

ALABAMA ASSOCIATION FOR JUSTICE

JOURNAL

Volume 42 • Number 1

Fall 2021



2021-2022 ALAJ PRESIDENT
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JUSTICE

FALL 2021

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The Official Publication of the Alabama Association for Justice

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OUR MISSION

We preserve and protect the constitutional right to a trial by jury guaranteed by the Seventh Amendment to the United States Constitution by ensuring that every person or business harmed or injured by the misconduct or negligence of others can hold wrongdoers accountable in the one room where everyone is equal – The Courtroom

TIPS *From the Trenches*

By David G. Wirtes and Lisa Ivey



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Personal Jurisdiction in Alabama Following *Ford v. Montana*.

INTRODUCTION

Personal jurisdiction is the lawful authority of courts to exercise judicial power over persons or entities whose acts or omissions cause effects within a state or federal district. Personal jurisdiction over non-resident defendants has been discussed, defined, and refined in both state and federal courts for decades.

The basic formula for personal jurisdiction, articulated over seventy-five years ago, has remained the same: “a defendant must have sufficient minimum contacts within the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *International Shoe v. Washington*, 326 U.S. 310, 316 (1945). The catchphrase that quickly evolved for establishing minimum contacts was whether a defendant had “purposefully availed” itself “of the privilege of conducting activities within the forum State,” thus “invoking the benefits and protections of its laws.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Courts have repeatedly emphasized that, for a defendant’s contacts with the forum to be constitutionally sufficient, “the contact must be related to the cause of action and be such that the defendant should reasonably anticipate being haled into court” there. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980).

Defendants have often attempted to seize on the requirement that their contacts within the forum must be “suit-related” to argue that even significant and ongoing conduct directed toward a particular state or federal district did not satisfy the “minimum contacts” test. In products liability cases in particular, courts were urged by defendants to adopt a due process

test for personal jurisdiction that depended on a strict causation-only approach that would ask where the products were designed, manufactured, or *originally* sold, regardless of whether the products later moved further in the stream of commerce. These and other defense tactics often confused and conflated the correct test and resulted in opinions injecting uncertainty and imprecision into the law. Particularly in Alabama, for the first decade of the 2000s, our Supreme Court strayed away from the *World-Wide Volkswagen* test and adopted what had become known as the “stream of commerce plus” test, before correcting course in 2009 in *Ex parte DBI, Inc.*, 23 So. 3d 635 (Ala. 2009) and returning to a pure “stream of commerce” test. See David G. Wirtes, Jr., *Establishing Personal Jurisdiction in Alabama*, 29 Ala. Ass’n Just. J. 74 (2009).

In 2019, the Alabama Supreme Court articulated its comprehensive current recent view of personal jurisdiction, discussing both general and specific personal jurisdiction, in *Facebook, Inc. v. K.G.S.*, 294 So. 3d 122 (Ala. 2019).

Now, however, the United States Supreme Court has weighed in definitively in a unanimous opinion to state with clarity when *specific* personal jurisdiction is appropriate under due process principles. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, ___ U.S. ___, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021). *Ford v. Montana* affords us a timely opportunity to revisit what is necessary in Alabama to establish specific personal jurisdiction.

This article begins with an analysis of both general and personal jurisdiction and Alabama’s tests for establishing them. As to personal jurisdiction in particular, the analysis of *Ford v. Montana* will be compared and contrasted to Alabama’s

well-settled specific jurisdiction test as crafted in *Ex parte DBI*. Emphasis will be placed on similarities that can be used to strengthen arguments in favor of finding personal jurisdiction.

The article next discusses the uncertainties that remain in Alabama because *Facebook, Inc.* continued a history of allowing “wiggle room” for defendants to try to narrow the correct scope and breadth of the specific personal jurisdiction analysis. The article then examines where Alabama’s specific personal jurisdiction test should go following the unanimous holding in *Ford v. Montana*.

ALABAMA’S LONG ARM STATUTE

Any analysis of personal jurisdiction must begin with Alabama’s long arm rule, Ala. R. Civ. P. 4.2, which “extends the personal jurisdiction of Alabama courts to the limit of due process under the United States and Alabama Constitutions.” *Hiller Invs. Inc. v. Insultech Grp., Inc.*, 957 So. 2d 1111, 1115 (Ala. 2006). Necessarily, the “full extent” and “the limits of due process” are the furthest reaches allowable by binding precedent of the United States Supreme Court, which now includes *Ford v. Montana*.

In *Ex parte Aladdin Mfg. Corp.*, 305 So. 3d 214 (Ala. 2019), the Court discussed the broad reach of Alabama’s long-arm rule:

“ . . . Rule 4.2 does not contain a specifically enumerated list; however, before Rule 4.2 was amended in 2004, it “included a ‘laundry list’ of types of conduct that would subject an out-of-state defendant to personal jurisdiction in Alabama.” Committee Comments to Amendment to Rule 4.2 Effective August 1, 2004. Former Rule 4.2(a)(2)(D) permitted Alabama courts to exercise jurisdiction over a person who had caused “tortious injury or damage in this state by an act or omission outside this state if the person regularly does or solicits business, or engages in any other persistent course of conduct or derives substantial revenue from goods used or consumed or services rendered in this state.” Committee Comments to the 2004 amendment to Rule 4.2 state that, “[b]ecause the ‘catchall’ clause has consistently been interpreted to go to the full extent of federal due process, see, for example, *Martin v. Robbins*,

628 So. 2d 614, 617 (Ala. 1993), it is no longer necessary to retain the ‘laundry list’ in the text of the Rule.” Accordingly, considering the history and committee comments, we construe Rule 4.2 to include out-of-state torts, and we deem a tort to be committed in the place where the injury occurs. See, e.g., *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985) (explaining that, when “this Court is called upon to construe a statute, the fundamental rule is that the court has a duty to ascertain and effectuate legislative intent expressed in the statute, which may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained”); see also *Ex parte State ex rel. Daw*, 786 So. 2d 1134, 1137 (Ala. 2000) (“In construing rules of court, this Court has applied the rules of construction applicable to statutes. See *Ex parte Oswald*, 686 So. 2d 368 (Ala. 1996).”). The injury in this case indisputably occurred in Alabama; therefore, the tort occurred in Alabama for purposes of Rule 4.2.

