendant sold millions of cars in Oklahoma.").

¹⁸⁵ *Id.*

Next, the court determined that the facts met due process requirements because Ford’s contacts related to Bandemer’s claim.¹⁸⁶ Rejecting Ford’s claim that no tortious conduct of design, manufacturing, warranting, or warning about the 1994 Crown Victoria occurred in Minnesota, the court determining that Ford’s targeted advertising and sales meant this specific Crown Victoria did not randomly arrive in Minnesota.¹⁸⁷ Bandemer’s allegations that Ford failed to detect the defect related to Minnesota because Ford collected data from Minnesotans about their vehicle purchases and targeted Minnesotans with advertisements.¹⁸⁸ Furthermore, the car crash occurred in Minnesota, its owner registered the vehicle in Minnesota, and Bandemer’s injuries were treated in Minnesota.¹⁸⁹ Therefore, as in *Rilley*,¹⁹⁰ the court found the totality of the Bandemer’s allegations supported personal jurisdiction.¹⁹¹

Finally, the court determined that the facts supported the reasonableness of Minnesota’s personal jurisdiction and comported with traditional notions of fair play and substantial justice.¹⁹² The court established that Minnesota had a strong interest in adjudication because the accident involved a Minnesota county vehicle on a Minnesota road.¹⁹³ Furthermore, the dispute involved a Minnesota resident and a business that regularly transacted in Minnesota.¹⁹⁴ Also, Minnesota had an interest in governing its roads.¹⁹⁵ Next, Minnesota offered a convenient forum, as it was the location for Bandemer’s accident and treatment.¹⁹⁶ Finally, even “Ford concede[d] that these factors [were] established,” and, as the court explained, “Minnesota ha[d] a strong interest in adjudicating this dispute regarding an accident . . . between a Minnesota resident as plaintiff and both Ford—a corporation that does business regularly in Minnesota—and two Minnesota residents as defendants.”¹⁹⁷

However, two justices dissented because they deemed Ford’s connections to the forum state and the cause of action to be unrelated and violative of due process.¹⁹⁸ The justices disagreed for several reasons.¹⁹⁹ First,

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 754.

¹⁸⁹ *Id.*

¹⁹⁰ *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 337 (Minn. 2016).

¹⁹¹ *Bandemer*, 931 N.W.2d at 755.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 756 (Anderson, J., dissenting).

¹⁹⁹ *See id.* at 756-61.

they found that the Crown Victoria entered Minnesota by chance, as it was designed in Michigan, assembled in Canada, and sold by Ford in a Bismarck, North Dakota dealership in 1994.²⁰⁰ The car entered Minnesota in 2011 by way of its fourth owner, and the accident occurred during the car's fifth ownership, which started in 2013.²⁰¹ Second, the dissent noted that Ford dealerships in Minnesota are independently owned.²⁰² Third, they argued that Ford engaged in national advertising that merely included Minnesota, rather than advertising that directly targeted Minnesotans.²⁰³ Furthermore, the dissent noted that no recent advertisements included a 1994 Crown Victoria.²⁰⁴ Fifth, the dissent distinguished *Riley* from the instant case by stating the loan company both solicited services from Minnesotans and violated Minnesota consumer protection laws in the ads, while Ford's marketing did not mention a Crown Victoria or its airbags.²⁰⁵ Sixth, the dissent argued that injury to a forum resident alone is not sufficient to form a connection with the forum, so personal jurisdiction did not apply to Ford purely because of Bandemer's accident.²⁰⁶ Accordingly, the dissent found a lack of personal jurisdiction.²⁰⁷

However, the majority quickly distinguished this argument from the facts and held that the present case involved facts sufficiently connecting the non-resident defendant to the alleged injury in the forum state.²⁰⁸ Conversely, in *Bristol-Myers Squibb*, "[t]he Supreme Court held that California did not have personal jurisdiction over the company regarding claims by out-of-state . . . plaintiffs because no connection existed between those out-of-state plaintiffs' claims and the defendant's contacts with California."²⁰⁹ As a result, the court affirmed the court of appeals decision, determining personal jurisdiction was properly exercised.²¹⁰

²⁰⁰ *Id.* at 757–58.

²⁰¹ *Id.* at 758.

²⁰² *Id.*

²⁰³ *See id.* (listing national advertising and direct mail, "which may reach the Minnesota market," alongside online data collections that any American could use as untargeted strategies).

²⁰⁴ *Id.* at 760.

²⁰⁵ *Id.* (distinguishing *Riley v. MoneyMutual, LLC*, 884 N.W.2d 321, 325 (Minn. 2016)).

²⁰⁶ *Id.* at 762 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296 (1980)).

²⁰⁷ *See id.* (stating that the defendant's contacts with the forum were what mattered, and that the majority did not establish that Ford's contacts with Minnesota related to Bandemer's allegations).

²⁰⁸ *Id.* at 752 (majority opinion).

²⁰⁹ *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781–82 (2017)).

²¹⁰ *See id.* at 755.

C. *Quick Note on Ford’s Petition for a Writ of Certiorari*

The United States Supreme Court granted Ford’s petition for a writ of certiorari, and oral arguments were held on October 7, 2020.²¹¹ Ford, in its brief, argued for the adoption of a causal relationship standard for the exercise of personal jurisdiction.²¹² In contrast, *Bandemer* posited that adopting Ford’s proposition would transition personal jurisdictional analysis into something more akin to tort law’s proximate cause standard.²¹³ The following analysis sections contain two opposing arguments written by the separate authors. The first analysis argues the Minnesota Supreme Court correctly decided *Bandemer*, while the second analysis argues the *Bandemer* decision was made in error.

IV. THE ARGUMENT SUPPORTING THE EXERCISE OF SPECIFIC PERSONAL JURISDICTION²¹⁴

A. *The Bandemer Decision: A Five-Factor Analysis*

The *Bandemer* decision correctly upheld the minimum contacts and due process analysis necessary for Minnesota to exercise specific personal jurisdiction.²¹⁵ The minimum contacts analysis includes: “(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the convenience of the parties.”²¹⁶ The factors themselves are not individually determinative, rather the defendant’s contacts are considered in aggregate “by looking at the totality of the circumstances.”²¹⁷ Furthermore, “the first three factors determine whether Ford has sufficient ‘minimum contacts’ with Minnesota,

²¹¹ *Ford Motor Company v. Bandemer*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/ford-motor-company-v-bandemer/> [https://perma.cc/B9EX-J2KE]; see also *Ford Motor Company v. Montana Eighth Judicial District Court*, OYEZ (Oct. 7, 2020), <https://www.oyez.org/cases/2020/19-368> [https://perma.cc/2LDL-YY98]; *Oral Argument: Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, SCOTUS (Oct. 7, 2020), https://www.supremecourt.gov/oral_arguments/audio/2020/19-368 [https://perma.cc/XMN5-YLKA].

²¹² Brief for Petitioner at 15, *Ford Motor Co. v. Bandemer*, 140 S. Ct. 916 (Nos. 19-368 & 19-369), 2020 WL 1154744, at *15.

²¹³ Brief for Respondents at 10–12, *Ford Motor Company v. Mont. Eighth Judicial Dist. Court*, 140 S. Ct. 917 (2020) (Nos. 19-368 & 19-369), 2020 WL 1531238, at *10–12; see also Brief for Petitioner, *supra* note 212.

²¹⁴ This section of the analysis is authored exclusively by John-Paul Dees.

²¹⁵ See *supra* Section III.B (discussing the five factors Minnesota courts use to determine if specific personal jurisdiction is present).

²¹⁶ *Bandemer*, 931 N.W.2d at 749.

²¹⁷ *Id.* at 750 (citing *Riley v. MoneyMutual, LLC*, 884 N.W.2d 321, 337 (Minn. 2016)).

and the last two factors determine whether jurisdiction is otherwise 'reasonable' under concepts of 'fair play and substantial justice.'²¹⁸

1. *Quality, Nature, and Quantity of Contacts*

In *Bandemer*, Ford did not dispute the first and second factors of the minimum contacts test as relating to the "quality or quantity of [Ford's] contacts with Minnesota."²¹⁹ Ford's use of regional advertising and marketing activities in Minnesota established "contacts that were not 'random, fortuitous, or attenuated'" resulting in Ford's purposeful availment of Minnesota law.²²⁰

Although Ford does not dispute the nature or quality of its contacts with Minnesota,²²¹ it is important to consider the significance advertisements and the age of internet commerce play in a minimum contacts analysis.²²² In *Asahi's* plurality opinion, Justice O'Connor stated that "placing a product into the stream of commerce was not enough unless coupled with some other act."²²³ O'Connor suggested that an example of an additional act could include "designing the product for the market . . . , advertising in the forum state, establishing channels for providing regular advice to customers . . . , or marketing the product through a distributor . . . in the forum state."²²⁴

The significance of advertisements in establishing a connection to a forum state for specific personal jurisdiction is underutilized by legal teams. In *Rilley v. MoneyMutual*, the Minnesota Supreme Court, held that the purchase of Internet advertisements through the Google AdWords platform by MoneyMutual was a means to establish a significant connection

²¹⁸ *Id.* at 749 (quoting *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 570 (Minn. 2004)).

²¹⁹ *Id.* at 750-52 (stating that Ford's contacts with Minnesota were sufficient for specific personal jurisdiction because "Ford's data collection, marketing, and advertising in Minnesota demonstrate that it delivered its product into the stream of commerce with the intention that Minnesotans purchase such vehicles.").

²²⁰ *Id.* at 750 (quoting *Bandemer v. Ford Motor Co.*, 913 N.W.2d 710, 715 (Minn. Ct. App. 2018) (citation omitted)).

²²¹ *See id.* at 748.

²²² *See generally* Scott M. Hagel, *Civil Procedure - The Stream of Commerce Theory in Minnesota: Does the Shoe Fit?*, 24 WM. MICHELL L. REV. 231 (1998) (discussing stream of commerce theory decisions and their influence on decisions involving personal jurisdiction in Minnesota); Brian X. Chen, *I Downloaded the Information That Facebook Has on Me. Yikes.*, N.Y. TIMES (Apr. 11, 2018), <https://www.nytimes.com/2018/04/11/technology/personaltech/i-downloaded-the-information-that-facebook-has-on-me-yikes.html> [https://perma.cc/2XUK-V5YA].

²²³ *See Hagel, supra* note 222, at 237-38 (1998) (discussing *Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 112 (1987)).

²²⁴ *See id.* at 238.

with Minnesota.²²⁵ If anything, the judiciary underestimates the significance of corporations utilizing data-mined information from private individuals to tailor advertisements specifically to citizens of various states in an attempt to encourage individuals to purchase goods.²²⁶ As a result of modern technology, corporations can utilize geo-fencing advertisements, a practice that forwards or triggers an advertisement to an individual on a smartphone alerting him or her of a particular offer, or company, based on radio frequency identification, Wi-Fi, GPS location, or cellular data.²²⁷ Courts should maintain a strong presumption favoring the exercise of personal jurisdiction over non-resident corporations that advertise online because these corporations use this consumer data to guide business decisions relating to that forum.²²⁸

As a general matter, Ford offers a rewards program called “FordPass,” which enables Ford to collect an individual’s private

²²⁵ *Riley v. MoneyMutual*, 884 N.W.2d 321, 336–39 (Minn. 2016). Google Ads is a platform that enables businesses to advertise business goods or services by paying for promotion in the form of search result appearances that coincide with certain predetermined search parameters. See *Google Ads, How It Works*, GOOGLE, https://ads.google.com/home/how-it-works/?subid=us-en-ha-awa-bk-c-co:lo3~EAlaIQobChMIkoHrld-d7AIVBL7Ach17PQqq~EAAAYASAAEgIBGvD_BwE~76351050606~kwd-12340353~6466339383~445804224654 [<https://perma.cc/F9LW-AKGP>].

