Nos. 19-368 and 19-369

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY, *Petitioner,*
v.
MONTANA EIGHTH JUDICIAL DISTRICT COURT, *et al.*,
Respondents.

FORD MOTOR COMPANY, *Petitioner,*
v.
ADAM BANDEMER, *Respondent*.

On Writs of Certiorari
to the Supreme Court of Montana
and the Supreme Court of Minnesota

BRIEF FOR THE ALLIANCE FOR AUTOMOTIVE INNOVATION AND GENERAL AVIATION MANUFACTURERS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI *CURIAE*

The Alliance for Automotive Innovation (Auto Innovators) is the leading advocacy group for the auto industry, representing 35 automobile manufacturers and value chain partners who together produce nearly 99 percent of all light-duty vehicles sold in the United States.[1] The members of Auto Innovators include (alphabetically) Aptiv PLC, Aston Martin, Robert Bosch LLC, BMW Group, Byton, Cruise LLC, DENSO, Fiat Chrysler Automobiles, Ferrari S.p.A., Ford Motor Company, General Motors Company, Honda Motor Company, Hyundai Motor America, Isuzu Motors Ltd., Jaguar Land Rover, Karma Automotive, Kia Motors, Local Motors, Maserati, Mazda Motor Corporation, McLaren Automotive, Mercedes-Benz USA, Mitsubishi Motors, Nissan Motor Company, NXP Semiconductors, Panasonic Corporation, Porsche, PSA North America, SiriusXM, Subaru, Suzuki, Texas Instruments, Toyota Motor Company, Volkswagen Group of America, and Volvo Car USA.

The General Aviation Manufacturers Association (GAMA) is an international trade association representing over 120 of the world's leading manufacturers of general aviation aircraft, engines, avionics, and components, as well as operators of maintenance facilities, fixed-base operators, aircraft fleets, and pilot and technician training facilities. Throughout its fifty-year history, GAMA has been dedicated to

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[1] The parties consented to the filing of this brief. No counsel for a party authored any part of this brief; no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *amici curiae*, its members, or its counsel made a monetary contribution to the brief's preparation or submission.

fostering and advancing the welfare, safety, interests, and activities of the global general aviation industry. General aviation encompasses all civilian flying except scheduled commercial transport and includes business travel, medical transport, aerial firefighting, law enforcement, flight training, aerial agricultural services, surveying, and search and rescue. GAMA's members make nearly all of the general aviation aircraft flying today, from small, single-engine propeller plans to large jets to twin-turbine helicopters.

Automobile and general aviation manufacturers are responsible for billions in economic outputs and millions of jobs in the United States; moreover, they are essential to the country's transportation infrastructure. *Amici* aim to protect and promote the legal and policy interests of its members and frequently file *amicus curiae* briefs in cases such as this one that are important to the automobile and aviation industries. *See, e.g.*, *Avco Corp. v. Sikkelee*, No. 18-1140 (U.S.); *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

Amici's members include global companies that design, manufacture, and sell vehicles in various parts of the country—indeed, the world. Because vehicles like cars, trucks, and aircraft are durable and easily portable by design, *amici*'s members frequently face product litigation in forums throughout the United States. Like Ford's cases before this Court, specific personal jurisdiction is a significant and recurring question in vehicle accident litigation. *See also, e.g.*, *D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94 (3d Cir. 2009); *Montgomery v. Airbus Helicopters, Inc.*, 414 P.3d 824 (Okla. 2018). The question presented is therefore of significant importance to *amici*'s members. *Amici* therefore write to

emphasize the potential impacts of the Court's resolution of this question on the broader automotive industry (including foreign manufacturers) and beyond.

SUMMARY OF THE ARGUMENT

Specific personal jurisdiction cannot exist where the "conduct giving rise" to the plaintiff's claims occurred outside of the forum State. *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1782 (2017) ("*BMS*"). That is what puts the "specific" in "specific personal jurisdiction." If this due-process requirement means anything, it must mean that a plaintiff may not hale a nonresident defendant into court for its out-of-state conduct, based on forum contacts that are irrelevant to her claims.

But the Montana and Minnesota Supreme Courts held exactly the opposite. Both courts acknowledged that the plaintiffs' design-defect claims against Ford are based on *out-of-state* conduct—the plaintiffs' vehicles were not designed, manufactured, or sold in these States, and the only reason the vehicles ended up in these States was through the unilateral decisions of individuals who had purchased the vehicles "used" a decade or more after the vehicles were initially manufactured and sold. But they concluded that Montana and Minnesota courts could exercise jurisdiction over Ford as a result of *other* contacts Ford had with those States, such as advertising activities and the existence of Ford-franchised dealerships that had sold *other* vehicles to *non-parties* in those States. Thus, under a *specific* personal jurisdiction analysis, they incorrectly held that the courts of these States could adjudicate claims that would be exactly the same even if the defendant's forum activities had never occurred.

