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PERSONAL JURISDICTION ON THE MOVE

KIRSTEN M. CASTAÑEDA*

ABSTRACT

In *Ford Motor Co. v. Montana Eighth Judicial District Court*, the U.S. Supreme Court clarified the standards for establishing specific personal jurisdiction over a nonresident defendant in federal court. The Court rejected previous interpretations of specific jurisdiction that required a causal connection between the defendant's forum contacts and the plaintiff's alleged facts. This reorientation has had a ripple effect on specific personal jurisdiction inquiries in federal and state courts across the nation, including courts in the Fifth Circuit and Texas. This Article passes through the basics of general jurisdiction en route to a more leisurely exploration of the clarified specific jurisdiction standards and the ways in which it already has been applied in various federal and state courts. In addition, this Article swings by the Texas Supreme Court's latest opinion on jurisdictional discovery. Buckle up for this scenic tour of personal jurisdiction, on the move.

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I. THE STARTING POINT FOR PERSONAL JURISDICTION IN TEXAS

“TEXAS COURTS MAY ASSERT personal jurisdiction over a nonresident if (1) the Texas long-arm statute authorizes the exercise of jurisdiction and (2) the exercise of jurisdiction is consistent with federal due-process guarantees.”¹ “The plaintiff bears the initial burden of pleading allegations sufficient to confer jurisdiction.”² “The burden then shifts to the defendant to negate all bases of jurisdiction in the allegations.”³

“The Texas long-arm statute broadly permits jurisdiction over a nonresident doing ‘business in this state’ if the nonresident ‘commits a tort in whole or in part in this state.’”⁴ Such allegations satisfy our long-arm statute, but must also satisfy federal due-process requirements.⁵ “Consistent with federal due process protections, a state may assert personal jurisdiction over a nonresident defendant only if the defendant has established ‘minimum contacts’ with the forum state such that maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”⁶

¹ *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 8 (Tex. 2021) (citing *TV Azteca v. Ruiz*, 490 S.W.3d 29, 36 (Tex. 2016)).

² *Id.* (citing *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 574 (Tex. 2007)).

³ *Id.* (citing *Moki Mac*, 221 S.W.3d at 574).

⁴ *Id.* (quoting TEX. CIV. PRAC. & REM. CODE § 17.042(2)).

⁵ *Id.*

⁶ *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

II. THE FORK IN THE ROAD

“A defendant’s contacts with the forum can give rise to either general or specific jurisdiction.”⁷

A. GENERAL JURISDICTION

“A court has general jurisdiction over a nonresident defendant whose ‘affiliations with the State are so “continuous and systematic” as to render [it] essentially at home in the forum State.’”⁸ This standard requires “substantial activities” within the forum.⁹ A court with general jurisdiction may exercise jurisdiction even if the claim at issue does not arise from or relate to the defendant’s contacts with the forum state.¹⁰

The “substantial activities” standard employs “a more demanding minimum contacts analysis than for specific jurisdiction.”¹¹ For example, mere purchases, even if occurring at regular intervals, are not enough to support general jurisdiction.¹² Purchasing helicopters, equipment, and training services from a Texas company; sending employees to Texas for training; and sending the CEO to Houston for contract negotiation is insufficient.¹³ The substantial activities must be sufficient to render the defendant essentially “at home” in the forum state.¹⁴

The Dallas Court of Appeals addressed general jurisdiction in a 2021 opinion.¹⁵ Plaintiffs Forever Living Products International, LLC (Forever Living) and Aloe Vera of America, Inc. (AVA) produced and marketed aloe vera products around the world.¹⁶ AVA’s former vice president, Hardy, and other former Forever Living employees created an aloe vera business called AloeVeritas.¹⁷ Hardy was manager of HW&B Enterprises, LLC

⁷ *Id.* (citing *Spir Star AG v. Kimich*, 310 S.W.3d 868, 872 (Tex. 2010)).

⁸ *TV Azteca v. Ruiz*, 490 S.W.3d 29, 37 (Tex. 2016) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 119 (2014)).

⁹ *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 797 (Tex. 2002).

¹⁰ *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021); *TV Azteca*, 490 S.W.3d at 37.

¹¹ *BMC Software*, 83 S.W.3d at 797 (quoting *CSR Ltd. v. Link*, 925 S.W.2d 591, 595 (Tex. 1996)).

¹² *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 417 (1984).

¹³ *Id.* at 415–16.

¹⁴ *See Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); *TV Azteca*, 490 S.W.3d at 37.

¹⁵ *See Forever Living Prods. Int’l, LLC v. AV Eur. GmbH*, 638 S.W.3d 719, 719 (Tex. App.—Dallas 2021, no pet.).

¹⁶ *Id.* at 722.

¹⁷ *Id.*

(HW&B), the holding company that owned AloeVeritas entities, including AV Europe.¹⁸ After successfully arbitrating claims against Hardy, Forever Living and AVA sued HW&B, AloeVeritas Americas, and AV Europe for tortious interference.¹⁹

AV Europe asserted “it [was] a German entity with no office or facility outside Germany.”²⁰ From July 2016 through September/October 2017, “AV Europe’s managing director was Thomas Reichert, a German resident.”²¹ From September/October 2017 until November 2017, AV Europe’s managing director was Sean Higgins, a United Kingdom resident.²² But in November 2017, Hardy, a Texas resident, became managing director and remained so at the time of the lawsuit.²³ AV Europe stopped conducting business in June 2018 and had no employees by the time the lawsuit was filed.²⁴

The court of appeals, construing the plaintiffs’ pleading under “Texas’s liberal notice-pleading standards,” concluded that plaintiffs alleged AV Europe’s nerve center was in Texas by alleging that AV Europe “[wa]s operating in Dallas County,” Texas.²⁵ A company is subject to general jurisdiction in the state of its principal place of business.²⁶ The principal place of business, often referred to as a company’s nerve center, is “the place where [the company’s] officers direct, control, and coordinate the [company’s] activities.”²⁷ Thus, the Dallas Court of Appeals’ inquiry focused on “where AV Europe’s officers directed, controlled, and coordinated the company’s activities as of January 2019, when suit was filed.”²⁸

There was no evidence that Hardy or any other AV Europe officer directed, controlled, or coordinated AV Europe’s activities from Texas in January 2019.²⁹ But the evidence showed that

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 726.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 724. *But see id.* at 731 (Schenck, J., dissenting) (“Nowhere in the petition is general jurisdiction asserted . . .”).