Id. at 237.

As noted in *Facebook*, the “critical question with regard to the nonresident defendant’s contacts is whether the contacts are such that the nonresident defendant “should reasonably anticipate being haled into court” in the forum state. *Facebook, Inc.*, 294 So. 3d at 131–32 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985), quoting in turn *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)).

General and Specific Personal Jurisdiction in Alabama

In *Facebook*, the Court reiterated the distinction between general and specific personal jurisdiction:

Since the United States Supreme Court’s decision in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), two types of personal jurisdiction have been recognized: “‘general’ (sometimes called ‘all-purpose’) jurisdiction and ‘specific’ (sometimes called ‘case-linked’) jurisdiction.” *Bristol-Myers Squibb*, 582 U.S. at ___, 137 S.Ct. at 1780.

“In the case of either general in personam jurisdiction or specific in personam jurisdiction, “[t]he “substantial connection” between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State.’ *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 112, 107 S.Ct. 1026, 94 L.Ed. 2d 92 (1987). This purposeful-availment requirement assures that a defendant will not be haled into a jurisdiction as a result of “the unilateral activity of another person or a third person.” ‘ *Burger King [Corp. v. Rudzewicz]*, 471 U.S. [462,] 475, 105 S.Ct. 2174 [85 L.Ed.2d 528 (1985)], quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417, 104 S.Ct. 1868, 80 L.Ed. 2d 404 (1984).”

Elliott, 830 So. 2d at 731.

Facebook, Inc., 294 So. 3d at 132.

General Personal Jurisdiction, Generally, Following Ford and Facebook

When a court asserts “[g]eneral jurisdiction, as its name implies, [it] extends to ‘any and all claims’ brought against a defendant.” *Ford*, 141 S. Ct. at 1024. When a court determines “a defendant is ‘essentially at home’ in the State” then claims brought against the defendant in that forum “need not relate to the forum State or the defendant’s activity there; they may concern events and conduct anywhere in the world.” *Id.* However, “[o]nly a select ‘set of affiliations with a forum’ will expose a defendant to such sweeping jurisdiction.” *Id.* For individuals, a court only has “general jurisdiction in her place of domicile.” *Id.* For corporations, a court only has general jurisdiction in “its place of incorporation and principal place of business.” *Id.*

General Jurisdiction - Individuals

Earlier, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the United States Supreme Court explained that general jurisdiction requires a defendant’s contacts with the forum be “so continuous and systematic as to render it essentially at home in the forum state.” *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915, 919 (2011). In *Goodyear*, the Court declared that an individual is subject to general jurisdiction in the

place of their “domicile[.]” *Id.* at 924. “A person’s domicile is the place of ‘his true, fixed, and permanent home and principal establishment, and to which he has the intention of returning whenever he is absent therefrom[.]” *Smith v. Marcus & Millichap, Inc.*, 991 F.3d 1145, 1149 (11th Cir. 2021) (quoting *McCormick v. Aderholt*, 293 F.3d 1254, 1267 (11th Cir. 2002)). Accordingly, a “person is [also] a citizen of the state in which he is ‘domiciled.’” *Id.*

Essentially, “domicile (or citizenship) consists of two elements: residency in a state and intent to remain in that state.” *Id.* In *Smith v. Marcus & Millichap*, the Eleventh Circuit held that while “[r]esidency is necessary” it is “insufficient[] to establish citizenship [or domicile] in a state.” *Id.* In *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330 (11th Cir. 2011) the court held “[d]omicile is not synonymous with residence; one may temporarily reside in one location, yet retain domicile in a previous residence.”. *Molinos Valle Del Cibao, C. por A.*, 633 F.3d at 1341–1342.

When determining “a person’s intent to ‘remain in a state[.]’ courts consider ‘various factors.’” *Smith*, 991 F.3d at 1149. These include: “the location of real and personal property, business ownership, employment records, the location of bank accounts, payment of taxes, voter registration, vehicle registration, driver’s license, membership in local organizations, and sworn statements of intent.” *Id.* “Determination of a party’s domicile requires a ‘totality of the circumstances’ approach weighing a constellation of objective facts, no single one of which is entitled to controlling weight.” *Slate v. Shell Oil Co.*, 444 F. Supp. 2d 1210, 1215 (S.D. Ala. 2006).

General Jurisdiction – Corporations

Before *Ford v. Montana*, but after *Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014), and *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559, 198 L. Ed. 2d 36 (2017), merely having a substantial physical presence, substantial sales to the forum or substantial operations within the forum were no longer deemed sufficient to establish general jurisdiction. For corporations, general jurisdiction was usually restricted to the state of incorporation and principal place of business. See, e.g., *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 924 (explaining that these are the “paradigm bases for the

exercise of general jurisdiction”). To-date, the Supreme Court has not specified how to determine a corporation’s “principal place of business” for the explicit purpose of asserting general jurisdiction over corporations. Obviously, this can make it difficult to know exactly which forum (if any) may assert general jurisdiction over a corporate defendant.