This error is of substantial importance to business, particularly industries like *amici*'s. The no-causation standard adopted by Montana and Minnesota exposes automotive and general aviation manufacturers, as well as other companies that manufacture durable and easily movable products, to nationwide specific personal jurisdiction on the basis of generalized connections they share with each and every State in the country. These decisions erase the clear line that this Court has maintained between general and specific personal jurisdiction, eviscerating the due-process protections on which the latter is premised. A core principle driving specific personal jurisdiction is that *defendants' own voluntary, affirmative actions directed at the forum and the lawsuit* are what render them liable to suit. The approach adopted by Montana and Minnesota upends this Court's precedents and puts plaintiffs in the personal-jurisdiction driver's seat.

Just as troubling, the no-causation, stream-of-commerce standard advocated by respondents creates more questions than it provides answers, particularly for long-life products, like automobiles and aircraft, that are sold and resold for decades. If independent dealers and general connections (like advertising and sales), coupled with a mere expectation of in-state use, are sufficient to confer jurisdiction over product-liability claims, are those connections assessed as of the time of design and manufacture (which may have occurred over 30 years earlier), the time of plaintiffs' injury, or the time the lawsuit was filed? How pervasive must these contacts be and what types are sufficient? Would nationwide advertising that happens to appear in the State be enough? Attendance at in-state trade

shows? Sending federally mandated safety information to an aircraft owner wherever she happens to live? And would relevant advertisements and sales be limited to the product that is the subject of the product-liability lawsuit, or merely similar (or even dissimilar) products?

If respondents' standard is adopted, these complicated questions will occupy state and federal courts for decades, creating the very unpredictability the personal-jurisdiction requirement is supposed to avoid. This unpredictability is particularly acute for foreign defendants. Under respondents' rule, a plaintiff could force a foreign company to answer product claims in U.S. courts so long as the plaintiff can identify *some* U.S. conduct by the defendant that is peripherally related to that product—even if the U.S. conduct had no impact whatsoever on the plaintiff's claims and even if the foreign company's product entered the United States through the unilateral decision of a consumer or importer. That cannot be right. As this Court has repeatedly emphasized, jurisdiction over foreign entities must be grounded in their specific activities related to the suit at issue and not generalized activities incidentally affecting the forum. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 886-87 (2011) (plurality opinion); *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). Under principles of interstate federalism, this constitutional limit on a State's exercise of jurisdiction must stand even if the State "has a strong interest in applying its law to the controversy" and "is the most convenient location for litigation." *BMS*, 137 S. Ct. at 1780-81 (citation omitted).

This Court should reverse the judgments below, reaffirm these longstanding principles (most recently

reiterated in *BMS*), and hold that specific personal jurisdiction requires a causal link between a defendant's forum contacts and a plaintiff's specific claims.

ARGUMENT

I. The Decisions of the Minnesota and Montana Supreme Courts Erase the Clear Line Between General and Specific Personal Jurisdiction.

The Due Process Clause "sets the outer boundaries of a state tribunal's authority to proceed against a defendant," permitting States to exercise personal jurisdiction only where the defendant has "certain minimum contacts with [the State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). The relationship between a defendant and a State "must arise out of contacts that the 'defendant *himself* creates with the forum," because "[d]ue process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

This Court has recognized two varieties of personal jurisdiction: "'general' (sometimes called 'all-purpose') jurisdiction and 'specific' (sometimes called 'case-linked') jurisdiction." *BMS*, 137 S. Ct. at 1780 (citation omitted). General jurisdiction derives from the nature of the overall relationship between the

defendant and the State based on "continuous and systematic" connections rising to the level of being "at home" in the jurisdiction, *Daimler*, 571 U.S. at 137-38; it enables a State to exercise jurisdiction over a defendant independent of any connection between the defendant's forum-related contacts and the suit at issue, *Int'l Shoe*, 326 U.S. at 317.

Specific jurisdiction, however, is predicated on an "affiliatio[n] between the forum and the underlying controversy," and it primarily relies on suit-related conduct that occurred in or was directed toward the forum State. *Goodyear*, 564 U.S. at 919 (citation omitted). Specific jurisdiction "focuses on 'the relationship among the defendant, the forum, and the litigation,'" with particular attention paid to "the defendant's suit-related conduct." *Walden*, 571 U.S. at 284 (citation omitted).

Courts have occasionally blended these disparate doctrines into a hybrid analysis that allows them to exercise jurisdiction over a defendant when neither the general nor specific jurisdictional requirement is satisfied. Just as often, this Court has rejected these attempts, insisting on a clear demarcation between general and specific jurisdiction. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), for example, this Court rejected a North Carolina court's approach that "[c]onfus[ed] or blend[ed] general and specific jurisdictional inquiries." *Id.* at 919-20. Even more recently, in *BMS*, this Court considered the California Supreme Court's application of a "sliding scale approach" to specific jurisdiction whereby "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim." 137 S. Ct.

at 1778 (citation omitted). This Court categorically rejected such an approach, calling it "a loose and spurious form of general jurisdiction" with "no support" in the Court's cases. *Id.* at 1781. Similarly, this Court has expressed serious concern with any personal-jurisdiction test that would create "all-purpose jurisdiction" in any State in which a defendant sells a significant number of products. *Daimler*, 571 U.S. at 139.