²⁶ *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014).

²⁷ *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010).

²⁸ *Forever Living*, 638 S.W.3d at 726 (citing *Ascentium Capital LLC v. High-Tech the Sch. of Cosmetology Corp.*, 558 S.W.3d 824, 829, 831 (Tex. App.—Houston [14th Dist.] 2018, no pet.)).

²⁹ *Id.* at 727.

Hardy, the managing director, lived in Texas full-time and was “winding down” AV Europe’s business, “which implie[d] some level of activity.”³⁰ Because the plaintiffs alleged a Texas nerve center, the burden shifted to AV Europe to prove that Hardy was *not* directing, controlling, or coordinating AV Europe’s activities from Texas in January 2019.³¹

The court of appeals held “that AV Europe produced legally insufficient evidence to negate general-jurisdiction minimum contacts with Texas.”³² The court also held that AV Europe did not present a compelling case that the exercise of personal jurisdiction would offend traditional notions of fair play and substantial justice.³³ Accordingly, the court reversed the trial court’s order granting AV Europe’s special appearance, denied the special appearance, and remanded the case to the trial court for further proceedings.³⁴

B. SPECIFIC JURISDICTION

As opposed to general jurisdiction, specific jurisdiction requires that (1) the defendant take some act by which it purposefully avails itself of the privilege of conducting activities within the forum state and (2) the plaintiff’s claims arise out of or relate to the defendant’s contacts with the forum.³⁵ Under the first prong, “the contacts must be the defendant’s choice and not ‘random, isolated, or fortuitous.’”³⁶ “They must show that the defendant deliberately ‘reached out beyond’ its home—by, for example, ‘exploit[ing] a market’ in the forum State . . .”³⁷ The second prong requires that there is “an affiliation between the forum and the underlying controversy.”³⁸ The jurisdictional inquiry is conducted on a claim-by-claim basis.³⁹

³⁰ *Id.*

³¹ *Id.* at 726.

³² *Id.* at 728.

³³ *Id.*

³⁴ *Id.* at 729.

³⁵ *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024–25 (2021).

³⁶ *Id.* at 1025 (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984)).

³⁷ *Id.* (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

³⁸ *Id.* (quoting *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017)).

³⁹ *Moncrief Oil Int’l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013).

III. NEW SPECIFIC JURISDICTION GUIDEPOSTS

A. ARISING OUT OF OR RELATED TO: *FORD* AND *LUCIANO*

In *Ford Motor Co.*, the U.S. Supreme Court clarified the parameters for the second prong, requiring an “affiliation between the forum and the underlying controversy.”⁴⁰ This affiliation need not be causal in nature.⁴¹ The Supreme Court rejected the argument that “arise out of or relate to” requires that the defendant’s forum conduct gave rise to the plaintiff’s claims.⁴²

As the Court explained:

None of our precedents has suggested that only a strict causal relationship between the defendant’s in-state activity and the litigation will do. As just noted, our most common formulation of the rule demands that the suit “arise out of *or relate to* the defendant’s contacts with the forum.” The first half of that standard asks about causation; but the back half, after the “or,” contemplates that some relationships will support jurisdiction without a causal showing.⁴³

The rejected causal-connection test might limit specific jurisdiction to the states of design, manufacture, and first sale in some cases. However, the “relate to” aspect of the “arise out of *or relate to*” test allows specific jurisdiction in other states based on other activities or occurrences involving the defendant.⁴⁴ Thus, in cases ranging from *Ford Motor Co.* back to *World-Wide Volkswagen Corp. v. Woodson*,⁴⁵ the U.S. Supreme Court has held that specific jurisdiction attaches when a company serves a market for a product in the forum state and the product malfunctions there.⁴⁶

When a company “has continuously and deliberately exploited [a State’s] market, it must reasonably anticipate being haled into [that State’s] court[s]’ to defend actions ‘based on’ products causing injury there.”⁴⁷

⁴⁰ *Ford Motor Co.*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780).

⁴¹ *Id.* at 1026.

⁴² *Id.*

⁴³ *Id.* (internal citations omitted).

⁴⁴ *See id.*

⁴⁵ 444 U.S. 286 (1980).

⁴⁶ *See Ford Motor Co.*, 141 S. Ct. at 1027; *World-Wide Volkswagen*, 444 U.S. at 297.

⁴⁷ *Ford Motor Co.*, 141 S. Ct. at 1027 (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 771 (1984)) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–73 (1985)).

[I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in [the forum] State[], it is not unreasonable to subject it to suit in [the forum] State[] if its allegedly defective merchandise has there been the source of injury to its owner or to others.⁴⁸

In *Luciano*, the Texas Supreme Court announced that it “appl[ies] the Supreme Court’s precedent to determine” whether a suit arises out of or relates to the defendant’s Texas contacts so as to establish specific jurisdiction.⁴⁹ More specifically, the Texas Supreme Court confirmed that its *Luciano* holding “rests on the Supreme Court’s analysis in *Ford Motor Co.* . . . to determine whether a product liability lawsuit ‘arise[s] out of or relate[s] to’ a nonresident defendant’s contacts with the forum state.”⁵⁰ The purposeful availment prong—which the *Ford Motor Co.* parties agreed was met⁵¹—continues to be governed by the same standards that are based on federal jurisprudence.⁵²

1. *Using Facts Showing Systematic Service of a Market in the Forum State for the Same Type of Product/Activity*

Whereas the facts in *Ford Motor Co.* exemplify a situation in which a company has served a market for a product “[b]y every means imaginable,” the facts in *Luciano* demonstrate that the “arise out of or relate to” prong of specific jurisdiction can be established by contacts with the forum state that are far fewer and by no means pervasive.⁵³ It is useful to compare *Ford Motor Co.* and *Luciano* as disparate examples of facts that meet the specific jurisdiction standards and also to examine two other situations the U.S. Supreme Court used as examples of facts that fall short.