²²⁶ See Chen, *supra* note 222; Jake Frankenfield, *Data Analytics*, INVESTOPEDIA (July 1, 2020) <https://www.investopedia.com/terms/d/data-analytics.asp> [<https://perma.cc/EDW6-HSYV>] (defining data analytics as “the science of analyzing raw data to make conclusions about that information. Many of the techniques and processes of data analytics have been automated into mechanical processes and algorithms that work over raw data for human consumption.”); Alexandra Twin, *Data Mining*, INVESTOPEDIA (Sept. 20, 2020), <https://www.investopedia.com/terms/d/datamining.asp> [<https://perma.cc/AKW5-K7AL>] (describing the use of free customer loyalty cards that enable stores to easily track an individual’s spending habits to specifically tailor coupons to the individual encouraging additional consumption); Andrew Olton, *Data Science Case Study: Optimizing Product Placement in Retail (Part 1)*, TOWARDS DATA SCIENCE (May 28, 2018), <https://towardsdatascience.com/data-science-case-study-optimizing-product-placement-in-retail-part-1-2e8b27c16e8d> [<https://perma.cc/G8AJ-SCGE>] (describing the practical uses of big data and data analytics information can provide to retail businesses); see also Terry Turner, *Data Mining*, CONSUMER NOTICE (July 17, 2020), <https://www.consumernotice.org/data-protection/mining/> [<https://perma.cc/PYP8-VE35>] (defining “data-mining,” as the collection of an individual’s personal information for the purpose of the selling the information to companies to aid marketing efforts).

²²⁷ Amber Kemmis, *What is Geofencing? Everything You Need to Know About Location-Based Marketing*, BUS. 2 COMMUNITY (Jan. 10, 2020), <https://www.business2community.com/marketing/what-is-geofencing-everything-you-need-to-know-about-location-based-marketing-02274287> [<https://perma.cc/3GW6-YEUV>]; see also Charles Mazzini, *The Five Ws (And One H) of Geofence Marketing*, FORBES (Dec. 13, 2019), <https://www.forbes.com/sites/forbesagencycouncil/2019/12/13/the-five-ws-and-one-h-of-geofence-marketing/#2e78a3e649aa> [<https://perma.cc/N5AL-MFSX>].

²²⁸ See generally *supra* note 226 (describing ways in which personal information gathered through data mining may guide business decisions).

information relating to the precise location where information is collected from a mobile device and/or a vehicle with location-based functions.²²⁹ Additionally, Ford collects information relating to a vehicle's current "location, travel direction, and speed" including deriving approximate locations through access points such as "cell towers, . . . IP address[es], whether location services are on or turned off, through the permission system used by . . . [an individual's] mobile operating system."²³⁰ Furthermore, Ford uses the personal information collected under the guise of providing greater functionality and service because it enables Ford to personalize a consumer's "experience, troubleshoot problems, [and] develop new and improved products, services, and marketing strategies and research."²³¹

2. *The Connection Between the Cause of Action and the Contacts*

Regarding the third factor, Ford maintains, in cases like *Bandemer*, that specific personal jurisdiction should be altered to make it more predictable.²³² However, due to the pervasive and near-constant nature of data mining conducted across the country, a tenable argument for general personal jurisdiction over non-resident corporate defendants exists, regardless of whether the injured party's personal data was used.²³³ These data mining operations are pervasive to the point that they constitute continuous business operations in whichever state they occur.²³⁴ This argument ultimately relies on an exchange: if Ford Corporation wants to utilize the personal information of private individuals to assist the purported improvement of products and aid the creation of tailored marketing campaigns to potential customers, then Ford should reasonably expect to

²²⁹ *FordPass Terms and Privacy Policy*, FORD (Feb. 2020), <https://owner.ford.com/fordpass/fordpass-terms-and-conditions.html#two> [<https://perma.cc/VRD5-UZW5>]; see also *infra* Section VII.A-C (outlining how Ford utilizes an individual's personal information to further its own business operations and services).

²³⁰ See *id.*

²³¹ See *id.*

²³² See generally *Bandemer v. Ford Co.*, 931 N.W.2d 744 (Minn. 2019).

²³³ See *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) ("[A] court may assert jurisdiction over a foreign corporation 'to hear any and all claims against [it]' only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive 'as to render [it] essentially at home in the forum State.'" (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)); FORD, *supra* note 229 (describing FordPass); *supra* note 226 (describing data mining practices more generally); *infra* Section VII.A-C (outlining how Ford utilizes an individual's personal information to further its own business operations).

²³⁴ FORD, *supra* note 229; *infra* Section VII.A-C (outlining how Ford utilizes an individual's personal information to further its own business operations and services); see also *supra* notes 226–27.

avail itself of the forum states where Ford collects personal information from private citizens.²³⁵

However, it is unlikely the United States Supreme Court will completely abandon the specific personal jurisdiction framework developed under the progeny of *International Shoe*.²³⁶ In *Bristol-Myers Squibb*, Justice Alito, writing for the majority, stated that the Supreme Court’s “settled principles regarding specific jurisdiction control . . . [the] case” and “for a state court to exercise specific jurisdiction, ‘the suit’ must aris[e] out of or relat[e] to the defendant’s contacts with the forum.”²³⁷

Maintaining this frame of reference and turning our attention to the third factor of the minimum contact test, Ford contended that specific personal jurisdiction would not be proper because the third factor should supposedly require a “‘giving rise to’ standard in place of the ‘arising out of or related to standard’” or a causal standard.²³⁸ However, Ford’s argument fails to account for Justice Alito’s language in *Bristol-Myers Squibb*, indicating Supreme Court jurisprudence controlled the Court’s decision, which recognized that personal jurisdiction may exist whether the requisite ties “arises out of” or “relate[s] to” a non-resident corporate defendant’s conduct.²³⁹ Relying on guiding principles outlining the proper exercise of personal jurisdiction in *MoneyMutual*, the Minnesota Supreme Court ultimately found Ford’s arguments unpersuasive and held that Ford’s advertisements constituted a sufficient “contact with the Minnesota forum for the purpose of minimum contacts analysis.”²⁴⁰

3. *Interest of the State Providing a Forum*

The fourth factor was established because a “dispute regarding an accident involving a Minnesota county vehicle that occurred on a Minnesota road, between a Minnesota resident as plaintiff and Ford” involved Minnesota’s “vital interest in protecting the safety of its residents, [and] regulating the safety of its roadways.”²⁴¹ Ford argued that requiring a causal connection to establish specific personal jurisdiction would be most consistent with the principles of federalism.²⁴² Additionally, Ford stated that “a non-causal test would allow a forum State to use a defendant’s

²³⁵ See generally FORD, *supra* note 229; see also *infra* Sections VII.A–C.

²³⁶ *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1780–81 (2017) (internal quotation marks omitted).

²³⁷ *Id.*

²³⁸ *Bandemer v. Ford Co.*, 931 N.W.2d 744, 752–53 (Minn. 2019); see generally *Bristol-Myers Squibb*, 137 S. Ct. at 1782; see also *supra* Section III.B.

²³⁹ *Bristol-Myers Squibb*, 137 S. Ct. at 1780–81; see also *infra* Part V.

²⁴⁰ *Bandemer*, 931 N.W.2d at 752.

²⁴¹ *Id.* at 755.

²⁴² Brief for Petitioner, *supra* note 212, at 23.

unconnected in-state activities as a hook to regulate the defendant's out-of-state activities that actually form the basis of the plaintiff's claims."²⁴³ The arguments put forward in Ford's brief woefully understate how a causal requirement for specific jurisdiction over a non-resident corporate defendant would do more to undermine federalism than it would conform with due process and any purported protections of federalism.²⁴⁴ Additionally:

Due process does not require that specific jurisdiction rest on a strict causal link between the defendant's forum-state contacts and the plaintiffs claims, and inventing such a requirement provides no new benefits, whether in terms of fairness or federalism. It would, however, generate needless inefficiencies, jeopardize states' well-accepted regulatory interests, and possibly result in claims that cannot be brought in *any* U.S. state.²⁴⁵

Adopting a causal requirement for establishing specific personal jurisdiction would exacerbate the financial resource disparities between individual private plaintiffs and defendant corporations because litigation involving these parties will almost always involve a motion to dismiss for lack of personal jurisdiction as a matter of course.²⁴⁶

4. *The Convenience of the Parties*

Lastly, the fifth factor pertaining to the convenience of the parties is appropriate for the Minnesota forum because it was "the site of the accident and treatment of injury" and the United States Supreme Court "has long recognized the States' 'Manifest Interest' in providing judicial forums for their injured citizens, preventing them from having to follow defendants to

²⁴³ *Id.* at 25.

²⁴⁴ Brief for Minnesota, Texas, thirty-seven other States, and the District of Columbia as Amici Curiae in Support of Respondents at 4-6, *Ford Motor Co. v. Bandemer*, 140 S. Ct. 916 (2020) (Nos. 19-368 & 19-369), 2020 WL 1875615, at *4-6 [hereinafter Amici Curiae Brief for Minnesota et al.].

²⁴⁵ Brief for Civil Procedure Professors, *supra* note 17, at 1.

²⁴⁶ YEAZELL & SCHWARTZ, *supra* note 20, at 477 (recognizing that judicial proceedings do not work as effectively or efficiently for poor litigants and with coin flip claims many litigants could face a David battling Goliath situation); *cf.* Brief of Respondents at 10-12, *Ford Motor Company v. Bandemer*, 140 S. Ct. 916 (2020) (Nos. 19-368 & 19-369), 2020 WL 1531238, at *10-12 (indicating that if the causal standard were adopted and a widget manufactured by a non-resident defendant corporation caused an injury, the onus would fall upon the injured party to spend time and resources to identify the state of first-sale); Brief for Civil Procedure Professors, *supra* note 17, at 2 (describing the detrimental impact of a disruptive and inefficient causal test, which may break single disputes up across multiple state courts).

distant locals.”²⁴⁷ Additionally, in the wake of the coronavirus pandemic, and the rapid adoption of technology within various adjudicatory proceedings for the observation of social distancing practices, it becomes increasingly apparent that remote proceedings are not only feasible, but desirable in many circumstances.²⁴⁸ Non-resident defendant corporations should no longer be able to escape liability by arguing that defending a case in a foreign state is “inconvenient.”²⁴⁹ After all, at the very least, these defendants will be able to make remote appearances in their own defense, regardless of the venue.²⁵⁰

B. *Flaws in Ford’s Argument*

Ford argues the “giving rise to” standard articulated in *Bristol-Myers Squibb* narrows the scope of the minimum contacts analysis and subsequently requires a jurisdictionally relevant contact that gives rise to the plaintiff’s claim of harm.²⁵¹ Ford attempts to egregiously narrow the minimum contact analysis by requiring a more pinpointed jurisdictionally relevant claim of injury to allow for the exercise of specific personal jurisdiction.²⁵² This requirement is misguided, to say the least, because the personal jurisdiction doctrine was originally crafted as a mechanism and means to establish jurisdiction over a non-resident corporate defendant and bring the defendant into the forum where the injured plaintiff resides.²⁵³

Ford argues that the result in *Bristol-Myers Squibb*—in which the non-resident plaintiffs were denied specific personal jurisdiction—supports its position that Minnesota courts exercising personal jurisdiction in the *Bandemer* case would be inappropriate.²⁵⁴ However, the *Bristol-Myers Squibb* decision included language specifically indicating that non-resident

²⁴⁷ *Bandemer v. Ford Co.*, 931 N.W.2d 744, 755 (Minn. 2019); see *Amici Curiae Brief for Minnesota et al.*, *supra* note 244, at 5 (citing *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957)).