On the other hand, to determine a corporation’s citizenship for purposes of the diversity jurisdiction statute, the Supreme Court has specified what constitutes a corporation’s principal place of business. See *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93, 130 S. Ct. 1181, 175 L. Ed. 2d 1029 (2010). In *Hertz*, the Court acknowledged that “[t]he phrase ‘principal place of business’ has proved more difficult to apply than its originators likely expected.” *Id.* at 78. Accordingly, the Court attempted “to find a single, more uniform interpretation of the statutory phrase” and held that in the context of the diversity jurisdiction statute, “the phrase ‘principal place of business’ refers to the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities. Lower federal courts often metaphorically called that place a corporation’s ‘nerve center.’” *Id.* at 80–81. When applying this analysis, “the ‘nerve center’ will typically be found at a corporation’s headquarters.” *Id.* at 81, 95.

Nonetheless, a corporate headquarters is only considered a corporation’s principal place of business “provided that the headquarters is ... not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion).” *Wylie v. Red Bull N. Am., Inc.*, 627 F. App’x 755, 757–758 (11th Cir. 2015) quoting *Hertz Corp.*, 559 U.S. at 93. “[T]he Supreme Court specifically held that the ‘mere filing of a form ... listing a corporation’s ‘principal executive offices’ without more, is insufficient to establish a corporation’s principal place of business[.]” otherwise “it would readily permit jurisdictional manipulation, thereby subverting a major reason for the insertion of the principal place of business language in the diversity statute.” *Wylie*, 627 F. App’x 755, quoting *Hertz Corp.*, 559 U.S. at 97.

General Jurisdiction – Practice Thoughts and Tips

The takeaway from the above is that, while general personal jurisdiction may be

obvious in some circumstances, it certainly will not be so in others, particularly in situations where an individual defendant is attempting to manipulate her domicile or a corporate defendant attempts to manipulate its principal place of business. In these cases, of course, discovery that tracks the appropriate factors will help flesh out the appropriate arguments for establishing general personal jurisdiction.

Two quick cautionary tips are appropriate here. First, following the holding in *Ford v. Montana*, attention must continue to be paid to the “consent” theory of general personal jurisdiction. Under this theory, whenever a non-resident corporation registers to do business in Alabama, plaintiff argues it enjoys the same, but no greater, rights and privileges than a resident corporation. See Alabama Business and Nonprofit Entity Code, Ala. Code § 10A-1-7.32. Because a resident corporation is certainly subject to the jurisdiction of Alabama’s courts for all purposes, the argument goes, so too is a non-resident corporation; otherwise, non-resident corporations would not be treated equally with resident corporations, but actually better. Properly understood, this is not an argument that the non-resident corporation is “at home” in Alabama, but an argument that the non-resident corporation has consented to suit in Alabama. There is arguable support for this theory to be found in *Ex parte Nissei Sangyo Am., Ltd.*, 577 So. 2d 912 (Ala. 1991). Also, following the release of *Ford v. Montana*, the Georgia Supreme Court unanimously upheld the registration-to-do-business consent theory of general personal jurisdiction in *Cooper Tire & Rubber Co. v. McCall*, case no. S20G1368, ___ S.E. 3d ___, (Ga. Sept. 21, 2021).

It should be noted that *Nissei Sangyo* arose in the context of a discovery dispute where NSA, a nonparty, requested a protective order regarding trade secrets and sought to require that any deposition of its corporate representative be taken in Illinois. *Id.* at 913. The court held that, by registering in Alabama and doing business in Alabama, NSA had submitted itself to the jurisdiction of Alabama’s courts and that the trial court had broad discretion to order the deposition to be taken in Madison County. Although it did find NSA was “subject to the jurisdiction” of Alabama’s courts, *Nissei Sangyo* may be of more limited utility in establishing general personal jurisdiction for purposes

of suing a non-resident defendant here. The case simply does not speak to whether NSA would have been subject to general personal jurisdiction had it been named as a party defendant.

Too, before *Ford v. Montana* or *Cooper Tire & Rubber Co. v. McCall*, the Alabama Supreme Court in *Facebook* flatly rejected the suggestion that a non-resident corporation is subject to general jurisdiction in Alabama simply because it is registered to do business in Alabama. See *Facebook, Inc.*, 294 So. 3d at 133–34. True, in *Facebook*, the issue was framed by the Court as whether Facebook's registration and "doing business" in Alabama made it "at home" here, not whether Facebook had consented to general personal jurisdiction by virtue of its registration. See *id.* However, given the recency of the *Facebook* decision, and the disinclination that our Court demonstrated toward imposing general personal jurisdiction on a corporation that is not "at home" here, it may be unlikely that a "registration-based" "consent" argument for imposing general personal jurisdiction would find favor, but the Georgia Supreme Court's unanimous reasoning in *Cooper Tire & Rubber Co.* cannot be ignored.

The second cautionary tip regarding establishing general personal jurisdiction in corporate cases is to make sure that the "nerve center" test is being strictly and correctly applied in a given case. There is a real danger that the "nerve center" test for general personal jurisdiction may be conflated with the "doing business" test found in Ala. Code § 6-3-7, the venue statute. In this regard, under the venue test, "[i]t is well established that '[a] corporation 'does business' in a county for purposes of § 6-3-7 if, with some regularity, it performs there some business functions for which it was created.'" *Ex parte Mercedes-Benz U.S. Int'l, Inc.*, 290 So. 3d 402, 406 (Ala. 2019) (quoting *Ex parte SouthTrust Bank of Tuscaloosa Cty., N.A.*, 619 So. 2d 1356, 1358 (Ala. 1993) (other citation omitted). "This principle is based on a long-recognized distinction between the exercise of corporate powers that are 'merely a necessary incident' to a corporation's business and 'the exercise of functions for which the corporation was created.'" *Id.*

In short, this means that the correct general personal jurisdiction test focuses on almost the exact opposite to the venue test (corporate planning and decision making at a high-level as opposed to the day-to-

day business activities like manufacturing and sales). Thus, these are two very separate and distinct analyses, but many trial judges may be much more familiar with the test for venue when the question is actually one of personal jurisdiction. Consequently, it is important to be precise and resist any analytical "creep" or imprecision in this area.