⁴⁸ *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 297); see also *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 927 (2011) (reciting same *World-Wide Volkswagen* quote); *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 110 (1987) (same).

⁴⁹ *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 16 (Tex. 2021).

⁵⁰ *Id.* at 16 n.5.

⁵¹ *Ford Motor Co.*, 141 S. Ct. at 1026.

⁵² See, e.g., *Luciano*, 625 S.W.3d at 9 (in discussing purposeful availment, citing both state and federal case law).

⁵³ Compare *Ford Motor Co.*, 141 S. Ct. at 1028 (finding pervasive and extensive contacts satisfy the “related to” prong), with *Luciano*, 625 S.W.3d at 17–19 (finding two contacts satisfy the “related to” prong).

a. *Ford Motor Co. and Luciano*: Contacts That Meet the Standard

Ford advertised, sold, and serviced the vehicles at issue in the two lawsuits the Court reviewed (an Explorer in one and a Crown Victoria in the other) in both forum states (Montana and Minnesota) for many years.⁵⁴ Ford urged Montanans and Minnesotans to buy its vehicles, including but not limited to the Explorer and Crown Victoria, by means including “billboards, TV and radio spots, print ads, and direct mail.”⁵⁵ Ford sold its vehicles, including the Explorer and Crown Victoria in many dealerships throughout both states.⁵⁶ In addition to sales, Ford fostered ongoing connections with Ford vehicle owners by maintaining and repairing Ford vehicles at dealerships in both states and distributing parts to dealers and independent auto shops in both states.⁵⁷ These activities also “encourage[d] Montanans and Minnesotans to become lifelong Ford drivers.”⁵⁸

At the other end of the spectrum, in *Luciano*, the defendant SprayFoamPolymers.com, LLC (SprayFoam) contracted with a *single* sales representative in Texas and utilized *one* Texas distribution center.⁵⁹ SprayFoam retained Preston Nix as an independent contractor sales representative and “sold through him for a period of time . . . in the State of Texas.”⁶⁰ Nix’s independent contractor status was irrelevant to the inquiry into whether SprayFoam’s own conduct was directed towards marketing and distributing its products in Texas.⁶¹ Although there was no data on the volume of sales realized through Nix’s efforts, SprayFoam had used his “boots on the ground” to “tap[] into the local market and reap[] economic benefits from his sales.”⁶² The role of this single salesperson “evinced SprayFoam’s ‘intent or purpose’ to target the Texas market.”⁶³ And by hiring just one salesman who resided in Texas, “SprayFoam ‘enjoy[ed] the benefits and protection of the laws’ of Texas.”⁶⁴

⁵⁴ *Ford Motor Co.*, 141 S. Ct. at 1019.

⁵⁵ *Id.* at 1028.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 16 (Tex. 2021).

⁶⁰ *Id.* at 11.

⁶¹ *Id.*

⁶² *Id.* at 12.

⁶³ *Id.* (quoting *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 112 (1987)).

⁶⁴ *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

SprayFoam also acquired a *single* warehouse space to maintain a stock of merchandise in Texas.⁶⁵ The record did not establish whether SprayFoam also maintained warehouse space in other, non-Texas locations, but such a determination was unnecessary “because only SprayFoam’s Texas contacts are relevant for the specific-jurisdiction analysis.”⁶⁶ And although SprayFoam argued that it maintained a Texas distribution center only as a by-product of an agreement with a Colorado-based logistics company (Acme) that ran the warehouse, the evidence showed that SprayFoam contracted with Acme in the Dallas/Fort Worth (DFW) area, arranged to store some SprayFoam products at the DFW warehouse, and directed Acme to ship from the DFW warehouse supplies to customers.⁶⁷ The Texas Supreme Court concluded that these facts “show[ed] that the location of the warehouse was neither adventitious nor thrust upon SprayFoam.”⁶⁸

The Lucianos also argued that the Texas location of the third-party company that purchased and installed SprayFoam’s product supported specific jurisdiction.⁶⁹ However, the Texas Supreme Court held that mere knowledge that a SprayFoam product would be sold and used in Texas, in itself, was not enough to show purposeful availment, and it did not consider this fact in determining relatedness.⁷⁰

So in the end, the *only* Texas contacts on which the Texas Supreme Court relied to find specific jurisdiction in *Luciano* were:

- SprayFoam’s retention of **one** independent-contractor sales representative in Texas; and
- SprayFoam’s use of **one** warehouse space in Texas.⁷¹

The court concluded that these contacts supported the conclusion that “SprayFoam ‘served a market’ in Texas ‘for the very [spray foam insulation] that the plaintiffs allege malfunctioned and injured them’ in Texas.”⁷² Accordingly, the court found “a

⁶⁵ *Id.* at 10.

⁶⁶ *Id.* at 11 n.3.

⁶⁷ *Id.* at 11.

⁶⁸ *Id.* (internal citations omitted); *see also id.* (“[W]hile SprayFoam downplays the role of Acme’s warehouse, Acme stored and delivered insulation at SprayFoam’s direction and on SprayFoam’s dime.”).

⁶⁹ *Id.* at 12.

⁷⁰ *Id.* at 13.

⁷¹ *Id.* at 13–14.