²⁴⁸ Joanna Goodman, *Technology: LegalTech: Whose Team Are You On?*, L. SOC’Y GAZETTE (May 18, 2020), <https://www.lawgazette.co.uk/analysis/whose-team-are-you-on/5104284.article> [https://perma.cc/8BLP-SDDP]; see also Lev Breydo, *Can Covid-19 Help Catalyze LegalTech Adoption?*, AM. BAR ASS’N (May 19, 2020), https://www.americanbar.org/groups/business_law/publications/committee_newsletters/legal_analytics/2020/202005/fa_2/ [https://perma.cc/GZA5-4682].

²⁴⁹ Goodman, *supra* note 248; Breydo, *supra* note 248.

²⁵⁰ Goodman, *supra* note 248; Breydo, *supra* note 248.

²⁵¹ *Bandemer*, 931 N.W.2d at 752–53; see also Brief for Petitioner, *supra* note 212, at 32–33.

²⁵² *Bandemer*, 931 N.W.2d at 752–53; see also Brief for Petitioner, *supra* note 212, at 32–33.

²⁵³ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 310 (1945); see also *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 220 (1957).

²⁵⁴ *Bandemer*, 931 N.W.2d at 752–53 (citing *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1783–84 (2017)).

plaintiffs who were removed from the proceeding in California still had the ability to join “together in a consolidated action in the States that have general jurisdiction over . . . Bristol-Myers Squibb. Alternatively, the non-resident plaintiffs could probably sue together in their respective home States.”²⁵⁵ Furthermore, the *Bristol-Myers Squibb* decision did not extend jurisdiction to the plaintiffs who were “not forum-state residents and were not injured” in California.²⁵⁶ Conversely, in *Bandemer*, the plaintiff is a forum-state resident, and the exercise of personal jurisdiction would comport with previous Supreme Court personal jurisdiction jurisprudence.²⁵⁷ The *Bristol-Myers Squibb* decision supports exercising personal jurisdiction in the *Bandemer* case because *Bristol-Myers Squibb* indicates that when a consumer good, such as a prescription drug or mass-manufactured vehicle, enters the stream of commerce,²⁵⁸ individuals can bring a suit in the state in which they are injured.²⁵⁹ Here, this logic supports Bandemer’s right to bring suit against Ford in Minnesota, the state in which he was injured.²⁶⁰

In addition, regarding *Bristol-Meyer Squibb*, it is more accurate to say the Court felt the case would have been better suited to establish personal jurisdiction over non-resident plaintiffs had it been properly certified as a class action.²⁶¹ The majority in *Bristol-Myers Squibb* determined that preventing non-resident plaintiffs from joining the case in California would not prevent the omitted plaintiffs “from joining together in a consolidated action in the States that have general jurisdiction over *Bristol-Myers Squibb*.”²⁶² This statement does not support Ford’s attempts to

²⁵⁵ *Bristol-Myers Squibb*, 137 S. Ct. at 1177.

²⁵⁶ Brief for Civil Procedure Professors, *supra* note 17, at 4.

²⁵⁷ *Id.* at 4–5.

²⁵⁸ *Stream-of-Commerce Theory*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The principle that a state may exercise personal jurisdiction over a defendant if the defendant places a product in the general marketplace and the product causes injury or damage in the forum state, as long as the defendant also takes other acts to establish some connection with the forum state, as by advertising there or by hiring someone to serve as a sales agent there.”).

²⁵⁹ *Bristol-Myers Squibb*, 137 S. Ct. at 1177; Brief for Civil Procedure Professors, *supra* note 17, at 2.

²⁶⁰ *Bristol-Myers Squibb*, 137 S. Ct. at 1177; Brief for Civil Procedure Professors, *supra* note 17, at 2; *see also* *Bandemer v. Ford Co.*, 931 N.W.2d 744, 752–53 (Minn. 2019).

²⁶¹ *Bristol-Myers Squibb*, 137 S. Ct. at 1782–84; *see also* FED. R. CIV. P. 23(c) (describing the process to obtain proper certification for a class action); *Class Action*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“A lawsuit in which the court authorizes a single person or a small group of people to represent the interests of a larger group; specifically, a lawsuit in which the convenience either of the public or of the interested parties requires that the case be settled through litigation by or against only a part of the group of similarly situated persons and in which a person whose interests are or may be affected does not have an opportunity to protect his or her interests by appearing personally or through a personally selected representative, or through a person specially appointed to act as a trustee or guardian.”).

²⁶² *Bristol-Myers Squibb*, 137 S. Ct. at 1783.

construe the decision in a manner that limits its liability for injuries that Ford-manufactured products may cause.²⁶³

Furthermore, in the petition for certiorari, Ford posits that a plaintiff’s injury in a forum state is only sufficient to establish the plaintiff’s contacts with the state and not the contacts of the defendant.²⁶⁴ Ford attempts to support this argument by stating, “the plaintiff would have experienced this same injury wherever else he might have traveled, and [the plaintiff] . . . just happened to travel to” the forum state.²⁶⁵ However, even if *Bristol-Myers Squibb* did narrow the application of personal jurisdiction to require “but for” causation, the Minnesota court’s application of personal jurisdiction in *Bandemer* would still be correct.²⁶⁶ In the context of *Bandemer*, “but for” Defendant Hanson’s purchase of an allegedly negligently manufactured 1994 Ford Crown Victoria, there is no substantial certainty that Plaintiff Bandemer would have experienced the same or similar injuries.²⁶⁷ Ford might argue that incorporating the facts from *Bandemer* creates only a hypothetical and, therefore, overly attenuated connection, but this merely speaks to the fragility of Ford’s next argument in support of a causal standard.²⁶⁸

Ford purports that a causal standard for establishing personal jurisdiction should be adopted because “[a] causal test for specific personal jurisdiction . . . furthers fairness. It ensures that a defendant will have fair warning that a particular activity may subject it to the jurisdiction of a foreign sovereign.”²⁶⁹ However, this argument is not persuasive because Ford is simply attempting to narrow its own accountability when facing individuals injured by products that Ford placed in the stream of commerce.²⁷⁰ Ford affirmatively availed itself to jurisdiction in Minnesota by continuously engaging in activities such as advertising and manufacturing its vehicles for the purpose of sale in the state.²⁷¹ As a result of the continuous contacts Ford exhibited with Minnesota, Ford should reasonably foresee and anticipate a

²⁶³ See Brief for Petitioner, *supra* note 212, at 1 (arguing that Ford should expect specific personal jurisdiction to be exercised in the forum of the first sale of a particular widget).

²⁶⁴ See *id.* at 32.

²⁶⁵ See *id.* at 33.

²⁶⁶ See *id.*

²⁶⁷ See *id.*; Levi M. Klinger-Christiansen, *The Nexus Requirement After Bristol-Myers: Does “Arise out of or Relate to” Require Causation?*, 50 SETON HALL L. REV. 1145, 1146–47 (2020) (noting that *Bristol-Myers* “narrowed the understanding of . . . the nexus requirement” to “require at-least but-for causation between the plaintiff’s claim and the defendant’s forum contacts in most situations”).

²⁶⁸ *Bandemer v. Ford Co.*, 931 N.W.2d 744, 752–53 (Minn. 2019); see also Brief for Petitioner, *supra* note 212, at 23–26.

²⁶⁹ See Brief for Petitioner, *supra* note 212, at 26–27 (citation omitted) (internal quotation marks omitted).

²⁷⁰ See *supra* Part IV.

²⁷¹ See *supra* Part IV.

court challenge that arises, or relates to, any alleged injuries involving a vehicle the company manufactured.²⁷²

This position is only strengthened when the injury relates to a defective airbag, a known issue in vehicles for the past decade.²⁷³ It would seem Ford is attempting to enjoy the benefits of a free market while simultaneously seeking to shield itself from any liability by using recent personal jurisdiction jurisprudence that treats the Due Process Clause as a proxy for jurisdictional analysis. Given the company's reliance on national and global streams of commerce, this jurisdictional analysis would be better served by applying principles applicable to the interstate and international commerce clauses, not the restrictive, individualistic notions of due process.²⁷⁴

Additionally, Ford stated in oral arguments that it would be unfair to subject the company to Minnesota's courts and juries.²⁷⁵ However, the real travesty would be freeing manufacturers from liability where their vehicles are sold by an owner in one state, purchased by a driver in another, and subsequently the vehicle injures a private party due to a product defect but the injured individual is unable to litigate in the state where the injury occurred because Ford believed it was unfair in *Bandemer*.²⁷⁶ If the private sale of an automobile is allowed to shield automakers from liability, car manufacturers may be incentivized to build shoddier vehicles knowing they will not face repercussions in the event a vehicle breaks down after several years have passed and the car has changed hands since the initial purchase.²⁷⁷

²⁷² See *supra* Part IV.

²⁷³ See *supra* Part IV.

²⁷⁴ See *McIntyre Machinery v. Nicastro*, 564 U.S. 873, 873 (2011); University of South Carolina School of Law, *McIntyre: Specific Jurisdiction and Stream of Commerce*, YOUTUBE (Mar. 28, 2013), <https://www.youtube.com/watch?v=GKS49u59xrI> [<https://perma.cc/9U3J-GELG>] (discussion at 30:20).

²⁷⁵ Oral Argument at 11:05, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 592 U.S. __ (2021) (No.19-368 & No. 19-369), <https://www.oyez.org/cases/2020/19-368> [<https://perma.cc/VQE3-LQJP>]. During a colloquy between Justice Breyer and Attorney Sean Marotta regarding what would be unfair about litigating in both Minnesota and Montana, attorney Sean Marotta stated "I think what's unfair about it is that Ford has to be subject to the rulings of Montana and Minnesota judges, be subject to the verdicts of Montana and Minnesota juries, be subject to the Montana and Minnesota Rules of Evidence and Procedure, and even if you don't think that's a significant burden on Ford because Ford's a big company, the rule you'll announce in this case applies to much smaller manufacturers." *Id.*

²⁷⁶ *Id. But cf.* Brief for Respondents, *supra* note 213, at 34 (indicating that depriving an injured resident access to the courts in the state in which they reside would be unfair).