Specific Personal Jurisdiction. Generally, Following Ford and Facebook

Specific personal jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Ford Motor Company*, 141 S. Ct. at 1024. Put another way, specific jurisdiction applies when "a defendant has had few contacts with the forum state, but those contacts gave rise to the lawsuit." *Branded Trailer Sales, Inc. v. Universal Truckload Servs., Inc.*, 74 So. 3d 404, 410 (Ala. 2011) (quoting *Ex parte Covington Pike Dodge, Inc.*, 904 So. 2d 226, 229–30 (Ala. 2004)).

The specific personal jurisdiction analysis arises most often, although not invariably, when a defendant files a motion to dismiss asserting lack of such jurisdiction. When this is the situation, the reviewing court *must consider as true* the allegations of the plaintiff's complaint not controverted by the defendant's affidavits. *Facebook, Inc.*, 294 So. 3d at 131 (quoting *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253 (11th Cir. 1996), and *Cable/Home Commc'n Corp. v. Network Prods., Inc.*, 902 F.2d 829 (11th Cir. 1990)). Where the plaintiff's complaint and the affidavits conflict, the court *must* construe all reasonable inferences *in favor of the plaintiff*. *Robinson*, 74 F.3d at 255 (quoting *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990)).

Yet, it is not to be overlooked that this motion to dismiss standard still imposes an evidentiary burden on plaintiffs that can be ignored only at the plaintiffs' peril: "[I]f the defendant makes a prima facie evidentiary showing that the Court has no personal jurisdiction, 'the plaintiff is then required to substantiate the jurisdictional allegations in the complaint by affidavits or other competent proof, and he may not merely reiterate the factual allegations in the complaint.'" *Facebook, Inc.*, 294 So. 3d at 131 (citing *Mercantile Cap., LP v. Fed. Transtel, Inc.*, 193 F. Supp. 2d 1243, 1247 (N.D. Ala. 2002) (citing *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249

(11th Cir. 2000)). See also *Hansen v. Neumueller GmbH*, 163 F.R.D. 471, 474–75 (D. Del. 1995) ("When a defendant files a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), and supports that motion with affidavits, plaintiff is required to controvert those affidavits with his own affidavits or other competent evidence in order to survive the motion.") (citing *Time Share Vacation Club v. Atl. Resorts, Ltd.*, 735 F.2d 61, 63 (3d Cir. 1984))."

In meeting this evidentiary burden, special consideration should be given to *Facebook*, where the Alabama Supreme Court embraced the language for specific jurisdiction set forth in *Walden v. Fiore*, 571 U.S. 277 (2014):

Although the question of general jurisdiction looks to whether an out-of-state defendant is essentially "at home" in the forum state, the question of specific jurisdiction concerns whether the underlying controversy "arises out of or relate[s] to the defendant's contacts with the forum." *Daimler*, 571 U.S. at 127, 134 S.Ct. 746 (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n. 8, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984)).

"Specific jurisdiction ... depends on an 'affiliatio[n]' between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation. von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1136 (1966) (hereinafter von Mehren & Trautman); see Brillmayer et al., A General Look at General Jurisdiction, 66 Texas L. Rev. 721, 782 (1988) In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.' von Mehren & Trautman 1136."

Goodyear [Dunlop Tires Operations, S.A. v. Brown], 564 U.S. 915 at 919, 131 S.Ct. 2846, 180 L.Ed.2d 796 [(2011.)]:

In *Walden v. Fiore*, 571 U.S. 277, 291, 134 S.Ct. 1115, 188 L.Ed.2d 12 (2014), the Supreme Court summarized the minimum contacts necessary for the exercise of specific jurisdiction over a nonresident defendant:

“The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant ‘focuses on “the relationship among the defendant, the forum, and the litigation.”’ *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977)). For a State to exercise jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum State. Two related aspects of this necessary relationship are relevant in this case.

“First, the relationship must arise out of contacts that the ‘defendant himself’ creates with the forum State. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). Due process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant -- not the convenience of plaintiffs or third parties. See *World-Wide Volkswagen Corp. [v. Woodson]*, 444 U.S. 286, 291-292, 100 S.Ct. 559, 62 L.Ed.2d 490 [(1980)]. We have consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State. See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984) ([‘The] unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction’).... 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.’ *Rush [v. Savchuk]*, 444 U.S. [320,] 332, 100 S.Ct. 571, 62 L.Ed.2d 516 [(1980)].