⁷² *Id.* at 17 (quoting *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 (2021)).

strong ‘relationship among the defendant, the forum, and the litigation’—the ‘essential foundation’ of specific jurisdiction.”⁷³ To establish that the plaintiff’s claims arose out of or related to the defendant’s contacts with the forum, Luciano was not required to establish that the exact barrel of spray foam installed in their home was sold by the Texas sales representative or distributed from the Texas warehouse.⁷⁴ Rather, it was “sufficient that SprayFoam intended to serve a Texas market for the insulation that the Lucianos allege[d] injured them in this lawsuit.”⁷⁵

Consistent with the shifting burden that requires the defendant to negate all bases of jurisdiction alleged by the plaintiff,⁷⁶ the Texas Supreme Court examined both the Lucianos’ allegations and SprayFoam’s responses. For example, the Lucianos alleged that SprayFoam sold Thermosteal 500 (the spray foam product installed in the Lucianos’ home) in Texas.⁷⁷ The court noted that “SprayFoam does not contend that the sale of Thermosteal 500 to [the installer] was an ‘isolated occurrence’ in Texas.”⁷⁸

Although the degree by which the respective defendants serviced the forum-state market differed dramatically between *Ford* and *Luciano*, both defendants were subject to specific jurisdiction in the forum.⁷⁹ In each instance, the defendant systematically served a market in the forum state for the very product that the plaintiffs alleged malfunctioned in that state.⁸⁰ That linkage shows “a strong ‘relationship among the defendant, the forum, and the litigation,’” which is “the ‘essential foundation’ of specific jurisdiction.”⁸¹ *Ford* and *Luciano* serve as useful bookends for the range of contacts that will support specific jurisdiction.

b. *Bristol-Myers* and *Walden*: Contacts That Fail the Standard

In contrast with the facts presented in *Ford* and *Luciano*, the U.S. Supreme Court provided two examples of facts that will *not* support specific jurisdiction. In *Bristol-Myers Squibb Co. v. Superior*

⁷³ *Id.* (quoting *Ford Motor Co.*, 141 S. Ct. at 1028).

⁷⁴ *See id.*

⁷⁵ *Id.* (citing *Ford Motor Co.*, 141 S. Ct. at 1028).

⁷⁶ *See id.* at 17 n.6.

⁷⁷ *Id.* at 17.

⁷⁸ *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

⁷⁹ *Ford Motor Co.*, 141 S. Ct. at 1032; *Luciano*, 625 S.W.3d at 19.

⁸⁰ *Ford Motor Co.*, 141 S. Ct. at 1028; *Luciano*, 625 S.W.3d at 17.

⁸¹ *Ford Motor Co.*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

Court of California, San Francisco County,⁸² the plaintiffs sued in California state court for alleged injuries from taking Plavix.⁸³ Many of the plaintiffs were not California residents, had not been prescribed Plavix in California, had not ingested Plavix in California, and had not been injured in California.⁸⁴ The plaintiffs could establish Bristol-Myers's connection with California (i.e., servicing a Plavix market there), but could not show *any* connection between California and their Plavix-related claims.⁸⁵

In *Walden v. Fiore*,⁸⁶ the plaintiffs had the opposite problem. The plaintiffs sued in Nevada state court for alleged injuries from seizure of their money at an Atlanta airport by a Georgia police officer.⁸⁷ The plaintiffs were Nevada residents and experienced the effects of the officer's conduct there.⁸⁸ However, the officer had never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada.⁸⁹ Although the plaintiffs could establish a connection between their claims and Nevada, they could not show any connection between Nevada and the defendant.⁹⁰

The linkage in *Ford Motor Co.* and *Luciano* missing in *Bristol-Myers* and *Walden* is that the defendant systematically served a market in the forum state for the very product that the plaintiffs alleged malfunctioned in that state.⁹¹ Although the degree by which the respective defendants serviced the forum state market differed dramatically between *Ford Motor Co.* and *Luciano*, the relationship—not the pervasiveness of the contacts—established jurisdiction.⁹² Indeed, “a single contact can support jurisdiction if that contact creates a ‘substantial connection’ with the forum.”⁹³

⁸² 137 S. Ct. 1773 (2017).

⁸³ *Id.* at 1777.

⁸⁴ *Id.* at 1778.

⁸⁵ *Id.* at 1781.

⁸⁶ 571 U.S. 277 (2014).

⁸⁷ *Id.* at 279–80.

⁸⁸ *Id.* at 281.

⁸⁹ *Id.* at 289.

⁹⁰ *Id.* at 291.

⁹¹ *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1028 (2021); *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 17 (Tex. 2021).

⁹² *See Ford Motor Co.*, 141 S. Ct. at 1028; *Luciano*, 625 S.W.3d at 17.

⁹³ *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 577 (Tex. 2007); *see also Luciano*, 625 S.W.3d at 12.

2. *The Importance of Defining the Type of Product/Activity*

An important component of establishing that a defendant systematically serves a market for the type of product at issue is defining what the product is. In evaluating specific jurisdiction over different defendants in the same case, a court may consider different products. For example, in an airplane-crash case where one defendant manufactured an aircraft engine and another defendant manufactured the aircraft into which the engine was integrated, the first defendant's market was the type of aircraft engine at issue, while the second defendant's market was the type of aircraft at issue.⁹⁴

In *Johnson v. TheHuffingtonPost.com, Inc.*,⁹⁵ the majority and dissenting opinions differed in their assessment of the product at issue. The plaintiff sued TheHuffingtonPost.com (HuffPost) for libel based on statements in an article posted on HuffPost's website.⁹⁶ The majority viewed the product as the libel in the article.⁹⁷ The dissent viewed the product as the HuffPost publication.⁹⁸

To determine whether a website provided the contacts required for specific jurisdiction, the majority examined whether the interactive website involved contacts that met the specific jurisdiction standards.⁹⁹ "What matters is whether HuffPost aimed *the alleged libel* at Texas."¹⁰⁰ The article from which the libel claim arose had no ties to Texas.¹⁰¹ The majority concluded that merchandise sold to Texans through the website, the ads shown to Texas site visitors, and the tailoring of ads to show Texas-based ads to visitors located in Texas "neither produced nor relate to Johnson's libel claim."¹⁰² Ultimately, the majority concluded that HuffPost was not subject to personal jurisdiction in Texas.¹⁰³

The dissent, on the other hand, viewed the product as the HuffPost publication.¹⁰⁴ The dissent noted that the plaintiff had

⁹⁴ See *LNS Enters. LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 857 (9th Cir. 2022).

⁹⁵ See 21 F.4th 314 (5th Cir. 2021).

⁹⁶ *Id.* at 316.

⁹⁷ *Id.* at 319.

⁹⁸ *Id.* at 329 (Haynes, J., dissenting).

⁹⁹ *Id.* at 318 (majority opinion).

¹⁰⁰ *Id.* at 321.

¹⁰¹ *Id.* at 319.

¹⁰² *Id.* at 320–21.

¹⁰³ *Id.* at 316.