In short, this Court has consistently maintained a clear line between general and specific bases for personal jurisdiction. For general jurisdiction, a defendant's general contacts with a forum State are relevant, but they must be so continuous and systematic that the defendant can be deemed "at home" there. *Id.* at 137. For specific jurisdiction, a defendant's activities within the forum State are relevant only if the causes of action asserted in the complaint arise out of or relate to those activities. *Goodyear*, 564 U.S. at 923 (specific personal jurisdiction exists "where the corporation's in-state activity is 'continuous and systematic' and *that activity gave rise to the episode-in-suit*" (citation omitted)); *Daimler*, 571 U.S. at 127 (in-state activities "may sometimes be enough to subject the corporation to jurisdiction in that State's tribunals with respect to suits relating to that in-state activity" (citation omitted)); *Int'l Shoe*, 326 U.S. at 320 (personal jurisdiction existed because the defendant engaged in in-state activities, and "[t]he obligation which is here sued upon arose out of those very activities"). Thus, as this Court has explained, "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated *to those sales*." *Goodyear*, 564 U.S. at 930 n.6 (emphasis added); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466

U.S. 408, 418 (1984) ("mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related *to those purchase transactions*" (emphasis added)).

Here, all parties agree that Ford is not subject to *general* jurisdiction in Montana or Minnesota. The plaintiffs' lawsuits are based on alleged defects in the design or manufacture of their Ford vehicles. But Ford did not design the plaintiffs' vehicles in Montana or Minnesota, manufacture the plaintiffs' vehicles in Montana or Minnesota, or even sell the plaintiffs' vehicles in Montana or Minnesota. Nevertheless, the Montana and Minnesota Supreme Courts held that despite the cases being about the design and manufacture of the vehicles, the state courts could exercise *specific* personal jurisdiction over Ford in these lawsuits because Ford sold *other vehicles* to *other individuals*, advertised in those States, partnered with dealerships in those States, offered repair or replacement services in those States, and could reasonably have foreseen its products being used in those States. 19-368 Pet. App. 11a-12a, 16a-17a, 19a-20a; 19-369 Pet. App. 9a-10a, 16a-17a.

The state high courts considered Ford's forum activities sufficient to exercise specific personal jurisdiction even though those activities did not give rise to the plaintiffs' claims and the plaintiffs would have experienced the exact same injuries had Ford not engaged in any of those activities in Montana or Minnesota. This approach is similar to a *general* personal-jurisdiction analysis, but without the critical due-process-protecting requirement that the defendant's

forum-related contacts are so systematic and continuous that the defendant can be considered at home there and thus can reasonably be expected to be haled into court there for *any* dispute that arises.

By basing the exercise of personal jurisdiction on acts for which there is no nexus to the claims, these decisions resemble the sliding-scale approach that this Court expressly rejected in *BMS*, 137 S. Ct. 1773. There, California residents and nonresidents sued Bristol-Myers Squibb in California, alleging that the company's drug Plavix had injured them. The company had research and laboratory facilities in California, employed hundreds of employees and sales representatives there, and sold 187 *million* Plavix pills in the State. Applying the principle that "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim," the court held that the company's "extensive contacts with California" warranted exercising jurisdiction over all of the plaintiffs' claims. *Id.* at 1778-79 (citations omitted). In particular, the court relied upon the similarity of the residents' and nonresidents' claims, as they were "based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product." *Id.* at 1779 (citation omitted).

This Court rejected the California Supreme Court's approach, calling it a "loose and spurious form of general jurisdiction. For specific jurisdiction, a defendant's general connections with the forum are not enough." *Id.* at 1781. The Court stated that "[t]he mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the

nonresidents"— did not allow plaintiffs whose claims did not arise as a result of the defendant's California-related activities to sue Bristol-Myers Squibb in the State because "a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." *Id.* (quoting *Walden*, 571 U.S. at 286).

The same is true here. Just as Bristol-Myers Squibb's sales of 187 million Plavix pills in California did not permit *every* plaintiff to sue the company there, Ford's sales of similar—or even identical—vehicles to *other* Montana and Minnesota residents does not mean that Ford can be haled into court there to litigate claims over vehicles that the company sold in Washington and North Dakota.

The Montana and Minnesota Supreme Courts both said that *BMS* was distinguishable because the nonresident plaintiffs in *BMS* neither used nor were injured by Plavix in California, whereas here, the allegedly defective vehicles were used and caused injuries in Montana and Minnesota. 19-368 Pet. App. 18a; 19-369 Pet. App. 17a. But that disregards this Court's instruction that "mere injury to a forum resident" is not enough. *Walden*, 571 U.S. at 290. That is because a plaintiff's or third party's "unilateral" actions connecting the dispute to the forum are "not an appropriate consideration" when considering whether personal jurisdiction exists over a defendant. *Helicopteros*, 466 U.S. at 417. This due-process limitation on a forum State's jurisdiction exists to protect *defendants'* rights, not plaintiffs'. *See Walden*, 571 U.S. at 285 ("Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" (citation omitted)).