“Second, our ‘minimum contacts’ analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there. See, e.g., *International Shoe [Co. v. Washington]*, 326 U.S. 310, 319, 66 S.Ct. 154, 90 L.Ed. 95 [(1945)] (Due process ‘does not contemplate that a state may make binding a judgment in personam against an individual ... with which the state has no contacts, ties, or relations’); *Hanson [v. Denckla]*, 357 U.S. 235, 251, 78 S.Ct. 1228, 2 L.Ed.2d 1283 [(1958)] (‘However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the “minimal contacts” with that State that are a prerequisite to its exercise of power over him’). Accordingly, we have upheld the assertion of jurisdiction over defendants who have purposefully ‘reach[ed] out beyond’ their State and into another by, for example, entering a contractual relationship that ‘envisioned continuing and wide-reaching contacts’ in the forum State, *Burger King, supra*, at 479-480, 105 S.Ct. 2174, or by circulating magazines to ‘deliberately exploi[t]’ a market in the forum State, *Keeton, supra*, at 781, 104 S.Ct. 1473. And although physical presence in the forum is not a prerequisite to jurisdiction, *Burger King, supra*, at 476, 105 S.Ct. 2174, physical entry into the State -- either by the defendant in person or through an agent, goods, mail, or some other means -- is certainly a relevant contact. See, e.g., *Keeton, supra*, at 773-774, 104 S.Ct. 1473.

“But the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant’s conduct that must

form the necessary connection with the forum State that is the basis for its jurisdiction over him. See *Burger King, supra*, at 478, 105 S.Ct. 2174 (‘If the question is whether an individual’s contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party’s home forum, we believe the answer clearly is that it cannot’); *Kulko v. Superior Court of Cal., City and County of San Francisco*, 436 U.S. 84, 93, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978) (declining to ‘find personal jurisdiction in a State ... merely because [the plaintiff in a child support action] was residing there’). To be sure, a defendant’s contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties. But a defendant’s relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction. See *Rush, supra*, at 332, 100 S.Ct. 571 (‘Naturally, the parties’ relationships with each other may be significant in evaluating their ties to the forum. The requirements of *International Shoe*, however, must be met as to each defendant over whom a state court exercises jurisdiction’). Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State. *Burger King*, 471 U.S. at 475, 105 S.Ct. 2174 (internal quotation marks omitted).”

571 U.S. at 283-86, 134 S.Ct. 1115.

Facebook, Inc., 294 So. 3d at 134-36.

Facebook highlights the *Walden* court’s reasoning that specific jurisdiction is proper when “the defendant’s suit-related conduct [creates] a substantial connection with the forum state.” *Id.* at 1121. The Court focused upon two principles that should be considered in evaluating whether specific jurisdiction exists: the relationship must arise out of contacts that the defendant creates with the forum state, and the minimum contacts analysis looks

to the defendant's contacts with the forum state itself, *not with contacts with persons who reside within that state.* *Id.* at 1122. Jurisdiction is proper over defendants "who have purposefully 'reach[ed] out beyond' their State and into another by, for example, entering a contractual relationship that 'envisioned continuing and wide-reaching contacts' in the forum state." *Id.* While noting that "physical presence in the forum is not a prerequisite to jurisdiction, ... physical entry into the State – either by the defendant in person or through an agent, goods, mail, or some other means – is certainly a relevant contact." *Id.*

Accordingly, a court's analysis of a Rule 12(b)(2) motion to dismiss alleging a want of specific personal jurisdiction must focus on "the relationship among the defendant, the forum, and the litigation." Following *Facebook*, if the defendant's suit-related conduct has a substantial connection to Alabama, the exercise of personal jurisdiction is proper.

The Effect of Ford v. Montana on Alabama's Jurisprudence

Ford v. Montana has, in some ways, reinforced bedrock principles of specific personal jurisdiction that have been extant since *International Shoe*. In other ways, though, it has refined or placed new slants on certain elements of the tests. At minimum, it provides much-needed clarity.

After *Ford v. Montana*, when assessing whether the assertion of specific jurisdiction comports with Due Process, a court first looks to the defendant's contacts with the forum, and these contacts must be purposeful on the part of the defendant. *Ford Motor Company*, 141 S. Ct. at 1024. Courts must then determine if the claims "arise out of or relate to" the defendant's contact with the forum. *Id.* And if these facts are established, courts must then engage in the traditional assessment of whether the assertion of specific jurisdiction comports with "fair play and substantial justice." *Id.*

Contacts

It is settled that "the Due Process Clause 'does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations.'" *World-Wide Volkswagen Corp.*, 444 U.S. at 294 (quoting *International Shoe Co.*, 326 U.S. at 319). Accordingly, "[t]he first prong of the [specific jurisdiction] analysis requires the court to focus on the

contacts 'the defendant [itself] creates with the forum State[.]'" *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1314 (11th Cir. 2018). In *Ford*, the Court reminds us that these contacts "often go by the name 'purposeful availment,'" giving renewed heft to this shorthand recitation of the required contacts. See *Ford Motor Company*, 141 S. Ct. at 1024 (citing *Burger King Corp.*, 471 U.S. at 475.) Compare, *Ex parte DBI, Inc.*, 23 So. 3d at 654–55 (discussing purposeful availment factors in the context of a foreign manufacturer servicing the Alabama market under a *stream-of-commerce* analysis).

More specifically, the defendant's contacts with the forum must consist of "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Ford Motor Company*, 141 S. Ct. at 1024–25 (quoting *Hanson*, 357 U.S. at 253). These contacts "must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Id.* They "must show that the defendant deliberately 'reached out beyond' its home – by, for example, 'exploit[ing] a market' in the forum State or entering a contractual relationship centered there." *Ford Motor Company*, 141 S. Ct. at 1025 (citing *Walden*, 571 U.S. at 285.)

"[P]urposeful availment may be demonstrated if the defendant who placed [an] item into the stream of commerce[,] ... design[ed] the product for the forum state; *advertis[ed] or market[ed] in that state*; or establish[ed] channels for providing advice to that state's residents." *Ford Motor Company*, 141 S. Ct. at 1027. *Ford* provides clarity, holding, "specific jurisdiction attaches ... when a company like Ford serves a market for a product in the forum State and the product malfunctions there." *Id.* at 1027. The Court does "not limit [specific] jurisdiction to where the [product] was designed, manufactured, or first sold." *Id.* at 1028. Nor does the Court limit specific jurisdiction to require "proof of causation[.]" *Id.* at 1026.