¹⁰⁴ *Id.* at 329 (Haynes, J., dissenting).

not sued the author of the article, but instead the publisher.¹⁰⁵ In *Keeton v. Hustler Magazine, Inc.*, the U.S. Supreme Court held that a publisher's "regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine."¹⁰⁶ "When a publication 'continuously and deliberately exploit[s] [a] market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine.'"¹⁰⁷ The First, Second, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have all analyzed *Keeton* in the context of internet publications without restricting *Keeton* to print publications.¹⁰⁸

In *Johnson*, the dissent noted that HuffPost purposefully and regularly circulated its publication in Texas, tailoring Texas-based ads in the publication to readers in Texas locations.¹⁰⁹ HuffPost actively sought Texas readers and the money generated from selling ads to those targeting Texas consumers.¹¹⁰ HuffPost availed itself of the benefit of Texas readership through money it made from selling Texas-specific advertising.¹¹¹ As part of serving the Texas market, HuffPost circulated its publication—i.e., the articles it posted—to Texas readers.¹¹² The plaintiff alleged he was injured by one of those articles.¹¹³ As in *Ford Motor Co.*, "That link—between the article that injured Johnson (who [was] in Texas) and HuffPost purposely circulating articles to Texas—supports specific jurisdiction."¹¹⁴

The dissent observed that, despite the rejection of a causal-connection standard in *Ford Motor Co.*, "the majority opinion seems to suggest that only if the (extensive) Texas-based advertising *caused* the lawsuit might there be jurisdiction."¹¹⁵ This appears to be true. Although the majority opinion recites the

¹⁰⁵ *Id.*

¹⁰⁶ *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 773–74 (1984).

¹⁰⁷ *Johnson*, 21 F.4th at 328 (Haynes, J., dissenting) (quoting *Keeton*, 465 U.S. at 781).

¹⁰⁸ *Id.* at 330.

¹⁰⁹ *Id.* at 331; *see also* *Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1225 (10th Cir. 2021) (quoting *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895, 917 n.35 (10th Cir. 2017) (noting that, in cases involving websites, the Tenth Circuit "ask[s] whether the defendant intended its online content to create effects specifically in the forum state"))).

¹¹⁰ *Johnson*, 21 F.4th at 331 (Haynes, J., dissenting).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *See id.*

¹¹⁵ *Id.*

“relates to” portion of the standard, it held that “HuffPost may avoid the authority of Texas’s courts by not purposefully directing at Texas the *conduct that* PRODUCED Johnson’s suit.”¹¹⁶ The different approaches in the majority and dissenting opinions highlight the critical importance of defining the type of product or activity at issue.¹¹⁷

3. *Application of Ford Motor Co. in Federal and Texas Courts*

In the months since *Ford Motor Co.* was decided, a variety of courts have addressed the opinion and applied it to specific jurisdiction inquiries.

a. Federal Circuit Courts

In addition to the Fifth Circuit’s *Johnson* opinion discussed above, other federal circuit courts have addressed *Ford Motor Co.* in recent cases. *Motus, LLC v. CarData Consultants, Inc.* involved an attempt to exercise specific jurisdiction in Massachusetts over CarData Consultants, Inc. (CarData) for alleged trademark infringement regarding a phrase in the meta title of its website.¹¹⁸ Although the court mentioned *Ford Motor Co.* in discussing the applicable standards, the court’s analysis focused on purposeful availment.¹¹⁹ Motus, LLC (Motus) did not allege that CarData sought to serve a Massachusetts market; rather, its allegations focused on nationwide activities and offices in other states.¹²⁰ Although “CarData’s website identifie[d] means for potential customers—including those in Massachusetts—to reach out to CarData,” the record did not indicate that a single Massachusetts resident had accepted the invitation, and “nothing in the record indicat[ed] that CarData ha[d] initiated any contacts with, or ha[d] responded to, any Massachusetts residents.”¹²¹

Motus argued that the mere use of the phrase in the website’s meta title that infringed Motus’s trademark directed an intentional tort at a Massachusetts resident (Motus).¹²² But trademark

¹¹⁶ *Id.* at 323 (majority opinion) (emphasis added).

¹¹⁷ *See id.* at 326; *see also* Hood v. Am. Auto Care, LLC, 21 F.4th 1216, 1225 (10th Cir. 2021) (defining type of activity as telemarketing calls to sell vehicle warranties, not calls to Vermont telephone numbers).

¹¹⁸ *See* Motus, LLC v. CarData Consultants, Inc., 23 F.4th 115, 119 (1st Cir. 2022).

¹¹⁹ *Id.* at 125.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

infringement does not require knowledge that the defendant “is infringing another’s mark” or knowledge about where the plaintiff is located.¹²³ Thus, one could not infer from the alleged intentional tort itself that CarData had directed its conduct to Massachusetts.¹²⁴ On the record before it, the court held that no specific jurisdiction existed.¹²⁵

LNS Enterprises LLC v. Continental Motors, Inc. involved attempts to exercise personal jurisdiction in Arizona over Textron Aviation, Inc. (Textron) and Continental Motors, Inc. (Continental) with regard to an aircraft and engine involved in a non-fatal crash in Arizona.¹²⁶ With regard to Textron, the plaintiff also did not allege “that Textron’s single Arizona service center ever serviced [the specific] aircraft [at issue], nor [was] there any indication that this service center even service[d] the same type of Columbia aircraft at issue.”¹²⁷ The Ninth Circuit also noted that Textron’s connection with the subject Columbia Aircraft Manufacturing Corporation (Columbia) aircraft was limited to “specific Columbia liabilities based on certain express written aircraft warranties” that Textron acquired through company acquisitions.¹²⁸ Plaintiffs did not assert that any of their claims fell within the warranties.¹²⁹

With regard to Continental, the plaintiff did not allege that four Arizona repair shops possibly affiliated with Continental had serviced either the specific engine at issue or the same type of engine.¹³⁰ The Ninth Circuit also found that the following items were insufficient to support specific jurisdiction:

- Allegations of Continental’s nationwide contacts.¹³¹
- Assertions in appellate briefs that were not properly before the court.¹³²
- Allegations in the pleadings that were contradicted by Continental’s affidavits.¹³³

¹²³ *Id.* at 126 (citing *Borinquen Biscuit Corp. v. M.V. Trading Corp.*, 443 F.3d 112, 116 (1st Cir. 2006)).