²⁷⁷ Trent Gillies, *Car Owners are Holding Their Vehicles for Longer, Which is Both Good and Bad*, CNBC (May 28, 2017), <https://www.cnbc.com/2017/05/28/car-owners-are-holding-their-vehicles-for-longer-which-is-both-good-and-bad.html> [<https://perma.cc/B2F3-JWEL>] (discussing how individuals are owning their vehicles for longer periods of time); see also

Historically, motor-vehicle companies have opposed government regulations.²⁷⁸ As a result, trusting the automobile industry to independently improve the safety of its products, while narrowing the specific personal jurisdiction doctrine, is inappropriate.²⁷⁹ This is particularly true given the endless parade of reports chronicling defective airbag inflators in new vehicles.²⁸⁰

Lastly, tort law further frustrates Ford’s argument in favor of adopting a causal standard for determining personal jurisdiction. Tort law, which previously embraced the influence of causal (proximate cause) thinking in the First and Second Restatements, has diverged and repudiated the influence of causal thinking in the Third Restatement of Torts.²⁸¹ Here, Ford argues that a causal standard would ensure predictability and federalism.²⁸² However, it is difficult to credit these arguments when the field of law that widely attempted to use causal standards is now retreating from the theories’ use.²⁸³

C. Possible Reasons Why Ford Advocates for Changes to Personal Jurisdiction

1. Historic Levels of Pro-Business Supreme Court Justices

The Roberts Court is “highly pro-business—the conservatives extremely so and the liberals only moderately liberal.”²⁸⁴

infra text accompanying note 298 (defining and discussing planned obsolescence in the automobile industry).

²⁷⁸ See generally Russel Hotten, *Volkswagen: The Scandal Explained*, BBC NEWS (Dec. 10, 2015), <https://www.bbc.com/news/business-34324772> [<https://perma.cc/8S5Y-46TW>] (describing how Volkswagen built a bypass mechanism that could tell when it was being tested and could temporarily modify emissions to pass the admissions test rather than manufacturing a vehicle that met government emission requirements).

²⁷⁹ *Takata Airbag Recall: Everything You Need to Know*, CONSUMER REP. (Oct. 5, 2020), <https://www.consumerreports.org/car-recalls-defects/takata-airbag-recall-everything-you-need-to-know/> [<https://perma.cc/DW6X-X8D7>].

²⁸⁰ *Id.*

²⁸¹ For a more detailed analysis, see RESTATEMENT (THIRD) OF TORTS § 29 cmt. g (AM. L. INST. 2012).

²⁸² Brief for Petitioner, *supra* note 212, at 42.

²⁸³ RESTATEMENT (THIRD) OF TORTS § 29 cmt. g (AM. L. INST. 2012).

²⁸⁴ Lee Epstein, William M. Landes & Richard A. Posner, *How Business Fares in the Supreme Court*, 97 MINN. L. REV. 1431, 1449 (2013) (analyzing and comparing present day Supreme Court data sets involving businesses as either the petitioner or respondent with previous iterations of the Court); see also Michelle Conlin, Dan Levine & Lisa Girion, *Special Report: Why Big Business Can Count on Courts to Keep its Deadly Secrets*, REUTERS (Dec. 19, 2019), <https://www.reuters.com/article/us-usa-courts-secrecy-lobbyist-special-report-why-big-business-can-count-on-courts-to-keep-its-deadly-secrets-idUSKBN1YN1GF> [<https://perma.cc/4623-BCR4>]; Adam Winkler, *Why Big Business Keeps Winning at the Supreme Court*, WASH. POST (June 26, 2017),

Business petitioners accounted for 34.7% of the Business Litigant Dataset from 1946 to 1968 (the Vinson and Warren Courts), 54.0% from 1969 to 2004 (the Burger and Rehnquist Courts), and 64.9% since 2005 (the Roberts Court). The increases in the separate win rates for business petitioners and business respondents . . . have been more modest. For business petitioners, the win rate is 45.0% in the Vinson and Warren Courts, 54.4% in the Burger and Rehnquist Courts, and 64.0% in the Roberts Court. For business respondents, the win rates in those three Courts are 23.3%, 30.5%, and 37.0%, respectively.²⁸⁵

Furthermore, Justices Alito, Roberts, Thomas, Kennedy, and Scalia are among the ten most business-friendly Justices to serve on the Court since 1946.²⁸⁶ Given the unprecedented favorable decisions the Robert's Court has issued for corporations, corporate defendants often select specific cases to appeal up to the Court in order to set favorable precedents moving forward.²⁸⁷

2. *Using, or Advocating for Change to, Existing Judicial Procedures to Limit Corporate Liability*

Prior to several asbestos settlements, which constituted the largest mass tort action in the United States in terms of number of claims, the judicial system largely permitted individuals unfettered access to evidence logs from court proceedings.²⁸⁸ Information gathered by attorney Ronald Motley, in an openly-available evidence log, helped establish the cornerstone for many arguments and claims against corporations for knowingly exposing employees to asbestos.²⁸⁹ In the aftermath, corporations

<https://www.washingtonpost.com/news/posteverything/wp/2017/06/26/why-big-business-keeps-winning-at-the-supreme-court/> [https://perma.cc/GM4G-QWZX] (detailing the pro-business mindset of the Supreme Court following the appointment of Justice Gorsuch and identifying the pro-business federation known as the U.S. Chamber of Commerce that filed amicus briefs in fifteen cases—with “11 wins and only three losses (one case remains to be decided)”; *About the U.S. Chamber of Commerce*, U.S. CHAMBER OF COM., <https://www.uschamber.com/about/about-the-us-chamber-of-commerce> [https://perma.cc/WG5L-BPRE].

²⁸⁵ Epstein et al., *supra* note 284, at 1453–54.

²⁸⁶ *Id.* at 1449.

²⁸⁷ *See generally* OYEZ, *supra* note 211 (arguing that the court should adopt a causation rule of personal jurisdiction or state of first sale, to ensure that Ford is only liable to individuals that purchase Ford vehicles from certified dealerships); Brief for Petitioner, *supra* note 212, at 15.

²⁸⁸ Conlin et al., *supra* note 284 (describing the history of corporations advocating to keep various kinds of information under seal during and after litigation).

²⁸⁹ *Id.*

and their “lawyers and lobbyists . . . [moved] to hide evidence that they sacrificed their customers’ [and employees’] health and safety in the name of corporate efficiencies” by seeking to keep a myriad of documents and interviews under seal.²⁹⁰

Corporate attorneys routinely convince judges to seal court filings, ensuring that information and evidence giving rise, or relating, to the claim at hand remains hidden once the product liability case is settled.²⁹¹ The effect of courts sealing documents contributes to the compounding negative health and safety repercussions for private citizens who unknowingly interacted with dangerous products.²⁹² Various consumer product lines demonstrate the cascading negative impact of sealed evidence on the health and safety of private citizens. The products themselves range across industries, including prescription drugs, firearms, and motor vehicles.²⁹³

Ford, as a large-cap company,²⁹⁴ has nearly infinite financial resources and can bring procedural challenges, such as personal jurisdiction in *Baudemer*, that border on frivolous. This is particularly problematic in disputes that pit companies against private parties, where companies often

²⁹⁰ *Id.* (quoting U.S. Representative Hank Johnson from Georgia).

²⁹¹ *Id.* (detailing how keeping court information under seal led to nearly 250,000 separate death and injury lawsuits); see also *Facts + Statistics: Product Liability*, INS. INFO. INST., <https://www.iii.org/fact-statistic/facts-statistics-product-liability> [https://perma.cc/ES6J-K2GC] (reiterating that most lawsuits are settled out of court).

²⁹² Conlin et al., *supra* note 284.

²⁹³ See *id.*; Jan Hoffman, *Payout From a National Opioids Settlement Won’t Be as Big as Hoped*, N.Y. TIMES (Feb. 17, 2020), <https://www.nytimes.com/2020/02/17/health/national-opioid-settlement.html> [https://perma.cc/52H2-MVMS] (describing the state of ongoing litigation involving thousands of cities “suing the pharmaceutical industry”); *Remington: Product Safety Warning and Recall Notice*, REMINGTON ARMS CO., <https://xmprecall.remington.com/> [https://perma.cc/G2GZ-XSL9] (describing how the trigger on one model of Remington firearm may experience unintended discharge even when the safety is on and the trigger has not been pulled); *Justice for Deadly Rollover Roof Crush Accidents: Injury/Paralysis*, DEFECTS LAWYER, <https://defectslawyer.com/rollover-roof-crush-accident/> [https://perma.cc/X7VR-A7YP] (describing the heightened potential for injury in an SUV as a result of a rollover accident); see also *Rollover: The Hidden History of the SUV*, PBS FRONTLINE, <https://www.pbs.org/wgbh/pages/frontline/shows/rollover/unsafe/cron.html> [https://perma.cc/E9BC-GEFR] (describing the history of the SUV and initial attempts at greater regulation of the vehicles design).

²⁹⁴ James Chen, *Market Capitalization*, INVESTOPEDIA (Oct. 3, 2020), <https://www.investopedia.com/terms/m/marketcapitalization.asp> [https://perma.cc/Q322-PLMF] (“Large-cap” companies have “a market capitalization of \$10 billion or more [and] . . . market capitalization refers to the total dollar market value of a company’s outstanding shares of stock.”); see also *Ford Motor Company*, YAHOO! FINANCE, <https://finance.yahoo.com/quote/F/> [https://perma.cc/RV76-JBK9] (showing that Ford has a market cap of 30.315 billion dollars).

use aggressive motion practice to drain opponents of funds in order to force concessions and negotiate settlements.²⁹⁵

Here, the parties in *Bandemer* have debated the issue of personal jurisdiction for nearly three years, which, on its face, contravenes the overriding goals of the Federal Rules of Civil Procedure.²⁹⁶ Here, Ford knows that a majority of product liability claims settle prior to trial, so if it is able to petition for its desired changes to the doctrine of personal jurisdiction, the company will be able to avoid liability in at least some instances by convincing a judge that any future lawsuit lacks specific personal jurisdiction. At a minimum, this creates another procedural hurdle for prospective plaintiffs because plaintiffs will incur greater costs in justifying a challenge to personal jurisdiction, while a corporate defendant may see significant cost savings if a claim is dismissed for lack of personal jurisdiction.²⁹⁷

Furthermore, narrowing specific personal jurisdiction as Ford proposes is asinine because Ford deliberately chooses to cannibalize its market each year by manufacturing new makes and models of its vehicles with mostly aesthetic changes. This is a business practice commonly referred to as perceived obsolescence.²⁹⁸ As a result, private sales often occur while cars are quite new, which renders the exclusion of liability after the private sale of a motor vehicle nonsensical.²⁹⁹ Consider an example analogous to the hypothetical posed by Justice Clarence Thomas during oral arguments: An individual purchases a new Ford, drives it home, and then subsequently needs to sell the newly purchased vehicle for reasons unrelated to the car. Ford's personal jurisdiction argument would create a situation in which a private purchaser of the "new" vehicle would be unable to sue Ford for a product liability defect, despite the total absence of changes

²⁹⁵ *Ford Motor Revenue 2006-2020*, MACROTRENDS, <https://www.macrotrends.net/stocks/charts/F/ford-motor/revenue> [<https://perma.cc/T63F-KYDP>] (reporting that Ford had annual reported revenues of: \$156.776 billion, \$160.338 billion, and \$155.900 billion for the years 2016, 2017, and 2018 respectively); see also YEAZELL & SCHWARTZ, *supra* note 20, at 477.

²⁹⁶ See FED. R. CIV. P. 1 ("These rules . . . should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.").

²⁹⁷ See *supra* text accompanying note 291 (describing the costs corporations face with mass tort litigation); see also *infra* text accompanying note 302 (detailing the approximate number of defective takata airbags in Ford vehicles which could potentially become instances of liability in future personal injury lawsuits).