The vehicles at issue in this case ended up in Montana and Minnesota not because of any action by Ford, but because subsequent owners decided to move there more than a decade after Ford sold the vehicles in Washington and North Dakota. Because third parties, and not Ford, are responsible for the presence of these vehicles in Montana and Minnesota, the fact that the vehicles were used in these States cannot be a jurisdictionally relevant contact with respect to claims based on Ford's *out-of-state* conduct.

The rule embraced by the Montana and Minnesota Supreme Courts exposes manufacturers to jurisdiction based on actions that are entirely out of their control—consumers' unilateral decisions about where to transport products they purchase. It allows plaintiffs whose claims are not based on a defendant's in-state contacts to piggyback off of the personal jurisdiction that *other* plaintiffs might have, which is precisely what *BMS* forbids. 137 S. Ct. at 1781. And because it does not permit defendants "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," it creates precisely the type of nationwide "all-purpose" jurisdiction that this Court has repeatedly eschewed. *Daimler*, 571 U.S. at 139 (quoting *Burger King*, 471 U.S. at 472).

II. This Court Should Reject Respondents' Unlimited Stream-of-Commerce Theory.

Respondents' no-causation test leans heavily upon a stream-of-commerce theory of specific personal jurisdiction. *Gullett* Br. in Opp. 1, 3, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17, 21, 22, 24. But this Court rejected this very theory—or, as a plurality called it, this "metaphor"—

less than ten years ago in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 886 (2011) (plurality opinion); *see also id.* at 889 (Breyer, J., concurring in the judgment).

A. In *J. McIntyre*, a New Jersey resident was injured in New Jersey by a metal-shearing machine manufactured in England. *Id.* at 878 (plurality opinion). The manufacturer (J. McIntyre) had engaged an independent U.S. distributor to sell its machines in the United States and did not directly sell its machines to buyers in this country. *Id.*

The New Jersey Supreme Court allowed suit in New Jersey, relying on a hodgepodge of contacts with no causal relationship to the plaintiffs' claims to conclude that the "stream-of-commerce doctrine of jurisdiction" warranted calling J. McIntyre into New Jersey courts. *Id.* at 879 (citation omitted). Although the New Jersey Supreme Court noted that it could "not find that J. McIntyre had a presence or minimum contacts in this State . . . that would justify a New Jersey court to exercise jurisdiction in this case," it held that personal jurisdiction was appropriate because J. McIntyre "knew or reasonably should have known that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states" and "failed to take some reasonable step to prevent the distribution of its products in [New Jersey]." *Id.* at 879, 886 (quotation marks omitted).

This Court reversed, with six Justices rejecting the stream-of-commerce argument advanced by the plaintiff. A plurality of the Court reaffirmed the "general rule" that "the exercise of judicial power is not lawful

unless the defendant purposefully avails itself of the privilege of conducting activities within the forum State" and concluded that "the so-called 'stream-of-commerce' doctrine cannot displace it." *Id.* at 877-78 (plurality opinion) (citation and internal quotation marks omitted). The plurality criticized the "deficiencies" of the malleable "stream of commerce" metaphor and clarified that "[a] defendant's actions, not his expectations, empower a State's courts to subject him to judgment." *Id.* at 881, 883. Likewise, Justice Breyer, joined by Justice Alito, noted in his concurring opinion the Court's longstanding skepticism about the notion that placing one's goods in the stream of commerce, "fully aware (and hoping) that . . . a sale will take place," can constitute an adequate basis for jurisdiction. *Id.* at 888-89.

Respondents, however, would look to reprise the stream-of-commerce theory as an *independent* basis for personal jurisdiction—a position other courts have rightly rejected. Under respondents' theory, a defendant with *some* forum contacts can be subject to specific personal jurisdiction by simply delivering its products into the stream of commerce and manifesting a desire or intention to reach consumers in any particular State—even if the defendant's forum contacts have no relationship to the plaintiff's specific claims. *Gullett* Br. in Opp. 3, 5, 8. Indeed, both Ford vehicles in this case were sold to respondents not by Ford or even an independent Ford dealership, but on the used-vehicle market (after being sold and resold four or five times). Thus, not only were their design-defect *claims* not causally related to any forum activities by Ford, the *purchase of their vehicles* was not even causally related to any forum activities by Ford. Under

respondents' theory, however, taking actions to "serv[e] a particular forum" is sufficient to confer specific personal jurisdiction over any product-litigation claims that a plaintiff might want to assert as long as a plaintiff happened to bring her vehicle (sold elsewhere) to that forum. *Id.* at 3. That theory deletes the arise-out-of-or-relate-to requirement entirely in favor of a purposeful-availment-only test.

B. If the stream-of-commerce "metaphor" has any continuing viability, it is certainly not as an independent source of specific personal jurisdiction. At most, it should be limited to allowing specific personal jurisdiction in the forum *where the defendant places the relevant product into the stream of commerce*—not anywhere the product might end up, even years (or decades) down the line. The experience of automobile and general aviation manufacturers demonstrates why.