¹²⁴ *Id.*

¹²⁵ *Id.* at 128.

¹²⁶ *LNS Enters. LLC v. Cont’l Motors, Inc.*, 22 F.4th 852, 856–57 (9th Cir. 2022).

¹²⁷ *Id.* at 864.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 863.

¹³¹ *Id.* at 862.

¹³² *Id.*

¹³³ *Id.* at 862–63.

- Allegations of relationships with third-party mechanics unaffiliated with Continental.¹³⁴

Atchley v. AstraZeneca UK Ltd. involved attempts to exercise specific jurisdiction in a U.S. federal court over six foreign suppliers of medical goods that allegedly violated the Anti-Terrorism Act (ATA) by securing lucrative medical-supply contracts with Iraq's Ministry of Health by giving corrupt payments and valuable gifts to the known terrorist group controlling the Ministry.¹³⁵ The plaintiffs alleged that the defendants delivered cash kickbacks to the terrorists, who gave them business and delivered off-the-books batches of medical supplies that the terrorist group sold to fund its operations and pay terrorist fighters.¹³⁶ The relevant forum in this case was the United States as a whole.¹³⁷

"[T]he six foreign supplier defendants reached into the United States to contract with an affiliated U.S. manufacturer to be the manufacturer's exclusive agent in Iraq."¹³⁸ Continuously over a period of years, each supplier-defendant sourced goods manufactured in the United States to fulfill the Iraqi contracts they secured.¹³⁹ The purported ATA-violating bribes arose from or related to these U.S. contacts "in at least four overlapping ways."¹⁴⁰

- The supplier-defendants' collaboration with the U.S. manufacturers to market U.S. products in Iraq was the basis for their interactions with the terrorist group.
- The products to be distributed through the interactions with the terrorist group were manufactured in the United States.
- The alleged ATA violation was part of the manner in which the supplier-defendants secured a market for the U.S.-manufactured products.
- Plaintiffs alleged that the terrorist group specified that the U.S. provenance of the medical goods was material.¹⁴¹

The D.C. Circuit held that, among other things, the analysis in *Ford Motor Co.* of the "arise out of or relate to" standard sup-

¹³⁴ *Id.* at 863.

¹³⁵ *See* *Atchley v. AstraZeneca UK Ltd.*, 22 F.4th 204, 209 (D.C. Cir. 2022).

¹³⁶ *Id.*

¹³⁷ *Id.* at 232.

¹³⁸ *Id.* at 233.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 234.

¹⁴¹ *Id.* at 234–36.

ported the court's conclusion that the specific jurisdiction standards were met.¹⁴²

Hood v. American Auto Care, LLC involved attempts to exercise personal jurisdiction in Colorado over American Auto Care, LLC (AAC) in a putative class action based on alleged violations of the federal Telephone Consumer Protection Act.¹⁴³ Shortly after purchasing a used car, Hood, a Colorado resident, began receiving telemarketing calls from AAC to sell him a vehicle warranty.¹⁴⁴ Hood's "cell phone number had a Vermont area code" because "[h]e had previously lived in Vermont."¹⁴⁵ The record established that AAC directed the same type of telemarketing efforts to Vermont and Colorado.¹⁴⁶ The Tenth Circuit reasoned that "[i]f AAC places telemarketing calls to sell service contracts to Vermont and Colorado residents alike, it does not matter that they called Mr. Hood from a list of apparent Vermont residents rather than a list of apparent Colorado residents."¹⁴⁷ The court noted that it "might not apply that proposition if there was a substantial relevant difference between calls placed to residents of the two states."¹⁴⁸

The court rejected AAC's attempts to characterize the activity at issue as "calling Vermont phone numbers."¹⁴⁹ Instead, the court considered the activity to be telemarketing calls to sell vehicle warranties.¹⁵⁰ "[W]hen the content of the solicitation calls is essentially the same whether calling a Vermont number or a Colorado number, it is appropriate to say that residents of both States receive the same 'model' call."¹⁵¹

The court also rejected the argument "that purposeful direction must be based solely on the contacts that generated the cause of action."¹⁵² Although the U.S. Supreme Court did not address purposeful availment in *Ford Motor Co.*, the Tenth Circuit held that "AAC's argument is incompatible with the [Supreme] Court's conclusion that purposefully directed in-state contacts can be sufficiently related to the plaintiff's injury de-

¹⁴² *Id.* at 237.

¹⁴³ *Hood v. Am. Auto Care, LLC*, 21 F.4th 1216, 1219–20 (10th Cir. 2021).

¹⁴⁴ *Id.* at 1220.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 1224.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 1225.

¹⁵⁰ *See id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 1226.

spite the absence of a causal connection.”¹⁵³ “The whole point of *Ford* was that it is enough if the activity forming the basis of the claim against the defendant is *related* to the activity of the defendant that establishes that it ‘purposefully directed [its] activities at residents of the forum.’”¹⁵⁴

Hepp v. Facebook involved attempts to exercise personal jurisdiction in Pennsylvania over Reddit (an online forum for “communities” organized around topics) and Imgur (a photo-sharing website) based on alleged violations of Pennsylvania’s right of publicity statute.¹⁵⁵ A photo of Hepp, a Philadelphia television host, was posted to Imgur, and a Reddit user posted a link to the Imgur post.¹⁵⁶ The photo had been taken without Hepp’s knowledge or consent and posted/linked without her authorization.¹⁵⁷

Hepp alleged facts showing that Imgur and Reddit purposefully availed themselves of the Pennsylvania market and targeted advertising business to Pennsylvania.¹⁵⁸ “She allege[d] Imgur ha[d] an online merchandise store that [sold] products to Pennsylvanians” and that Reddit had a “premium membership business and an online community organized around Philadelphia.”¹⁵⁹ However, Hepp did not establish that any “of these contacts form[ed] a strong connection to the misappropriation of Hepp’s likeness.”¹⁶⁰ This portion of the opinion focuses on the specific image at issue, rather than images generally.¹⁶¹ The Third Circuit observed that Hepp failed to “allege the merchandise featured her photo,” that “Imgur and Reddit used her likeness to sell advertising,” or that “the photo was taken, uploaded, or hosted in Pennsylvania.”¹⁶² The court concluded that “the alleged misappropriation [did] not relate to any of the contacts,” thus defeating specific jurisdiction.¹⁶³

Trimble Inc. v. PerDiemCo LLC involved attempts to exercise specific jurisdiction over PerDiemCo LLC (PerDiemCo) in California to decide declaratory judgment claims regarding allega-

¹⁵³ *Id.*

¹⁵⁴ *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

¹⁵⁵ *See Hepp v. Facebook*, 14 F.4th 204, 207 (3d Cir. 2021).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 206.