²⁹⁸ *What is Planned Obsolescence?*, FIN. REFERENCE, <https://www.financereference.com/learn/planned-obsolence> [<https://perma.cc/3WZN-TMYE>] ("Planned obsolescence, premature obsolescence or built-in obsolescence is a strategic policy of deliberately producing consumer goods designed to rapidly become obsolete, useless and require replacing.").

²⁹⁹ Cf. Oral Argument, *supra* note 275, at 7:08.

made to the vehicle after its original purchase from a motor-vehicle dealership.³⁰⁰

In essence, Ford’s rule relating to first sale and proximate cause completely eliminates Ford’s liability for vehicles it manufactured once the car is sold by a private party.³⁰¹ This opens a gap in the law and incentivizes the company to push for narrower standards for establishing personal jurisdiction because it would help Ford dismiss future lawsuits prior to any settlement negotiations.³⁰²

Ford argues that “due process limits on the State’s adjudicative authority principally protect[s] the liberty of the non-resident defendant not the convenience of plaintiffs or third parties.”³⁰³ If Ford truly believed in their “defendant’s convenience” argument, it could have moved to dismiss the matter for improper venue.³⁰⁴

Ford is not the first corporation, and it will not be the last to advocate for changes to judicial precedent to limit its future liability or make

³⁰⁰ *Id.*

³⁰¹ *Cf. id.* Justice Clarence Thomas asked Petitioner’s Attorney Sean Marotta whether Ford could be sued in a state if a private individual saw an advertisement for a used Ford and subsequently purchased it. Marotta stated: “If you bought . . . [the vehicle] from, you know just a private party, no. If you purchased . . . [the vehicle] from your local Ford dealer, yes.” *Id.* at 8:40; see also MINN. STAT. § 168.27, subdiv. 8(b)(2) (2020) (exempting private individuals who sell or lease five or less vehicles a year from licensure as a Minnesota motor-vehicle dealer); *Motor Vehicle Dealers License*, MINN. ELICENSING, <https://mn.gov/elicense/a-z/?id=1083-231321#/list/appId/filterType/filterValue/page/1/sort/order/> [<https://perma.cc/MNF6-PLXR>].

³⁰² See Amy Martyn, *Ford to Customers: Your Airbag May Kill You, Now Please Wait for the Repair*, CONSUMER AFFS. (Jan. 18, 2018), <https://www.consumeraffairs.com/news/ford-to-customers-your-airbag-may-kill-you-now-please-wait-for-the-repair-011818.html> [<https://perma.cc/M2EA-4VWA>] (showing that as recently as 2006 Ford had nearly 3,000 Ford Ranger vehicles that posed as an injury risk to consumers); see also *Takata Recall Spotlight*, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., <https://www.nhtsa.gov/equipment/takata-recall-spotlight> [<https://perma.cc/G4WS-N6SJ>] (reporting that there are nearly 57,400,000 defective Takata Air Bags in vehicles across the United States, and that the wide-reaching range of impacted Ford manufactured vehicles indicates that Ford may be attempting to make it more difficult for injured parties to maintain lawsuits against it for injuries sustained in accidents involving defective airbags); *Takata Airbag Recall*, *supra* note 279 (describing additional makes and models identified as having defective airbags).

³⁰³ Reply Brief for Petitioner, *Ford Motor Company v. Bandemer*, 140 S. Ct. 916 (2020) (Nos. 19-368 & 19-369), 2020 WL 2133053, at *3 (Apr. 2020) (quoting *Walden v. Fiore*, 571 U.S. 277, 284 (2014)).

³⁰⁴ *Bandemer v. Ford Motor Co.*, No. 77-CV-16-1025, 2017 WL 101185684, at *2 (Minn. Dist. Ct. May 25, 2017) (describing that Ford was improperly served with notice in an improper venue in 2016, but it subsequently moved to voluntarily transfer venue to Todd County, where the Hanson Defendants resided, under Minnesota Statute § 542.01 and in so doing, it accepted the venue when service of process was amended in 2017); see generally MINN. STAT. § 542.01 (2020).

it more difficult for an injured plaintiff to have his or her day in court.³⁰⁵ For example, in 2017, Microsoft successfully argued to prevent the Ninth Circuit Court of Appeals from reviewing the denial of a class action certification after the plaintiffs voluntarily dismissed the action with prejudice.³⁰⁶ The rationale for this decision comes from the Court's position that a voluntary dismissal with prejudice should not be allowed to circumvent the final judgment rule as a way to appeal the denial of a class's certification.³⁰⁷ This decision, in effect, makes it more difficult for a class of similarly injured parties to challenge the denial of class-action certification at the district court level in the event that the appellate court also denies review of class certification in accord with Federal Rules of Civil Procedure.³⁰⁸ The *Microsoft* decision was ultimately favorable to corporations facing class-action lawsuits.³⁰⁹

D. An Unsolicited Suggestion to Resolve the Unintentional Availment Concerns

The answer to whether jurisdiction could be exercised over a local manufacturer in Maine³¹⁰ or a small business that has not intentionally cultivated a market in a specific foreign-state can be determined by borrowing a legal rule developed in *Parklane Hosiery Co. v. Shore*.³¹¹ *Parklane* considered the extent to which offensive use of collateral estoppel, also known as issue preclusion, could prevent a defendant from relitigating facts that had already been determined in a previously closed case.³¹² The Court held that, although the offensive use of collateral estoppel does not promote judicial economy, it would not result in unfairness to the defendant when the plaintiff could not have easily joined in the previous action.³¹³ The Court permits defensive use of collateral estoppel because it precludes a plaintiff from relitigating identical issues by merely switching adversaries.³¹⁴

³⁰⁵ See Brief for Petitioner, *supra* note 212, at 13–14; see generally *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 759 (Minn. 2019).

³⁰⁶ *Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1706–07 (2017) (describing that voluntary dismissal will not be considered a final decision and will not allow an individual to appeal the denial of class certification under FED. R. CIV. P. 23(f)).

³⁰⁷ See *Microsoft Corp.*, 137 S. Ct. at 1706–07; see also FED. R. CIV. P. 23(f).

³⁰⁸ See *Microsoft Corp.*, 137 S. Ct. at 1706–07.

³⁰⁹ See *id.*; see also Ronald Mann, *Opinion Analysis: Justices Reject Lax Rule Permitting Free Review of Decisions Denying Class Certification*, SCOTUSBLOG (Jun. 13, 2017), <https://www.scotusblog.com/2017/06/opinion-analysis-justices-reject-lax-rule-permitting-free-review-decisions-denying-class-certification/> [https://perma.cc/H3FK-FFNA].

³¹⁰ Oral Argument, *supra* note 275, at 33:09.

³¹¹ 439 U.S. 322 (1979).

³¹² *Id.* at 322.

³¹³ *Id.* at 322–23.

³¹⁴ *Id.*

Meanwhile, the Court granted wide discretion to trial courts to determine the permissibility of offensive use of collateral estoppel.³¹⁵

Similarly, in *Bandemer*, the Court can adopt a similar theory regarding the application of specific personal jurisdiction, providing district courts with wide discretion to determine whether a given foreign defendant advertised in the forum state with the intent to cultivate a market or if the contacts were merely coincidental.³¹⁶ The district courts’ adoption of this flexible determination would ensure a mechanism exists to satisfy the fears Ford raises in its petition relating to small-scale manufacturers being unduly burdened by the specific personal jurisdiction doctrine as it presently exists.³¹⁷ Furthermore, the legal rule would help address the concerns voiced by Chief Justice Roberts and some of the other Justices relating to small business operations that did not consistently market their goods nationally. The defensive framework of the rule could relate to the holding in *Bristol-Myers Squibb*, preventing non-resident plaintiffs from using a foreign state’s court to adjudicate an injury without sufficient plaintiff contacts to the foreign state.³¹⁸ Lastly, it would affirm specific personal jurisdiction in *Bandemer* because Ford does advertise and cultivate a market in Minnesota.³¹⁹

V. OPPOSING ARGUMENT: MINNESOTA DID NOT PROPERLY EXERCISE SPECIFIC JURISDICTION³²⁰

The holding in *Bandemer* does not comply with federal due process requirements for purposes of specific personal jurisdiction.³²¹ For a court to find that a defendant maintains sufficient minimum contacts under the Due Process Clause, it must examine the quantity of the contacts with the forum state arising from the defendant’s conduct, the nature and quality of those contacts, and the connection between those contacts and the cause of action.³²²

Here, while the quantity of Ford’s contacts is high due to Ford’s generic activities in Minnesota, the contacts’ quality and nature, as well as

³¹⁵ *Id.* at 331.

³¹⁶ See *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 747-53 (Minn. 2019); *cf. Parklane*, 439 U.S. at 322-23.

³¹⁷ See *Bandemer*, 931 N.W.2d at 747-53.

³¹⁸ Oral Argument, *supra* note 275, at 33:09.

³¹⁹ See generally *Bandemer*, 931 N.W.2d at 747-53.

³²⁰ This section of the analysis is authored exclusively by Kevin Deno.

³²¹ See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 (2014) (holding when both the defendant’s conduct and the underlying controversy lack a forum state connection, the court cannot exercise specific personal jurisdiction).

³²² See *Bandemer*, 931 N.W.2d at 749 (listing the five factors that Minnesota courts must find to exercise specific personal jurisdiction over a company not *in personam*).

their connection to the cause of action, fall well below what is required for the purposes of federal due process.³²³ These inadequacies stem from three deficiencies.³²⁴ First, Ford acted through an untargeted marketing campaign that merely included Minnesota.³²⁵ Second, Ford did not include 1994 Crown Victorias in its Minnesota advertisements.³²⁶ Third, Ford dealerships are independently owned entities.³²⁷

A. Factor One: The Quantity of Contacts between the Forum State and the Defendant's Conduct

The facts in *Bandemer* satisfy the first factor for the minimum contact analysis under the Due Process Clause.³²⁸ For the contacts to be significant, they must extend beyond unilateral activity and constitute targeted actions within the forum state.³²⁹ Unilateral contact, insufficient for jurisdictional purposes, occurs when contacts arise solely from activities initiated by plaintiffs.³³⁰

Here, Ford sold around two thousand 1994 Crown Victorias and two hundred thousand other vehicles at franchisee dealerships in Minnesota from 2013 to 2015.³³¹ Additionally, Ford operated a continuous advertising campaign through direct mail advertisements that targeted Minnesotans alongside a national advertisement campaign.³³² Ford also fabricated a branded Mustang for the Minnesota Vikings, hosted a 2016 "Ford Experience Tour" in Minnesota, and created a driver training camp for Minnesotan teens.³³³ Finally, Ford collected data from its dealerships in

³²³ See *id.* at 748 (listing the facts demonstrating Ford's contacts including national advertisements, general car sales, employees, and data collection practices); *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017) (finding that a defendant's general connections with a forum state are not sufficient to establish specific personal jurisdiction under federal due process).

³²⁴ See *Bandemer*, 931 N.W.2d at 748 (analyzing the contacts Ford had with Minnesota including advertising, sales, and dealerships).

³²⁵ See *id.* at 760-62 (Anderson, J. dissenting) (arguing Ford acted through an untargeted marketing sale which happened to include vehicle advertisements in Minnesota).

³²⁶ See *id.* at 757 (arguing the Crown Victoria did not appear within Ford's Minnesota advertisements).