In addition, the *Ford* opinion notes that "jurisdiction in cases like these" does not need to "ride on the exact reasons for an individual plaintiff's purchase, or on his ability to present persuasive evidence about them." *Id.* After all, the specific jurisdiction "analysis requires the court to focus on the contacts 'the defendant [] creates with the forum [] and 'not the plaintiff[s] contacts with the forum or even the defendant's contacts with the plaintiff.'" *Thornton*, 438

F.Supp.3d at 1308-09. When assessing the existence of specific jurisdiction over a defendant, "the Court has long focused on the nature and extent of 'the defendant's relationship to the forum State.'" *Ford Motor Company*, 141 S. Ct. at 1024.

In this way, *Ford* closely mirrors and reaffirms Alabama's settled test of "purposeful availment" as analyzed in *Ex parte DBI, supra*. There, our Supreme Court explained the meaning of "purposeful availment" and how facts warranting a finding of purposeful availment justify holding tort-feasors accountable in Alabama's courts:

"We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who 'purposefully directs' his activities toward forum residents. A State generally has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. Moreover, where individuals 'purposefully derive benefit' from their interstate activities, it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because 'modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity,' it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity.

"Notwithstanding these considerations, the constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum State. Although it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction. Instead, 'the foreseeability that is critical to due process analysis ... is that the defendant's conduct and connection

with the forum State are such that he should reasonably anticipate being haled into court there.’ In defining when it is that a potential defendant should ‘reasonably anticipate’ out-of-state litigation, the Court frequently has drawn from the reasoning of *Hanson v. Denckla*, 357 U.S. 235, 253 (1958):

“The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant’s activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’

“This ‘purposeful availment’ requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts, or of the ‘unilateral activity of another party or a third person.’ Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a ‘substantial connection’ with the forum State. Thus where the defendant ‘deliberately’ has engaged in significant activities within a State, or has created ‘continuing obligations’ between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by ‘the benefits and protections’ of the forum’s laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

“Jurisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State. Although territorial presence frequently will enhance a potential defendant’s affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern

commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor’s efforts are ‘purposefully directed’ toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.”

471 U.S. at 473-76, 105 S.Ct. 2174 (footnotes omitted) (citations omitted). Significantly, the Supreme Court in *Burger King* quoted from *World-Wide Volkswagen* as follows:

“Thus ‘[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State’ and those products subsequently injure forum consumers.”

471 U.S. at 473, 105 S.Ct. 2174 (quoting *World-Wide Volkswagen*, 444 U.S. at 297-98, 100 S.Ct. 559).

Ex parte DBI, Inc., 23 So. 3d at 652-53.

In applying the “purposeful availment” test, it is also of note that earlier Alabama appellate opinions recognize that mere allegations of misrepresentations and conspiratorial acts by an out-of-state tort-feasor directed at citizens and businesses in Alabama which cause damage are *alone* sufficient to constitute the minimum contacts (or “purposeful availment”) necessary for a proper exercise of specific personal jurisdiction. See, e.g., *Ex parte Alamo Title Co.*, 128 So. 3d 700, 713 (Ala. 2013) (“Alabama courts have recognized that, in an appropriate case, specific jurisdiction can be based upon the purposeful conspiratorial activity of a nonresident defendant aimed at an Alabama plaintiff”); *Ex parte Kohlberg Kravis Roberts & Co., L.P.*, 78 So. 3d 959, 973 (Ala. 2011) (Alabama court had personal jurisdiction over Delaware limited partnerships under long-arm rule where plaintiff’s complaint alleged that the defendants made misrepresentations inducing reliance in Alabama (“... We

cannot avoid the conclusion that the defendants’ actions were purposefully directed toward the State of Alabama in a manner that created a ‘substantial connection’ between the defendants and this State.... The defendants have ‘purposefully establish[ed] minimum contacts with the forum State’ such that the defendants reasonably could have anticipated being haled into court.”)); *Ex parte Reindel*, 963 So. 2d 614 (Ala. 2007) (When plaintiff’s complaint alleges conspiracy-based jurisdiction with particularity, the failure to deny by affidavit or deposition the existence of, or participation in, a conspiracy will result in a denial of the motion to dismiss for lack of personal jurisdiction); *Roche Diagnostics Corp. v. Priority Healthcare Corp.*, 407 F.Supp. 3d 1216, 12134 (N.D. Ala. 2019) (Bowdre, Chief Judge) (“Under the conspiracy theory of personal jurisdiction, a defendant who otherwise may not be subject to personal jurisdiction might be [brought] into court if the plaintiff [pleads] with particularity the conspiracy as well as the overt acts within the forum taken in furtherance of the conspiracy.”); *Ex parte McInnis*, 820 So. 2d 795, 806-07 (Ala. 2001) (same).

“Arise out of or relate to”

As also discussed in detail *infra*, perhaps the most significant change or clarification that may be felt by the unanimous decision in *Ford* occurs at the second step of the specific jurisdiction analysis, where courts next assess whether “[t]he plaintiff’s claims ... ‘arise out of or relate to the defendant’s contacts’ with the forum.” *Ford Motor Company*, 141 S. Ct. at 1025. “[F]or specific in personam jurisdiction, there must exist ‘a clear, firm nexus between the acts of the defendant and the consequences complained of.’” *Elliott*, 830 So. 2d at 731 (quoting *Duke v. Young*, 496 So. 2d 37, 39 (Ala. 1986)). “Or put just a bit differently ‘there must be “an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.”’” *Ford Motor Company*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780).