¹⁵⁸ *Id.* at 208.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

tions of patent infringement.¹⁶⁴ “A patentee should not subject itself to personal jurisdiction in a forum solely by informing a party who happens to be located there of suspected infringement”¹⁶⁵ However, additional communications directed into the forum “threatening suit or proposing settlement or patent licenses can be sufficient to establish personal jurisdiction.”¹⁶⁶ For example, just as sales of a type of vehicle in a forum state in *Ford Motor Co.* can support personal jurisdiction, so can attempts to extract nonexclusive patent licenses from a resident of the forum state.¹⁶⁷

PerDiemCo directed at least twenty-two communications to Trimble Inc. (Trimble), a California resident, attempting to settle an infringement dispute, in part by offering a nonexclusive license to PerDiemCo’s patents.¹⁶⁸ During these communications, PerDiemCo asserted that Trimble had infringed on PerDiemCo’s patents and threatened to sue Trimble for patent infringement.¹⁶⁹ Before PerDiemCo did so, Trimble filed a declaratory judgment action in the Northern District of California.¹⁷⁰

Rather than simply informing Trimble of suspected infringement, “PerDiemCo repeatedly contacted Trimble . . . in California, accumulating an extensive number of contacts with the forum in a short period of time.”¹⁷¹ These contacts included amplifying threats of infringement, enlarging PerDiemCo’s assertions to include more of its patents and more of Trimble’s products, and making specific threats to sue Trimble (including identification of retained counsel and the “venue in which [PerDiemCo] planned to file suit”).¹⁷² These contacts also included attempts to extract a nonexclusive license, i.e., “an arms-length negotiation in anticipation of a long-term continuing business relationship” in the forum state.¹⁷³

¹⁶⁴ See *Trimble Inc. v. PerDiemCo LLC*, 997 F.3d 1147, 1150 (Fed. Cir. 2021).

¹⁶⁵ *Id.* at 1154 (quoting *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.*, 148 F.3d 1355, 1361 (Fed. Cir. 1998)).

¹⁶⁶ *Id.* at 1155.

¹⁶⁷ See *id.* at 1156.

¹⁶⁸ *Id.* at 1151.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 1151–52.

¹⁷¹ *Id.* at 1157.

¹⁷² *Id.*

¹⁷³ *Id.* (quoting *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.*, 148 F.3d 1355, 1361 (Fed. Cir. 1998)).

b. Texas Courts of Appeals

A slew of Texas courts of appeals opinions have addressed specific jurisdiction in light of *Ford* and *Luciano*. Most of the opinions have found specific jurisdiction exists, either as to all claims pleaded¹⁷⁴ or as to some of the claims pleaded.¹⁷⁵ A handful of cases have found that specific jurisdiction does not exist,¹⁷⁶ with one remanding the case for consideration of the plaintiff's alternative request (in the special appearance response) for jurisdictional discovery.¹⁷⁷

B. JURISDICTIONAL DISCOVERY

In February 2022, the Texas Supreme Court addressed the scope of available discovery regarding personal jurisdiction under Texas Rule of Civil Procedure 120a.¹⁷⁸ Rule 120a allows a trial court to rule on a special appearance based on “the plead-

¹⁷⁴ See, e.g., *BDTP, LLC v. United Structures of Am., Inc.*, No. 01-20-00464-CV, 2022 WL 710087, at *1 (Tex. App.—Houston [1st Dist.] Mar. 10, 2022, no pet.) (mem. op.); *Capital Title of Tex., LLC v. Shank*, No. 13-21-00062-CV, 2022 WL 480253, at *1 (Tex. App.—Corpus Christi-Edinburg Feb. 17, 2022, no pet.) (mem. op.); *Southwire Co., LLC v. Sparks*, No. 02-21-00126-CV, 2021 WL 5368692, at *1 (Tex. App.—Fort Worth Nov. 18, 2021, no pet.) (mem. op.); *Weeks Marine, Inc. v. Carlos*, No. 01-21-00015-CV, 2021 WL 4897714, at *1 (Tex. App.—Houston [1st Dist.] Oct. 21, 2021, pet. filed) (mem. op.); *ShockTheory DLV, Inc. v. Tava Ventures, Inc.*, No. 05-21-00182-CV, 2021 WL 4304643, at *1 (Tex. App.—Dallas Sept. 22, 2021, no pet.) (mem. op.); *Ford Motor Co. v. Lopez*, No. 13-19-00480-CV, 2021 WL 3869733, at *1 (Tex. App.—Corpus Christi-Edinburg Aug. 31, 2021, no pet.) (mem. op.); *Cirrus Design Corp. v. Berra*, 633 S.W.3d 640, 640 (Tex. App.—San Antonio 2021, no pet.); *Vertex Indus., Inc. v. State Farm Lloyds*, No. 03-20-00574-CV, 2021 WL 3684263, at *1 (Tex. App.—Austin Aug. 20, 2021, no pet.) (mem. op.); *Fitzgerald Truck Parts & Sales, LLC v. Advanced Freight Dynamics, LLC*, No. 14-19-00397-CV, 2021 WL 1685353, at *1 (Tex. App.—Houston [14th Dist.] Apr. 29, 2021, pet. filed) (mem. op.).