³²⁷ *Id.* (arguing that Ford dealerships in Minnesota were independently owned).

³²⁸ See *id.* at 749 (stating that the first factor is "the quantity of contacts with the forum state").

³²⁹ See *id.* at 751 ("This suit's connection with Minnesota is beyond 'the mere unilateral activity of those who claim some relationship with a nonresident defendant' . . . rather, the connection is based on Ford's own actions in targeting Minnesota for sales.") (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980)).

³³⁰ See *World-Wide Volkswagen*, 444 U.S. at 298 (discussing how the lack of car distribution in a tristate area rendered interactions by the defendant unilateral in nature).

³³¹ *Bandemer*, 931 N.W.2d at 748.

³³² *Id.*

³³³ *Id.*

Minnesota about its customers’ cars for information regarding automobile redesign and repair.³³⁴

The facts in *Bandemer* mirror the seminal personal jurisdiction case, *International Shoe*,³³⁵ but are distinguishable from *Bristol-Myers Squibb* and *World-Wide Volkswagen*.³³⁶ First, in *International Shoe*,³³⁷ the company’s actions produced substantial interstate business through its sales and service providers.³³⁸ These activities included employing thirteen salespeople within the state who conducted International Shoe’s principal business in the state.³³⁹ Moreover, the salespeople advertised the company’s services by presenting customers with sample shoes and rented sample rooms that salespeople used to display the shoes.³⁴⁰ These display areas ranged from rooms in business buildings to rooms in hotels.³⁴¹ Thus, the United States Supreme Court declared that personal jurisdiction was proper because the company had sufficient contacts with the forum state through its salespeople.³⁴²

In *Bandemer*, Ford had a greater number of contacts with Minnesota than International Shoe had with Washington.³⁴³ The thousands of car sales at Minnesota dealerships alone indicates that the contacts in *Bandemer* exceeded those in *International Shoe*.³⁴⁴ However, Ford also created contacts through driving camps and dealerships.³⁴⁵ Therefore, if the contacts of thirteen International Shoe employees in Washington can satisfy the quantity of contacts required for the first factor in a minimum contacts analysis, then additional contacts, like those in *Bandemer*, also satisfy the first minimum contacts factor.³⁴⁶

³³⁴ *Id.*

³³⁵ *Int’l Shoe*, 326 U.S. at 310.

³³⁶ *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017); *World-Wide Volkswagen*, 444 U.S. at 286.

³³⁷ *See Int’l Shoe*, 326 U.S. at 326 (describing activities of salespeople in the forum state, as well as how the company supplied and directed its salespeople).

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *See id.* (stating personal jurisdiction was proper because of the company’s systematic and continuous business in Washington).

³⁴³ *See Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 750 (Minn. 2019) (listing Ford’s contacts with Minnesota); *see also Int’l Shoe*, 326 U.S. at 326 (describing International Shoe’s activities in Washington).

³⁴⁴ *See Bandemer*. 931 N.W.2d at 760 (Anderson, J., dissenting) (“The fact that Ford sold the Crown Victoria and thousands of other cars to dealerships in Minnesota cannot sustain the exercise of specific personal jurisdiction.”).

³⁴⁵ *Id.*

³⁴⁶ *See Int’l Shoe*, 326 U.S. at 326 (finding personal jurisdiction was proper due to the company’s systematic and continuous business in Washington); *see also Bandemer*, 931

Thus, given the quantity of contacts, the *Bandemer* plaintiff's claim satisfies the first prong for minimum contacts analysis.³⁴⁷ Accordingly, it is unsurprising that Ford did not contest this minimum contacts factor.³⁴⁸ However, as the *Bristol-Myers Squibb* Court noted, sufficient contacts with the forum state by the defendant cannot outweigh both a lack of connection between the defendant and the forum state and a lack of connection between the defendant's forum contacts and the cause of action.³⁴⁹

B. Factor Two: The Nature and Quality of the Defendant's Contacts with the Forum State

Bandemer's facts do not satisfy the second factor of the minimum contacts analysis for purposes of federal due process.³⁵⁰ If the nature and quality of the defendant's contacts correlate with the plaintiff's alleged harm, then a court might be able to exercise specific personal jurisdiction over a foreign entity via federal due process.³⁵¹ More specifically, the quality of the connections must not be "random, fortuitous, or attenuated."³⁵²

For its quality analysis, the Minnesota Supreme Court examined the same facts as detailed above in this section's factor one analysis.³⁵³ Under these facts, the court held that Ford's contacts were not random, fortuitous, or attenuated, but rather a targeted marketing program by Ford in Minnesota.³⁵⁴

However, the court overlooked key facts, which, when combined with the preceding facts, illustrate that Ford did not specifically target Minnesota.³⁵⁵ First, Ford did not specifically target Minnesota with its advertising campaign but included the state in a national, untargeted

N.W.2d at 750 (holding that Ford had a sufficient quantity of contacts with Minnesota to satisfy the first prong of minimum contacts analysis).

³⁴⁷ See *Bandemer*, 931 N.W.2d at 749 (indicating when considering quantity of the contacts, the court must examine the contacts alleged by the plaintiff by looking at the totality of the facts).

³⁴⁸ *Id.* at 751.

³⁴⁹ See *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017) ("For specific jurisdiction, a defendant's general connections with the forum are not enough.").

³⁵⁰ See *Bandemer*, 931 N.W.2d at 749 (explaining the second factor involves "the nature and quality of [the defendant's] contacts").

³⁵¹ See *id.* at 748.

³⁵² See *id.* at 760–62 (Anderson, J., dissenting) (describing the untargeted nature of Ford's advertising and sales due to the absence of any reference to Crown Victorias or their fabrication).

³⁵³ See *supra* notes 330–333 and accompanying text (detailing Ford's contacts with Minnesota).

³⁵⁴ See *Bandemer*, 931 N.W.2d at 750–51 (majority opinion) (stating Ford purposefully availed itself to Minnesota through its marketing, sales, property, and employee contacts).

³⁵⁵ See *id.* at 760–62 (Anderson, J., dissenting).

advertising campaign that specifically targeted no individual state with increased frequency.³⁵⁶ These strategies included national advertising and direct mail sent to all Ford consumers regardless of whether they were located in Minnesota.³⁵⁷ Also, Ford created databases that allow all of its dealerships to gain information about Ford’s vehicles concerning service and repair; these dealerships are all independently owned and operated both in Minnesota and across the United States.³⁵⁸ Additionally, Minnesota dealerships, along with dealerships throughout the United States, sent Ford information about vehicle performance that Ford could use when considering future designs.³⁵⁹ However, as the data was for future designs, this collection was not related to 1994 Crown Victorias.³⁶⁰ Clearly then, the facts describe untargeted efforts by a company that collected and presented information to independently owned and operated dealerships in Minnesota. This, when considered alongside the facts articulated by the court, deeply erodes the quality of Ford’s advertising contacts within the state.³⁶¹

Furthermore, the court overlooked the origin of the plaintiff’s claim, the car’s manufacturing and assembly location, and other factors that contributed to the car entering the stream of commerce in Minnesota when it considered the nature of Ford’s contacts with the forum state.³⁶² Here, the vehicle’s passenger, Bandemer, brought product liability, negligence, and breach-of-warranty claims for an injury that occurred when the driver collided with a snowplow and the airbags failed to deploy.³⁶³ When considering these claims, the court should have examined and given weight to conduct that either aided in the car’s construction or placed the car into Minnesota’s stream of commerce.³⁶⁴ First, the Crown Victoria’s airbag

³⁵⁶ *See id.*

³⁵⁷ *Id.* at 758.

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *See id.* (“Ford receives information regarding vehicle performance from ‘across the United States, including in Minnesota,’ that may be used when considering future designs.”).

³⁶¹ *See id.* at 750 (majority opinion) (“This minimum-contacts inquiry must ‘look[] to the defendant’s contacts with the forum State itself’ and not the defendant’s ‘random fortuitous, or attenuated’ contacts with ‘persons affiliated with the State.’”) (quoting *Walden v. Fiore*, 571 U.S. 277, 285–86 (2014)).

³⁶² *See id.* at 757 (Anderson, J., dissenting) (describing Bandemer’s complaint against Ford as containing product liability, negligence, and breach-of-warranty claims); *see also id.* at 758 (stating that the Crown Victoria in question was designed in Michigan, assembled in Ontario, Canada, sold in Bismarck, North Dakota, and finally registered in Minnesota in 2011).

³⁶³ *Id.* at 757.

³⁶⁴ *See id.* at 759 (“In fact, all of the relevant conduct that frames the basis for Bandemer’s claims took place well before the 1994 Crown Victoria was first registered in Minnesota in 2011 by someone other than the parties to this lawsuit.”).

system was designed in Michigan.³⁶⁵ Second, the vehicle was assembled in Ontario, Canada.³⁶⁶ Third, the car was originally sold in North Dakota to a third party uninvolved in the claim.³⁶⁷ Fourth, another third party, uninvolved in the claim and unrelated to Ford, brought the Crown Victoria to Minnesota.³⁶⁸ Therefore, while the crash occurred in Minnesota, the remaining facts tying the plaintiff's claims to Ford, all occurred outside the state and occurred at least seventeen years before the plaintiff's claim.³⁶⁹ Thus, given the evidential weight, the quality and nature of Ford's contacts with Minnesota are poor because Ford's construction, design, and sale of the airbags all occurred outside of the state.³⁷⁰

Moreover, these facts mirror those found in controlling and persuasive cases. In *World-Wide Volkswagen*, the United States Supreme Court concluded that specific personal jurisdiction did not apply to the seller because the car came to Oklahoma by chance after its sale in New York, and the manufacturer made no specific effort to push the car into the state.³⁷¹ Furthermore, courts have reinforced that the happenstance of circumstances does not create personal jurisdiction in other cases. In *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, the Fourth Circuit found that a state did not have personal jurisdiction over a tire retailer when the tire popped while the driver traveled in the forum state.³⁷² In *Reilly v. Phil Tolkant Pontiac, Inc.*, a federal court in New Jersey found that a Wisconsin seller of defective automotive jacks could not be hauled into a New Jersey court simply because the damage occurred in New Jersey.³⁷³ A Minnesota district court found that Alaska did not have personal jurisdiction over a Florida company that sold concession materials when a defective bottle, which had been sold in Florida, was carried to and caused injuries in Alaska.³⁷⁴ Finally, that same Minnesota court did not find personal jurisdiction over a helicopter company when a helicopter sold by the company crashed as it traveled through the state.³⁷⁵

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ *See id.* (describing Ford's activities and their relation to plaintiff's claims).

³⁷⁰ *See id.* at 751 (stating that a strong "connection is based on [a company's] own actions in targeting Minnesota for sales").

³⁷¹ *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 288 (1980) (describing how a car sold by a corporation randomly ended up in the forum state through no act of the company).

³⁷² 239 F.2d 502, 507 (4th Cir. 1956).

³⁷³ 372 F. Supp. 1205, 1206-07 (D.N.J. 1974).

³⁷⁴ *Uppgren v. Exec. Aviation Servs., Inc.*, 304 F. Supp. 165, 170-71 (D. Minn. 1969).

³⁷⁵ *Id.* at 172.