In *Bristol-Myers Squibb*, the Court made clear that the assertion of specific jurisdiction requires that plaintiff’s claims must “relate sufficiently to the defendant’s forum activities” and “if they do not,

'specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State.'" *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781. There, the Supreme Court employed the phrase 'arise out of or relate to' with no suggestion that there might be a distinction between the two. However, in *Ford v. Montana*, the Supreme Court provides that distinction, holding "[t]he first half of that standard asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing." *Ford Motor Company*, 141 S. Ct. at 1026.

Fairness Factors

Courts next consider whether the "the maintenance of the suit" offends "traditional notions of fair play and substantial justice." *World-Wide v. Volkswagen Corp.*, 444 U.S. at 292 (quoting *International Shoe Co.*, 66 S. Ct. at 158). In *World-Wide Volkswagen*, the Supreme Court explained that this phrase refers to the "reasonableness" of requiring a defendant to defend itself in a particular forum. *Id.* at 292. In addition, the Court stated that "[i]mplicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors[.]" *Id.* These factors include "the forum state's interest in adjudicating the dispute, ... the plaintiff's interest in obtaining convenient and effective relief, ... the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of several States in furthering fundamental substantive social policies[.]" *Id.* Compare, *Ex parte DBI, Inc.*, 23 So. 3d at 656-57 (discussing burdens on foreign defendant of being required to litigate a wrongful death case in an Alabama state court.).

The Supreme Court holds that "[e]ven if the defendant would suffer minimal or no inconvenience" by being required to defend itself in a particular forum, and "even if the forum State has a strong interest in applying its law to the controversy[.]" and "even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *World-Wide Volkswagen Corp.*, 444 U.S. at 294 (quoting *Hanson*, 357 U.S. at 251, 254).

Put another way, in *Bristol-Meyers Squibb*, the Supreme Court explained that

assessing the burden on the defendant "obviously requires a court to consider the practical problems resulting from litigating in the forum, but it also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question." *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780. "[R]estrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation[.]" [t]hey are also a consequence of territorial limitations on the power of the respective States." *Id.* Compare, *Ex parte DBI, Inc.*, 23 So. 3d at 656-57.

Nevertheless, *Ex parte DBI, Inc.* also notes "[t]he limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years." 23 So. 3d 635 at 657 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). "[M]odern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 293).

Ex parte DBI's detailed explication of the specific "fairness factors" also provides strong support for the assertion of personal jurisdiction to provide redress for injuries. As to "the forum state's interest in adjudicating the dispute," *Ex parte DBI* embraces the concept that a state generally has a "'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." *Ex parte DBI*, 23 So. 3d at 656 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)).

The next factor is "the plaintiff's interest in obtaining convenient and effective relief." *Ex parte DBI*, 23 So. 3d at 656 (citing *World-Wide Volkswagen*, 444 U.S. at 292). Plaintiff's counsel should have no difficulty presenting this factor.

Finally, a court should consider "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." *Ex parte DBI*, 23 So. 3d at 656 (citing *World-Wide Volkswagen*, 444 U.S. at 292). Again, *Ex parte DBI* provides all of the guidance needed to meet this standard.

In regard to fairness and interstate federalism, the *Ford v. Montana* opinion

finds itself in close analytical agreement with *Ex parte DBI*. As *Ford* explains:

For related reasons, allowing jurisdiction in these cases treats Ford fairly, as this Court's precedents explain. In conducting so much business in Montana and Minnesota, Ford "enjoys the benefits and protection of [their] laws" – the enforcement of contracts, the defense of property, the resulting formation of effective markets. *International Shoe*, 326 U.S., at 319, 66 S.Ct. 154. All that assistance to Ford's in-state business creates reciprocal obligations—most relevant here, that the car models Ford so extensively markets in Montana and Minnesota be safe for their citizens to use there. Thus our repeated conclusion: A state court's enforcement of that commitment, enmeshed as it is with Ford's government-protected in-state business, can "hardly be said to be undue." *Ibid.*; see *supra*, at 1027 – 1028. And as *World-Wide Volkswagen* described, it cannot be thought surprising either. An automaker regularly marketing a vehicle in a State, the Court said, has "clear notice" that it will be subject to jurisdiction in the State's courts when the product malfunctions there (regardless where it was first sold). 444 U.S., at 297, 100 S.Ct. 580; see *supra*, at 1027. Precisely because that exercise of jurisdiction is so reasonable, it is also predictable—and thus allows Ford to "structure [its] primary conduct" to lessen or even avoid the costs of state-court litigation. *World-Wide Volkswagen*, 444 U.S., at 297, 100 S.Ct. 580.

Finally, principles of "interstate federalism" support jurisdiction over these suits in Montana and Minnesota. *Id.*, at 293, 100 S.Ct. 580. Those States have significant interests at stake—"providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-state actors," as well as enforcing their own safety regulations. *Burger King*, 471 U.S., at 473, 105 S.Ct. 2174; see *Keeton*, 465 U.S., at 776, 104 S.Ct. 1473. Consider, next to those, the interests of the States of first sale (Washington and North Dakota)—which Ford's proposed rule would make the most likely forums. For each of those States, the suit involves all

out-of-state parties, an out-of-state accident, and out-of-state injuries; the suit's only connection with the State is that a former owner once (many years earlier) bought the car there. In other words, there is a less significant "relationship among the defendant, the forum, and the litigation." *Walden*, 571 U.S., at 284, 134 S.Ct. 1115 (internal quotation marks omitted). So by channeling these suits to Washington and North Dakota, Ford's regime would undermine, rather than promote, what the company calls the Due Process Clause's "jurisdiction-allocating function." Brief for Petitioner 24.