Automobiles and aircraft are uniquely durable and inherently mobile. As this Court has recognized, "the very purpose of an automobile is to travel"; vehicles frequently cross state lines with no notice given to their manufacturers. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). And they do so for decades: the average age of cars and light trucks in this country exceeds 11 years,[2] and if properly maintained, vehicles can easily last 200,000 miles or

[2] Associated Press, *Driving an Older Car? You're Not Alone. Average Vehicle Age Sets a Record*, Autoblog (June 27, 2019, 8:30 a.m.), https://www.autoblog.com/2019/06/27/record-average-age-cars-on-road/.

more.[3] The same is true for aircraft. The average age of a single-engine piston aircraft is 46.8 years; for a multi-engine piston aircraft, the average age is 44.7 years old; and the average age of the entire U.S. general aviation fleet is 38.1 years.[4] General aviation aircraft fly over 25.5 million flight hours annually.[5] Some small, single-engine piston aircraft can fly over 500 nautical miles in one flight; a jet may traverse the entire country in a single flight over the course of a few hours.[6]

Moreover, both automobiles and aircraft are frequently sold second-hand, third-hand, and even fourth-hand by private individuals or dealers unaffiliated with the manufacturer and even in a different country than the product was manufactured or originally sold. The Third Circuit's decision in *D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94 (2009), provides a useful illustration. There, a plaintiff filed a product-liability lawsuit in Pennsylvania against the aircraft manufacturer, a Swiss company. *Id.* at 99. The aircraft had been designed and manufactured in Switzerland and originally sold to a French buyer, which resold it to another Swiss company, which resold it to a Massachusetts company, which imported the plane into the United States and

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[3] Julie Blackley, *Longest-Lasting Cars to Reach 200,000 Miles and Beyond*, iSeeCars (last visited Mar. 5, 2019), https://www.iseecars.com/longest-lasting-cars-study.

[4] General Aviation Manufacturers Association, *2019 Databook* 25 (Feb. 2020), https://gama.aero/wp-content/uploads/GAMA _2019 Databook_ForWebFinal-2020-02-19.pdf ("*GAMA Databook*").

[5] *GAMA Databook* 20.

[6] *See, e.g.*, *Purchase Planning Handbook* 83, 94, Business & Commercial Aviation (May 2017), http://assets.penton.com/digitaleditions/BCA/BCA_201705.pdf.

sold it to a Rhode Island company. *Id.* The aircraft was flown to Pennsylvania, where it tragically crashed. *Id.* at 98.

Ford's cases are similar. The two vehicles at issue in these cases were 21 and 19 years old, respectively, at the time they crashed. 19-368 Pet. App. 3a; 19-369 Pet. App. 3a. Both vehicles had been resold without the manufacturers' involvement, and brought into the forum States by individuals who were not the original purchasers of the vehicles and who were not the plaintiffs in either of these actions. 19-368 Pet. App. 24a; 19-369 Pet. App. 25a. And while the Montana and Minnesota Supreme Courts suggested that jurisdiction was not the result of the plaintiffs' unilateral decisions but rather Ford's general in-state contacts, all of the contacts between Ford and the forum States that the Montana and Minnesota Supreme Courts relied upon to support specific personal jurisdiction are present in exactly the same way in virtually every State in the country, which means that the approach taken by these courts would subject manufacturers like Ford to "all-purpose" jurisdiction nationwide.

First, the courts noted that Ford sold vehicles and parts in Minnesota and Montana, including *the types* of vehicles at issue in these cases. 19-368 Pet. App. 12a, 17a, 19a; 19-369 Pet. App. 4a, 9a-10a. But there are no local or regional automobile or aviation manufacturers in the United States. And this Court has already stated that even *millions* of in-state sales do not permit jurisdiction over manufacturers with respect to claims about even *identical* products the manufacturers sold elsewhere. *See BMS*, 137 S. Ct. at 1778, 1781-82. Thus, Ford's sales of *other* vehicles

simply cannot justify the exercise of specific personal jurisdiction over claims unrelated to those sales.[7]

Second, the courts emphasized that Ford engaged in regional and national marketing campaigns that reach Minnesota and Montana residents. 19-368 Pet. App. 11a, 17a, 29a-30a; 19-369 Pet. App. 4a, 9a, 10a, 17a. But even putting aside that the plaintiffs' claims did not arise from nor were related to Ford's advertising, these same facts exist in every other State too. Automobile and aviation manufacturers typically issue nationwide and regional advertisements across the country because they distribute vehicles in every State. And this Court has rejected efforts to premise personal jurisdiction on these types of nationwide advertising efforts—even where the plaintiffs asserted *misleading-advertising claims*. *See BMS*, 137 S. Ct. at 1778; *id.* at 1784, 1786 (Sotomayor, J., dissenting).