Much like these cases, the car in *Bandemer* arrived in Minnesota through similar happenstance.³⁷⁶ The 1994 Crown Victoria was first sold in North Dakota and only arrived in Minnesota in 2011, when its fourth owner registered the car there—seventeen years after the car’s original sale.³⁷⁷ Furthermore, Ford dealerships in Minnesota are independently owned and operated, and no advertisement by Ford included a Crown Victoria.³⁷⁸ Therefore, the 1994 Crown Victoria came to Minnesota outside of Ford’s control, and Ford directed no advertisements or sales for the car because Minnesotan dealerships are independent franchises.³⁷⁹ Accordingly, specific personal jurisdiction should not apply because Minnesota courts cannot exercise specific personal jurisdiction when the litigation lacks a connection between the forum and the controversy.³⁸⁰

Considering these facts, Ford neither targeted Minnesotans with advertisements involving 1994 Crown Victorias, nor sold 1994 Crown Victorias to Minnesotans directly, thus undermining the targeting needed for specific personal jurisdiction.³⁸¹ Furthermore, the court failed to consider *Bristol-Myers Squibb*’s relevance, where the Court ruled that pills produced or consumed outside California failed to establish specific personal jurisdiction.³⁸² Here, Ford designed the airbags in Michigan, manufactured them in Canada, and did not include the airbags in any advertisements in Minnesota.³⁸³ Therefore, the connections required for specific personal jurisdiction occurred entirely outside Minnesota. The only other connections involved the actions of third-party franchise owners, private owners, and nationally targeted advertisements. Accordingly, the facts do not satisfy the second minimum contacts factor necessary to establish personal jurisdiction.³⁸⁴

³⁷⁶ *Id.*

³⁷⁷ *Id.* at 757–58.

³⁷⁸ *Bandemer v. Ford Co.*, 931 N.W.2d 744, 758 (Minn. 2019) (Anderson, J., dissenting).

³⁷⁹ *See id.* (“It is undisputed that Ford dealerships in Minnesota are independently owned and operated.”).

³⁸⁰ *See Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017) (noting personal jurisdiction requires a connection between the forum state and the underlying controversy).

³⁸¹ *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980) (requiring some sales or other services).

³⁸² *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

³⁸³ *Bandemer*, 931 N.W.2d at 759 (Anderson, J., dissenting).

³⁸⁴ *See Bristol-Myers Squibb*, 137 S. Ct. at 1781 (stating general connections with the forum are not enough to create specific personal jurisdiction).

C. Factor Three: The Connection of the Defendant's Contacts to the Cause of Action

Finally, *Bandemer's* facts do not satisfy the third minimum-contact factor as the defendant's contacts lack any connection to the cause of action.³⁸⁵ If the cause of action is sufficiently connected with the defendant's contacts, then the facts satisfy a personal jurisdiction analysis.³⁸⁶ Conversely, as noted in *Walden v. Fiore*, "mere injury to a forum resident is not a sufficient connection to the forum" to establish personal jurisdiction.³⁸⁷

In *Bandemer*, the court again overlooked relevant facts that undermine its finding of personal jurisdiction over the plaintiff's product liability claims.³⁸⁸ Since these claims directly involve the airbag of a 1994 Crown Victoria, the court should have analyzed the car's manufacture and design.³⁸⁹ The airbag's construction occurred outside of Minnesota and seventeen years before the accident giving rise to the case.³⁹⁰ Therefore, while these actions may relate to the plaintiff's claims, they arose both out-state and many years prior.

Furthermore, the evidence does not support the conclusion that Ford's data collection practices created a sufficient connection to the plaintiff's claim.³⁹¹ The *Bristol-Myers Squibb* Court stated that a company's undertaking of matters within the forum state, but unrelated to the claim, are insufficient and irrelevant when deciding whether to subject a company to the forum state's specific personal jurisdiction.³⁹² Here, Ford's data collection practices involved taking data from independent dealerships for the development of future cars, which does not involve 1994 Crown Victorias.³⁹³ Ford's engineers stated that the information collected from these dealerships did not influence the design of the 1994 Crown Victoria.³⁹⁴ Because contemporary data collection practices do not affect the design of

³⁸⁵ See *Bandemer*, 931 N.W.2d at 749 ("(3) the connection of the cause of action with these contacts.").

³⁸⁶ *Id.*

³⁸⁷ *Walden v. Fiore*, 571 U.S. 277, 290 (2014).

³⁸⁸ *Bandemer*, 931 N.W.2d. at 757-58 (Anderson, J., dissenting) (discussing the car's construction and sale and Ford's advertising efforts within Minnesota).

³⁸⁹ See *id.* at 758 (stating the plaintiff's "strict liability claim alleges that Ford 'designed, manufactured, advertised, marked, tested, inspected, furnished, sold, and distributed'" the car).

³⁹⁰ *Id.*

³⁹¹ See *id.* at 759 (describing Ford's data collection from independently owned and operated dealerships for future car designs).

³⁹² *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017).

³⁹³ See *Bandemer*, 931 N.W.2d at 759 (Anderson, J., dissenting) ("The engineer in no way indicated that Minnesota data influenced the design . . . of the Crown Victoria.").

³⁹⁴ *Id.*

a 1994 Crown Victoria’s airbags, Ford’s practices do not have a connection with the plaintiff’s claim. Accordingly, the data collection practices are irrelevant and insufficient to establish personal jurisdiction.³⁹⁵

While Ford did conduct some advertising that specifically targeted Minnesotans, these actions do not satisfy the connection test required by *Bristol-Myers Squibb*.³⁹⁶ Here, Ford led its “Ford Experience Tour,” manufactured a Ford Mustang for the Minnesota Vikings, hosted a teen camp, and sponsored many athletic events in Minnesota.³⁹⁷ However, none of these undertakings specifically referenced a 1994 Crown Victoria or its airbags.³⁹⁸ Also, Ford’s advertising efforts from the mid-2010s did not contribute to development of the 1994 Crown Victoria. Therefore, because Ford’s specific actions in Minnesota do not reference the plaintiff’s claim, they are insufficient and irrelevant when deciding if Minnesota can exert personal jurisdiction over Ford as dictated by *Bristol-Myers Squibb*.³⁹⁹

Additionally, in its advertisements, Ford did not display the 1994 Crown Victoria or its airbags, which destroys the requisite connection between Ford’s actions and the plaintiff’s claim to support personal jurisdiction.⁴⁰⁰ In *Rilley*, the court agreed with numerous other courts that if a company’s advertising campaign is purely national in scope and is not directed at the forum state, then the advertising does not support personal jurisdiction.⁴⁰¹ Here, Ford conducted national advertising campaigns through direct mail and other means that reached Minnesotan markets.⁴⁰² Ford made no unique efforts to target Minnesota through its national marketing. Therefore, the advertising campaigns cannot support specific personal jurisdiction.

Given these advertising conditions, *Bandemer* is distinguishable from *Rilley*’s holding.⁴⁰³ In *Rielly*, while a payday loan company advertised through a national campaign that did not specifically target Minnesotans, the

³⁹⁵ See *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

³⁹⁶ See *id.* (stating general connections with the forum are not enough to create specific personal jurisdiction).

³⁹⁷ *Bandemer*, 931 N.W.2d at 748.

³⁹⁸ *Id.* at 760 (Anderson, J., dissenting).

³⁹⁹ See *Bristol-Myers Squibb*, 137 S. Ct. at 1781 (stating a company’s undertaking of matters within the forum state unrelated to the claim are insufficient and irrelevant when deciding if that company is subject to the forum state’s specific personal jurisdiction).

⁴⁰⁰ See *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 333–34 (Minn. 2016) (“[N]umerous other courts . . . have rejected purely national advertising as a contact supporting personal jurisdiction because such activity is not purposefully directed at the forum state.”).

⁴⁰¹ *Id.* at 337.

⁴⁰² *Bandemer*, 931 N.W.2d at 748.

⁴⁰³ See *Rilley*, 884 N.W.2d at 325 (describing how MoneyMutual’s advertising violated Minnesota’s consumer protection statutes by exceeding the maximum allowable APR).

company used its ads to attract Minnesotans to its specific service.⁴⁰⁴ Its advertisements also directly referenced the service.⁴⁰⁵ Conversely, Ford did not voluntarily or specifically target Minnesotans with advertisements featuring the 1994 Crown Victoria. Rather, its national marketing was indiscriminate, the car was not featured in any of Ford's advertisements targeting Minnesota, and the model was not in the information collected by dealerships.⁴⁰⁶ Moreover, none of the camps, sponsorships, or other specific actions involved a 1994 Crown Victoria.⁴⁰⁷ Accordingly, *Rilley* and *Bandemer* can coexist under the same rule.

In sum, Ford neither targeted Minnesota with advertisements featuring Crown Victorias, nor directly sold Crown Victorias to Minnesotans through corporate sales, making personal jurisdiction is inappropriate.⁴⁰⁸ Furthermore, the court failed to consider *Bristol-Myers Squibb's* holding that pills produced and consumed outside California were insufficient to confer specific personal jurisdiction.⁴⁰⁹ Similarly, Ford designed its airbags in Michigan, manufactured them in Canada, and never once advertised them in Minnesota.⁴¹⁰ Therefore, the connections required for specific personal jurisdiction occurred entirely outside Minnesota, and personal jurisdiction cannot be established.⁴¹¹

VI. CONCLUSION

The *Bandemer* court considered a motion to dismiss the claim for lack of personal jurisdiction.⁴¹² The Minnesota Supreme Court determined that personal jurisdiction was appropriate because sufficient minimum contacts existed between Ford and the forum state.⁴¹³ However, it is possible the Minnesota court erred in recognizing existing Supreme Court precedent

⁴⁰⁴ *Id.* at 337.

⁴⁰⁵ *Id.* at 325.

⁴⁰⁶ See *Calder v. Jones*, 465 U.S. 783 (1984) (stating that defendant's actions must be intentional, expressly targeted at the forum, and done with knowledge that the forum state's plaintiffs would feel the injury's strain); see also *Bandemer*, 931 N.W.2d at 750 (listing Ford's contacts with Minnesota).

⁴⁰⁷ *Id.* at 757.

⁴⁰⁸ See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980) (requiring some sales or other services).

⁴⁰⁹ *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017).

⁴¹⁰ *Bandemer*, 931 N.W.2d at 759 (Anderson, J., dissenting).

⁴¹¹ See *Bristol-Myers Squibb*, 137 S. Ct. at 1781 (stating that a company's undertaking of matters within the forum state but unrelated to the claim are insufficient and irrelevant when deciding if that company can be subjected to the forum state's specific personal jurisdiction).

⁴¹² *Bandemer*, 931 N.W.2d at 747-53 (majority opinion).