Ford Motor Company, 141 S.Ct. at 1029-30.

To summarize, *Ford* has provided important language, from a unanimous Supreme Court, that will aid in establishing each of the personal jurisdiction inquiries. Plaintiffs counsel should emphasize areas of agreement between the *Ford* decision and the Alabama Supreme Court's approach to enjoy maximum effect from *Ford*.

Facebook's Precedential Value is Questionable in Light of Ford v. Montana Tension Between Facebook and Ford - Ford is Correct

Ford v. Montana provides clarity regarding the elements of the test for specific personal jurisdiction. The Alabama Supreme Court's earlier decision in *Facebook* must now be deemed questionable in light of the unanimous reasoning in *Ford v. Montana*.

In *Facebook*, the Court found that the trial court lacked personal jurisdiction over a social media company in a case where an adoptive mother brought an action for an injunction prohibiting the dissemination of information about the child's contested adoption. In reaching this conclusion, the Court held that the adoptive mother did not demonstrate that Facebook's "suit-related conduct" created a "substantial connection" with Alabama. *Facebook, Inc.*, 294 So. 3d at 140. The Court rejected the argument that Facebook's failure to remove the Facebook page at issue established "minimum contacts" because Facebook's contacts with Alabama were *in response* to the plaintiff's contacts (the request to remove the Facebook page) and because any "intentional" conduct was aimed at the adoptive mother *herself*, and "not at Alabama

as a forum." *Id.* The Court also noted that it did not consider (and the mother had not asked it to consider) whether the "general accessibility" of Facebook's website and mobile applications provided a sufficient connection to the forum to support the exercise of general or specific jurisdiction. *Id.* at 136 n.11.

Post-*Ford*, though, particularly given the new explication of the "arise out of or relate to" test, a different result should be reached in a case like *Facebook*. Recall that in *Ford*, the Court noted that "[t]he first half of that standard asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction *without a causal showing.*" *Ford Motor Company*, 141 S.Ct. at 1026 (emphasis added). Although several "pre-*Ford*" opinions had held that Facebook's "general accessibility" was an insufficient basis to assert personal jurisdiction, the post-*Ford* landscape offers new opportunities to argue that the "back half" of the test allows for personal jurisdiction on *precisely* this basis.

So, while *Facebook* provided insight into the current Alabama Supreme Court's thinking on personal jurisdiction, and while attention should be paid to its articulation of the tests for establishing personal jurisdiction, *Facebook* ultimately does not match *Ford* in the breadth of the types of contacts or conduct that should now be found sufficient to establish personal jurisdiction. As such, it has continued to leave defendants with "wiggle room" in arguing that their conduct was not "suit-related."

In this regard, *Facebook* is also reminiscent of *Hinrichs v. General Motors of Canada, Ltd.*, 222 So. 3d 1114 (Ala. 2016). In *Hinrichs*, a plurality of the court held that there was no specific jurisdiction over a Canadian automobile manufacturer when the vehicle was sold in another state and the buyer brought the vehicle to Alabama. *Id.* at 1140-41. In *Hinrichs*, just as in *Facebook*, the Court purported to apply the test articulated in *Walden* regarding "suit-related conduct" and whether it created a "substantial connection" with the forum. *Id.* at 1141. And, just as in *Facebook*, the Court in *Hinrichs* found a lack of personal jurisdiction.

However, the commonplace reliance among the defense bar upon the outcome in *Hinrichs*, a mere plurality opinion, and the reliance that could be expected on *Facebook*, is now, in light of *Ford v.*

Montana, revealed to be completely unfounded. This means that, in looking to where Alabama's specific jurisdiction test should go following the unanimous holding in *Ford v. Montana*, counsel should readily be able to resist future attempts to place a too-narrow scope on the test. In urging trial courts to apply the *correct* specific jurisdiction test as articulated in *Ford*, heavy emphasis should be placed on the unanimity of the *Ford* decision and the new explication of the "arise out of or relate to" test. Specifically arguing that the "back half" of this test does not require a causal connection should dispel attempts by defendants to continue to rely on the flawed analyses embodied by *Hinrichs* and *Facebook*. And, while the *Ford* analysis is certainly not limited to products cases and is readily adaptable to all personal jurisdiction analyses, where appropriate, the language in *Ford* that establishes personal jurisdiction when a defendant has "reached out" and "exploited a market" in a forum can be used by plaintiffs to bring new heft to personal jurisdiction arguments in products cases specifically.

CONCLUSION

Even after 2009, when the Alabama Supreme Court issued its decision in *Ex parte DBI, Inc.* and returned to the correct "pure" "stream of commerce" analysis of personal jurisdiction in products cases, the test for personal jurisdiction remained riddled with confusion and opportunities for misapplication. The plurality opinion in *General Motors Canada v. Hinrichs* is an unfortunate example of a catastrophic injury being left with no judicial remedy because the issue of personal jurisdiction was wrongly decided. *Facebook* provided new guidance and insight into how the current Alabama Supreme Court analyzes personal jurisdiction issues, but likely is also now incorrectly decided in not permitting jurisdiction under the "arise out of or relate to" test for purposeful availment. *Ford v. Montana* has clarified and reinforced the appropriate breadth of personal jurisdiction, and can be readily adapted out of the specific context in which it was decided to allow Alabama courts to exercise personal jurisdiction to the limits of due process, as contemplated by our long-arm statute.