Third, the courts focused on the existence of Ford dealerships and certified mechanics in Montana and Minnesota. 19-368 Pet. App. 11a, 12a; 19-369 Pet. App. 4a, 9a, 16a-17a. But the courts' reliance on in-state Ford dealerships ignores that these dealerships are independently owned and operated by franchisees. Virtually every State in America prohibits automobile manufacturers with franchisees from engaging in

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[7] Indeed, the courts' erroneous analysis is particularly problematic for intensely regulated industries like *amici*'s. As the court in *Pilatus* noted, aircraft are designed pursuant to federal design standards, 566 F.3d at 103, which cannot be changed without further federal approvals, *see* 14 C.F.R. pt. 21, subpt. D. Similarly, even without pre-market approval requirements, automotive vehicles are subject to extensive regulation, resulting in the same product being sold in other states.

direct-to-consumer automobile sales.[8] Moreover, this Court has repeatedly held that "a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction," *Walden*, 571 U.S. at 286; *see BMS*, 137 S. Ct. at 1783 (Bristol-Myers Squibb's relationship with an in-state pharmaceutical distributor was not sufficient to establish specific personal jurisdiction in California). Thus, a vehicle manufacturer's affiliation with *non-parties* (such as mechanics or dealerships) is simply irrelevant to the personal-jurisdiction analysis.

Fourth, the Montana and Minnesota Supreme Courts relied heavily upon the foreseeability that the plaintiffs' vehicles could have been brought to these States and Ford's expectation that residents of these States will purchase Ford vehicles. *See* 19-368 Pet. App. 16a; *id.* at 13a & n.4, 17a; 19-369 Pet. App. 9a-10a, 17a. But these vehicles reached Montana and Minnesota through no act of Ford's, and this Court has previously expressed serious concern with any jurisdictional test that would allow personal jurisdiction in a product-liability case to follow the product itself, rather than hinge on *the defendant's* contacts with the forum State *related to the specific claims at issue*. As the Court put it in *World-Wide Volkswagen*, "If

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[8] *See* Mark Cooper, *Bringing New Auto Sales and Service into the 21st Century* 3, Consumer Fed'n of Am. (Oct. 2002), https://consumerfed.org/pdfs/InternetAutos102902.pdf; Gerald R. Bodisch, *Economic Effects of State Bans on Direct Manufacturer Sales to Car Buyers*, Economic Analysis Group 1 (May 2009), https://www.justice.gov/atr/economic-effects-state-bans-direct-manufacturer-sales-car-buyers; *see also* Joshua B. Arons, *Tesla's Right to Rise*, 44 Transp. L.J. 133 (2017) (detailing Tesla's efforts to sell electric vehicles directly to consumers and the numerous lawsuits these efforts have sparked under state franchise laws).

foreseeability were the criterion, . . . [e]very seller of chattels would in effect appoint the chattel his agent for service of process." 444 U.S. at 296. This is particularly true for products like automobiles and aircraft: manufacturers often have no knowledge of where products will wind up decades later.

Finally, the Montana and Minnesota Supreme Courts' decisions relied on general notions of fairness and convenience. *See, e.g.*, 19-368 Pet. App. 20a-21a; 19-369 Pet. App. 7a, 18a-20a. But this Court has rejected reliance on these considerations: "[d]ue process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Walden*, 571 U.S. at 284. That is because, under the federalism principles that underlie these due-process limits, "[f]reeform notions of fundamental fairness divorced from traditional practice cannot transform a judgment rendered in the absence of authority into law." *J. McIntyre*, 564 U.S. at 880 (plurality opinion). Thus, courts may not "excuse[]" these jurisdictional prerequisites even if "the plaintiff would suffer substantial hardship if forced to litigate in a foreign forum." *Id.* at 883.

Ultimately, the respondents' stream-of-commerce theory has no limiting principle—particularly for manufacturers of inherently mobile and durable products, like automobiles and aircraft. If this Court endorses that theory at all as a viable basis for specific personal jurisdiction, it should strictly limit it to the forum in which the manufacturer actively participated within the stream of commerce. That is precisely the interpretation adopted by the Third Circuit in *Pilatus*. The court held that specific personal

jurisdiction could not be exercised over the aircraft manufacturer even though it had *some* contacts with Pennsylvania (visits to the State to meet with suppliers and the purchase of more than $1 million in goods or services from Pennsylvania suppliers), because the plaintiff's claims did not "arise out of or relate to" those Pennsylvania contacts. 566 F.3d at 104. And while the manufacturer knew and expected its planes could end up in any State, the court held that the "so-called 'stream of commerce'" theory upon which the plaintiffs relied did not "provide a basis for jurisdiction" because the manufacturer did not direct the aircraft at issue through the stream of commerce to Pennsylvania. *Id.* at 104-05. Because the aircraft made it to Pennsylvania through the conduct of others, and not as a result of any actions by the manufacturer, the court held that the plaintiffs had pushed the stream-of-commerce theory far beyond its reasonable limits. *Id.* at 105-06. The court recognized that a contrary rule would confer specific personal jurisdiction based on foreseeability alone, which "has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *Id.* at 105 (quoting *World-Wide Volkswagen*, 444 U.S. at 295). But that foreseeability standard is precisely what adoption of respondents' theory would endorse.