⁴¹³ *Id.* at 755.

that Ford met the requirements for specific personal jurisdiction in the first place.⁴¹⁴

In its holding, the court argued that its application of decades-old minimum contacts analysis was consistent with established precedent in determining personal jurisdiction.⁴¹⁵ There are also important policy considerations to this holding as businesses have proven they will use all methods available to them to limit their own liability, whether this means advocating for changes through lobbying or litigation.⁴¹⁶ Moreover, businesses in the age of e-commerce utilize personal data to help promote and tailor advertisements in an increasingly personalized manner. As a result, courts should freely grant specific personal jurisdiction to help ensure that grievances are heard in a timely manner and to promote the efficiency of the courts. Not only that, in the age of e-commerce, the vast majority of challenges to personal jurisdiction brought by defendant-corporation will border on frivolous and constitute nothing more than a cynical effort to leverage the financial resource imbalances between the parties, which contravenes the goals laid out in the very first Federal Rule of Civil Procedure.⁴¹⁷

However, it is possible that the *Bandemer* court wrongfully permitted the exercise of specific personal jurisdiction under Minnesota’s long-arm statute.⁴¹⁸ Federal due process requires that a defendant maintain sufficient minimum contacts with the forum state, as determined by the contacts’ quantity, nature, quality, and relevance.⁴¹⁹ Ford’s contacts with Minnesota may fail to satisfy the requirements of minimum contact analysis since Ford neither specifically marketed its 1994 Crown Victoria in Minnesota, nor purposefully collected data from Minnesotans with an eye towards the car’s development.⁴²⁰ While the court found conduct sufficed to establish jurisdiction, Ford argued that its actions were, instead, untargeted, indiscriminate, and foreign to Minnesota which indicated contact short of what is required under a minimum contacts analysis.⁴²¹ Therefore, it is

⁴¹⁴ See *supra* Part V.

⁴¹⁵ *Id.* at 750–55.

⁴¹⁶ See *supra* Section IV.C.2.

⁴¹⁷ See *supra* text accompanying note 8.

⁴¹⁸ See *Bandemer*, 931 N.W.2d at 744 (Minn. 2019) (discussing how Minnesota courts could exercise personal jurisdiction over Ford due to the plethora of the company’s contacts with the forum state); *supra* Part IV.

⁴¹⁹ See *id.* at 749 (listing the factors required by due process to determine specific personal jurisdiction).

⁴²⁰ See *id.* at 759 (Anderson, J., dissenting) (describing the nature of Ford’s contacts with Minnesota).

⁴²¹ See *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017) (holding that a company’s connection with the forum state must constitute more than general connections to satisfy minimum contact analysis).

unsurprising that Ford petitioned the United States Supreme Court for certiorari.

The United States Supreme Court granted Ford's petition for a writ of certiorari and held oral arguments on October 7, 2020.⁴²² Ford argued for the adoption of a causal relationship standard for the exercise of personal jurisdiction.⁴²³ In contrast, Bandemer posited that adopting Ford's proposition would transition personal jurisdictional analysis into something more akin to tort law's proximate cause standard.⁴²⁴ As mentioned, the Court rendered a decision on March 25, 2021, holding that Ford was properly subject to specific personal jurisdiction in Minnesota and Montana.⁴²⁵

⁴²² See SCOTUSBLOG, *supra* note 211; OYEZ, *supra* note 211; Oral Argument, *supra* note 275.

⁴²³ Brief for Petitioner, *supra* note 212, at 15.

⁴²⁴ Brief for Respondents, *supra* note 213, at 10–12; see also Brief for Petitioner, *supra* note 212.

⁴²⁵ Ford Motor Company v. Montana Eighth Judicial District Court et al., 141 S. Ct. 1017, 1032 (2021) (holding that the connection between the claims and Ford's in state activities were sufficient for the exercise of specific personal jurisdiction in both Minnesota and Montana).

VII. APPENDICES

A. *Appendix: Ford Pass Loyalty Program Privacy Policy and Terms*⁴²⁶

FordPass

Terms and Privacy Policy (“Terms”)

Version: 1.11

Effective: February 2020

FordPass is a platform that will empower you to rethink the way you travel. Through a collection of current features and programs, and features coming soon, FordPass will provide you with more options so you can go further than you thought possible.

Ford is working to continually improve and expand the FordPass programs, features and functionality for our customers. These Terms describe programs and features currently available as well as features we expect to add in the future. The Terms apply to all of the features described below, but you can check the FordPass website and mobile app to see which ones are currently available. Some features of FordPass may only be available on the App or the Site. FordPass may also integrate with other services or devices, and these features may be subject to separate or supplemental terms or privacy practices – these will be presented to you in connection with that feature. Check back often as we add new programs and features to understand what FordPass can do for you!

Before we get started, we want you to know how FordPass works and we need you to click “Accept” to accept our Terms. Please review carefully.

A few important points:

- We update FordPass from time to time to introduce new features or fix issues. In some cases, you may need to install the newest version of the App before you can use FordPass again.
- Because of this, and because of things like network failures, dead batteries, or lost phones, make sure that you can always access your vehicle even if you can’t access FordPass – always take your key or key fob with you, and check your in-vehicle systems if any information in FordPass doesn’t seem right. And only use FordPass when it’s safe to do so.
- Even if you choose the Spanish version of the App, some sections of the App including certain messages regarding vehicle health may be displayed in English. If you have any questions regarding any such message please contact a Ford Guide.
- These Terms contain important disclaimers and other provisions that limit our liability to you.**
- FordPass relies on data from you, your computer or mobile device, and your vehicle, such as location and driving characteristics, so we can deliver you great functionality and services, and communications tailored to your interests and we may share this information, including with our authorized dealers and affiliates in accordance with the FordPass Policy. Please see the FordPass Privacy Policy (Section 2 below) for more information.**

⁴²⁶ FORD, *supra* note 229 (detailing Ford’s terms and conditions of the FordPass Loyalty Program and the Privacy Policy provisions of the EULA has been screen captured for posterity).

*B. Appendix: Ford Pass Loyalty Program Privacy Policy*¹²⁷

2. Privacy Policy

The FordPass Privacy Policy supplements the Ford Motor Company Privacy Policy located at <https://www.ford.com/help/privacy/>, which describes California privacy rights of California residents as of January 1, 2020. These Policies, will help you understand what personal information we collect from certain FordPass webpages located on owner.ford.com and the FordPass mobile app (collectively referenced herein as "FordPass", "site", "website" and "FordPass mobile app"), why we collect it, and what we do with it, in order to better serve you. When you are on FordPass pages on the owner.ford.com website you are also subject to the website's privacy statement located at <https://www.ford.com/help/privacy/>. FordPass may integrate with other services or features that are subject to different privacy policies as described in connection with those services or features. Please review those privacy policies to understand how they collect and use data.

FordPass Mobile App

This Privacy Policy incorporates by reference the FordPass mobile app Terms and Conditions.

Information We Collect: We collect the following types of information through your use of FordPass (including when you visit a FordHub) or third-party services that integrate with FordPass, which we also may combine with other information you have previously provided, or that we have collected from other sources:

- Information you provide to create an account or sign-in to an existing account, or utilize available services such as name, email address, street address, telephone number, credit card, Vehicle Identification Number (VIN), and vehicle service records. You must have an account to use FordPass mobile app, and to access certain functionality on the FordPass website.
- Information we collect through FordPass includes:
 - Precise location information is collected from your mobile device and/or vehicle in connection with location-based functions of FordPass. This information includes **Global Positioning System (GPS)** data and location derived from IP address. This information can be used to determine your device or vehicle's current location, travel direction, and speed. If you have enabled location services on your device, this data may be collected when the app is running in the foreground or background. We may also derive your approximate location from other device data such as Wi-Fi access points, cell towers, and your IP address, whether location services are on or turned off, through the permission system used by your mobile operating system.
 - Vehicle Information, such as the VIN, ID of key in use, hardware model and part numbers, status of vehicle systems (e.g., warning lights, fluid levels, fuel consumption, distance to empty, battery charge status, tire pressure, locks, doors, fuel shut-off, and air bags), vehicle diagnostics, odometer, and other information about how the vehicle is performing.
 - **Driving Characteristics**, such as speed, use of accelerator, brakes, steering, seat belts, and other similar information about how the vehicle is used.
- Computer or Mobile Device Information, such as software or operating system version, unique device identifiers, IP address, mobile network information, and mobile phone number and motion related information from your mobile device's accelerometer, gyroscope and compass.
- Information about how you use FordPass or third-party services that integrate with FordPass, such as when and for how long you use features and when you contact us, a record of your communication.
- FordPass may also use tracking technologies that collect information about how FordPass is used and how it is performing including if it crashes, and which may be able to be connected across devices and over time. These may include cookies (small files that are stored on your computer or device), pixels or web beacons (small pieces of code placed on web pages and content that communicate when the page or content has been viewed), log data (logs created that include IP address, date and time of activity, and the website or location that referred you to FordPass), or third-party analytics tools, such as Adobe Analytics, Aptelligent, and DynaTrace). Some of these technologies can be limited or deactivated through your browser or device settings, but some cannot. FordPass does not respond to "**Do-Not-Track**" requests.

¹²⁷ *Id.*

*C. Appendix: Ford Pass Loyalty Program Privacy Policy Continued*¹²⁸

How We Share Information: We do not provide personal information obtained through FordPass to anyone for independent use without providing you a choice, except as follows:

- We may share personal information obtained through FordPass and FordPass Rewards, including vehicle information and information regarding FordPass Rewards, with our authorized dealers and our affiliates (the group of companies related by common control or ownership).
- We share your personal information with trusted service providers under agreements that limit how they may use your personal information and require adequate safeguards.
- We may provide personal information to external companies under contract with us to enable delivery of the services and where they are subject to confidentiality and security obligations.
- We may share your personal information without notice to you where we believe that doing so is reasonably necessary to: comply with a legal requirement or enforceable governmental request; protect and defend our or our affiliates' rights or property; act under exigent circumstances to protect the personal safety of Ford or affiliate personnel, users of our vehicles, websites or apps, or the public; and detect, prevent, or otherwise address fraud, security, safety, or privacy issues.
- We may share your personal information without notice to you where we believe that doing so is reasonably necessary to: comply with a legal requirement or enforceable governmental request; protect and defend our or our affiliates' rights or property; act under exigent circumstances to protect the personal safety of Ford or affiliate personnel, users of our vehicles, websites or apps, or the public; and detect, prevent, or otherwise address fraud, security, safety, or privacy issues.
- To provide you with updated and personalized location search results through your SYNC 3 in-vehicle system that you have connected to FordPass, we use cloud-based location services provided by Telenav, Inc. (“**Telenav**”). To provide these services, Telenav obtains certain information, including: a unique user ID assigned by Ford, your current GPS location and planned route and/or destination information from your SYNC 3 in-vehicle system or mobile device, your address or point of interest search requests and search results selections, information about your use of the location search service, its performance, and your related actions and selections. Telenav may use this information to provide, improve, and enhance its products and services, and may store such information for up to two (2) years. By using location search services, you agree that we can disclose this information to Telenav for its use for these purposes.

Children's Privacy: FordPass does not knowingly intend to collect personal information from children under 13 years of age.

How to Contact Us, Access, or Control the Use of Your Information: For more information or to request correction or removal of personal information, contact us as at

Telephone
800-392-3673 (U.S.)
800-232-5952 (TDD for the hearing impaired)

Available M-F 8:00 am - 11:00 pm EST
Available Sat. 8:00 am - 8:00 pm EST

Mailing Address
Ford Motor Company
Customer Relationship Center
P.O. Box 6248
Dearborn, MI 48126

Security and Retention of Your Information: We use systems, policies, procedures, and technology to provide reasonable security to protect and maintain the security and accuracy of your information. We will only retain your personal information for so long as reasonably necessary to fulfill legitimate business purposes.

Privacy Policy Effective Date and Revisions: This Privacy Policy may be updated in order to reflect any changes to FordPass or our privacy practices. See the General Information section for effective date and more information.

Your California Privacy Rights: To review, please visit www.ford.com/help/privacy/#caPrivacy.

¹²⁸ *Id.*