¹⁷⁵ See, e.g., *Wadi Petrol., Inc. v. Miller*, No. 13-21-00014-CV, 2021 WL 4466320, at *1 (Tex. App.—Corpus Christi-Edinburg Sept. 30, 2021, pet. denied) (mem. op.); *Schrader v. Roach*, No. 01-20-00183-CV, 2021 WL 3868766, at *1 (Tex. App.—Houston [1st Dist.] Aug. 31, 2021, no pet.) (mem. op.).

¹⁷⁶ See *Devon Energy Corp. v. Moreno*, No. 01-21-00084-CV, 2022 WL 547641, at *1 (Tex. App.—Houston [1st Dist.] Feb. 24, 2022, no pet.) (mem. op.); *Steward Health Care Sys. LLC v. Saidara*, 633 S.W.3d 120, 120 (Tex. App.—Dallas 2021, no pet.); *Fed. Corp. v. Truhlar*, 632 S.W.3d 697, 697 (Tex. App.—El Paso 2021, pet. denied); *JPMorgan Chase Bank, N.A. v. Campbell*, No. 09-20-00161-CV, 2021 WL 2583573, at *1 (Tex. App.—Beaumont June 24, 2021, no pet.) (mem. op.); *LG Chem, Ltd. v. Granger*, No. 14-19-00814-CV, 2021 WL 2153761, at *1 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.) (mem. op.).

¹⁷⁷ See *LG Chem, Ltd. v. Turner*, No. 14-19-00326-CV, 2021 WL 2154075, at *1 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.) (mem. op.).

¹⁷⁸ *In re Christianson Air Conditioning & Plumbing, LLC*, 639 S.W.3d 671, 674 (Tex. 2022).

ings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony.”¹⁷⁹ Accordingly, “relevant discovery” is “a vital part of resolving a special appearance.”¹⁸⁰

Although a trial court has discretion in ordering jurisdictional discovery, that discretion is bounded by guiding rules and principles.¹⁸¹ Jurisdictional discovery is “limited to matters directly relevant to” jurisdiction.¹⁸² “[T]he discovery must target evidence that would make a disputed fact ‘of consequence in determining’ the [court’s jurisdiction] ‘more or less probable.’”¹⁸³

Nevertheless, issues of fact material to jurisdiction may also be material to the merits.¹⁸⁴ For example, when specific jurisdiction is at issue, information material to determining the existence of a “‘connection between the defendant, the forum, and the litigation’ [may] be relevant to the merits” as well.¹⁸⁵ Therefore, jurisdictional discovery is not improper or disallowed simply because it *also* relates to the merits.¹⁸⁶ The test is whether the information sought in jurisdictional discovery is “essential to prove at least one disputed factor that is necessary to the plaintiff’s proposed theory or theories of personal jurisdiction.”¹⁸⁷

In addition to this central limitation on jurisdictional discovery, there are other limitations applicable generally to discovery.¹⁸⁸ For instance, jurisdictional discovery should be limited under Texas Rule of Civil Procedure 192.4 if “the ‘discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient,’ or if ‘the burden . . . outweighs its likely benefit.’”¹⁸⁹ Likewise, jurisdictional discovery “must be ‘reasonably tailored’ and ‘not over-

¹⁷⁹ TEX. R. CIV. P. 120a.

¹⁸⁰ *Christianson*, 639 S.W.3d at 676 (quoting *Exito Elecs. Co. v. Trejo*, 142 S.W.3d 302, 307 (Tex. 2004)).

¹⁸¹ *See id.*; *see also In re Nat’l Lloyds Ins. Co.*, 507 S.W.3d 219, 226 (Tex. 2016).

¹⁸² *Christianson*, 639 S.W.3d at 676 (quoting *In re Doe*, 444 S.W.3d 603, 608 (Tex. 2014)).

¹⁸³ *Id.* (quoting TEX. R. EVID. 401).

¹⁸⁴ *Id.* at 676–77.

¹⁸⁵ *Id.* at 677 (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 584 (Tex. 2007)).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 678.

¹⁸⁸ *See id.*

¹⁸⁹ *Id.* (quoting TEX. R. CIV. P. 192.4).

broad.’”¹⁹⁰ Finally, jurisdictional discovery requests “must be ‘proportional,’ and not ‘overly burdensome.’”¹⁹¹

With regard to a jurisdictional corporate-representative deposition, the discovery should be evaluated on a topic-by-topic basis.¹⁹² For example, if the parties dispute both prongs of specific jurisdiction, each topic must target discovery that is essential to prove purposeful availment and relatedness.¹⁹³ However, a topic “need not be essential to all disputed factors simultaneously.”¹⁹⁴ Simply using the phrase “in Texas” does not necessarily make a topic essential to prove specific jurisdiction.¹⁹⁵ Instead, the topic as a whole must relate to a legally appropriate basis for finding specific jurisdiction.¹⁹⁶ In addition to geographic limits, the topics should include time and subject matter limits that tailor the topic to avoid overbreadth.¹⁹⁷

IV. CONTINUING THE JOURNEY: THE DEVELOPING STANDARDS FOR PERSONAL JURISDICTION IN TEXAS

The new developments in personal jurisdiction case law illuminate the road with more precision but also highlight new potential potholes and obstacles. The facts—both alleged and omitted—on which courts have relied to analyze specific jurisdiction after *Ford Motor Co.* provide a useful roadmap for other situations. The resources in this Article are just the beginning of a new leg of the journey required to establish or defeat personal jurisdiction over nonresident defendants in federal and Texas courts.

¹⁹⁰ *Id.* (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152–53 (Tex. 2003) (orig. proceeding)).

¹⁹¹ *Id.* (internal citation omitted).

¹⁹² *Id.* at 679.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 680.

¹⁹⁶ *Id.*; see also *In re Skadden, Arps, Slate, Meagher & Flom, LLP*, No. 02-21-00393-CV, 2022 WL 500036, at *4 (Tex. App.—Fort Worth Feb. 18, 2022, orig. proceeding) (mem. op.) (finding that jurisdictional request for production of documents regarding activities performed outside Texas could not help establish specific jurisdiction in Texas and was impermissible).

¹⁹⁷ *Christianson*, 639 S.W.3d at 681.