Thus, if this Court endorses respondents' stream-of-commerce theory as a viable basis for specific personal jurisdiction, it should strictly limit it to the forum in which the manufacturer actively participated within the stream of commerce (in many cases, where the manufacturer *first sells* the product, as that is typically all that the manufacturer has control over). A

contrary rule improperly places plaintiffs, rather than defendants, in the personal-jurisdiction driver's seat.

III. Respondents' No-Causation Rule Will Create Massive Uncertainty and Increase Litigation over Threshold Jurisdictional Issues.

The due-process protections underlying the purposeful availment test is intended to provide "predictability" to defendants so they can "structure their primary conduct with some minimum assurance as to where the conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. But respondents' no-causation, stream-of-commerce rule does exactly the opposite: it simply replaces one question (whether a causal relationship is required) with many more.

First, if forum-state contacts not causally connected to the plaintiffs' claims (such as unrelated marketing or sales to *other individuals* in the forum State) suffice to establish specific personal jurisdiction, then are those connections assessed as of the time of design and manufacture (which may have occurred 30 years earlier), the time of plaintiffs' injury, or the time the lawsuit was filed? If the relevant contacts are those at the time of design and manufacture, then that would mean a roving inquiry into activities and sales completely unconnected to the claims at issue that are potentially decades old. It would also mean that previous contacts, even deliberately discontinued, could still support specific personal jurisdiction. Specific personal jurisdiction would become a switch that, once turned on, could never be turned off. This would make "specific" personal jurisdiction even more persistent

and capacious than general jurisdiction, which may be prospectively eliminated by abandoning all presence and activities in a given forum. And if, in contrast, the relevant contacts are those at the time of sale or suit, that would mean that *later actions* (taken potentially by a different company, long after a merger or acquisition) could confer jurisdiction over claims about conduct that occurred decades earlier when the forum contacts did not exist. Neither of these two formulations makes any sense.

Second, *what quantum* of unrelated evidence would be sufficient to confer specific personal jurisdiction? Would advertisements run 10 years after the relevant product was manufactured and 10 years before any injury occurred? *Nationwide* advertisements that extend into the forum State? Advertisements that reached a different part of the forum State than where a plaintiff resides or the injury occurred? How many advertisements would need to be shown?

Third, would the relevant forum contacts have to relate to the precise product in question (*e.g.*, the specific year, make, and model of the vehicle that is alleged defective)? Or would relation to *other, similar* products (the make and model of that vehicle from a different year—one that is not alleged to have the design defect) be enough? How about a different type of vehicle? And if a different type of vehicle fits the bill, then why not different products altogether?

These are just some of the myriad questions that will occupy state and federal courts for decades (undoubtedly with inconsistent or even conflicting results) if respondents' no-causation, stream-of-commerce theory is adopted. That would only exacerbate

the confusion and uncertainty that exists now in the absence of a uniform nationwide rule.

IV. Respondents' Rule Would Have a Particularly Pernicious Impact on Foreign Manufacturers.

The implications of respondents' position are even more dramatic for the many foreign manufacturers that sell vehicles abroad. The volume of foreign-manufactured cars that are imported to the United States is substantial: according to the Center for Automotive Research, 48 percent of all automobiles sold in the United States were imported and more than $340 billion worth of imported light vehicles and parts were sold in the United States in 2017.[9]

These automobiles arrive in the United States in a variety of ways. Sometimes foreign corporations manufacture automobiles in their home countries and export them for sale in the United States, most commonly through distributors or dedicated importers. And they of course do so with the understanding that if they export an automobile to Pennsylvania, they could be subject to civil litigation in Pennsylvania for claims arising out of that Pennsylvania conduct. But other times, automobiles that are designed, manufactured, and sold in foreign countries are imported directly by consumers without any involvement by the manufacturer itself. In fact, consumers even import automobiles that were not designed or manufactured

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[9] Michael Schultz et al., *U.S. Consumer & Economic Impacts of U.S. Automotive Trade Policies* 3, Ctr. for Auto. Research (Feb. 2019), https://www.cargroup.org/wp-content/uploads/2019/02/US-Consumer-Economic-Impacts-of-US-Automotive-Trade-Policies-.pdf.

to be legally operated in the United States—the Environmental Protection Agency (EPA) permits consumers to import nonconforming vehicles either by meeting one of several exemptions or by modifying them, and EPA certifies Independent Commercial Importers to modify, test, and certify vehicles for compliance with U.S. emission standards.[10]

In either event, importation of foreign-manufactured vehicles is a common occurrence—and not only for *new* vehicles. In 2017, more than $1 billion in used cars were imported to the United States. *See* Office of Transp. & Mach., U.S. Dep't of Commerce, *U.S. Imports of Used Passenger Vehicles Imports, Value and Units*, https://legacy.trade.gov/td/otm/assets/auto/Used_Passenger_Imports.pdf (last visited Mar. 6, 2020). Indeed, EPA recently noted that it had underestimated the number of consumer-imported vehicles by more than 1,000 percent.[11]

Under respondents' rule, so long as a foreign corporation that manufactured a vehicle abroad has *some* U.S. contacts, it risks being haled into state courts in the United States even if those U.S. contacts had no impact on the plaintiff's claims, even if the vehicle

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[10] *See* U.S. EPA, *Independent Commercial Importers (ICIs)*, https://www.epa.gov/importing-vehicles-and-engines/independent-commercial-importers-icis (last visited Mar. 6, 2020).

[11] *See* Information Collection for Importation of On-Highway Vehicles and Motorcycles and Nonroad Engines, Vehicles, and Equipment, 84 Fed. Reg. 63,653 (Nov. 18, 2019). Due to a newly centralized system for submission of forms, including those filed by individuals importing their own automobiles, the EPA noted that "we are now able to have a much more accurate count of the number of forms that are being filed" amounting to "around 160,000 per year vs. the 12,000 we had been estimating" in the past. *Id.* at 63,654.

entered the United States through no action of the foreign manufacturer, and even if the manufacturer did not even design the vehicle to be legally operated in the United States. This cannot be right: the "unilateral" action of a consumer or a commercial importer is not supposed to be "an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros*, 466 U.S. at 417 (discussing personal jurisdiction over a Colombian company).

Even if the defendant *could* ultimately prevail on the merits, the respondents' amorphous test means that foreign manufacturers in this position at the very least risk being subjected to protracted and expensive jurisdictional battles in American courts. This risk is particularly acute when such a foreign defendant might be viewed as having deep pockets—even where plaintiffs unquestionably could bring product-related claims against a distributor or other defendant in U.S. courts.

As this Court has recognized, such an "expansive view" of personal jurisdiction poses "risks to international comity." *Daimler*, 571 U.S. at 140. The United States has expressed similar concerns. In *BMS*, the United States argued if a company that conducts business nationwide—or worldwide—could be subject to personal jurisdiction in any State where it arguably does business bearing some peripheral relation to a plaintiff's claims, it "could exceed what some other nations would regard as reasonable." U.S. Br. 27, *BMS*, No. 16-466. Any personal-jurisdiction test permitting such a result could "dissuade foreign companies from doing business in the United States," and risks American companies being "dissuaded from exporting

[their] products" for fear of a similar rule being applied against them. U.S. Br. 12, 31, *Goodyear Luxembourg Tires, S.A. v. Brown*, No. 10-76. The United States has even warned that "foreign governments' objections to some domestic courts' expansive views of [] jurisdiction have in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments." *Daimler*, 571 U.S. at 141-42 (quoting U.S. Brief 2).

These warnings are anything but ill-founded given the nature of American litigation. America's party-driven style of discovery and litigation is generally viewed by foreign companies as uniquely intrusive and burdensome. *See Societe Nationale Industrielle Aerospatiale* v. *U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522, 542 (1987) ("It is well known that the scope of American discovery is often significantly broader than is permitted in other jurisdictions . . . ."). In contrast to "more restrictive and controlled" discovery rules that predominate in foreign jurisdictions, "[t]he U.S. discovery process is unique in the liberality of its rules, the hunger of its lawyers, and the passivity of its judiciary." 2 Waller, *Antitrust & Am. Bus. Abroad* § 15:15 (4th ed. 2018).[12] Indeed, in U.S. litigation, it is quite common for parties to engage in wide-ranging discovery of any number of documents

[12] In many foreign legal systems, a highly involved judge manages disclosure between the parties so as to succinctly determine the correct answer to the questions before her, unlike the American system of discovery by right. *See generally* Geoffrey C. Hazard, Jr., *Discovery and the Role of the Judge in Civil Law Jurisdictions*, 73 Notre Dame L. Rev. 1017, 1020-22 (1998) (describing differences in development of evidence as between American and foreign civil law systems, and the latter's hostility to the former).

and facts for potentially years even during the early stages of a case—and dueling experts are often par for the course. These differences add up to real costs, with the U.S. Department of Commerce observing that "U.S. tort costs as a percentage of GDP are triple that of France and the United Kingdom and at least double that of Germany, Japan, and Switzerland." U.S. Dep't of Commerce, *The U.S. Litigation Environment and Foreign Direct Investment: Supporting U.S. Competitiveness by Reducing Legal Costs and Uncertainty* 1, https://legacy.trade.gov/investamerica/Litigation_FDI.pdf (Oct. 2008). Thus, companies such as *amici*'s international members that do not directly sell to American customers but may engage with U.S. distributors to sell vehicles in the United States are rightly chary of subjecting themselves and their employees to U.S. jurisdiction.

To be sure, foreign corporations do and should expect to be compelled to answer a complaint that arises out of actions they have taken here. But it is one thing to allow foreign companies to be haled into the courts of a particular State for claims arising from their conduct in that State. It is another thing entirely to allow foreign companies to be sued in any State in which their products were brought as a result of the unilateral decision of consumers, importers, or other third parties to bring them here—sometimes decades after the product was manufactured.

CONCLUSION

The decisions of the Montana and Minnesota Supreme Courts should be reversed.

Respectfully submitted.

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