

COMBATING WEAPONIZED CHALLENGES TO PERSONAL JURISDICTION

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David G. Wirtes, Jr.* & Christy Ward Rue**

INTRODUCTION

We often encounter in high-stakes litigation defendants weaponizing challenges to personal jurisdiction. Rule 12(b)(2) motions to dismiss alleging a lack of personal jurisdiction are frequently used to create threshold obstacles for plaintiffs, which increases the costs of litigation by necessitating protracted jurisdictional discovery, all while impeding plaintiffs' efforts at obtaining merits discovery and proceeding towards a trial. How has this come about?

The United States Supreme Court's decades-long hodgepodge of personal jurisdiction opinions, with all their plurality votes and special concurrences, created uncertainty about what specifically needed to be proven before courts could properly assert personal jurisdiction. This led to inconsistencies among state appellate court personal jurisdiction opinions as well. This environment of imprecision created opportunities for defense litigators to aggressively challenge personal jurisdiction and thereby make prosecution of plaintiffs' cases all the more difficult, time-consuming, and expensive.

I. ALABAMA'S INCONSISTENT PERSONAL JURISDICTION OPINIONS

Alabama's history with personal jurisdiction challenges is instructive. In the products liability context, for example, the Alabama Supreme Court traditionally adhered to a *stream-of-commerce* analysis following *World-Wide Volkswagen Corp. v. Woodson* and *Burger King Corp. v. Rudzewicz*, as exemplified in the holdings of *Bryant v. Ceat, S.p.A.* and *Alabama Power Co. v. VSL Corp.*¹ However, relying upon Justice O'Connor's plurality opinion in *Asahi Metal Industry Co. v. Superior Court of California*, the Alabama Supreme Court shifted to a *stream-of-commerce plus* test in *Ex parte McInnis* and again in *Ex parte Alloy Wheels International, Ltd.*² Then, upon challenge by a plaintiff, the Court corrected itself in *Ex parte DBI, Inc.*, holding that what *Alloy Wheels* "requires of litigants . . . goes beyond the due process required by the United States

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1. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985); *Bryant v. Ceat S.p.A.*, 406 So. 2d 376, 378–79 (Ala. 1981).

2. See *Ex parte McInnis*, 820 So. 2d 795, 803–04 (Ala. 2001) (relying on *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 112 (1987) (plurality opinion)); *Ex parte Alloy Wheels Int'l*, 882 So. 2d 819 (Ala. 2003), *overruled by Ex parte DBI, Inc.*, 23 So. 3d 635 (Ala. 2009).

Constitution and the Alabama Constitution. . . .³ In *DBI*, the Court reverted back to the traditional *stream-of-commerce* test, finding that

‘[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.⁴

Despite the precedential holding of *Ex parte DBI*, the Alabama Supreme Court again flip-flopped in *Hinrichs v. General Motors of Canada, Ltd.*, when, in a plurality opinion, it returned to a *stream-of-commerce plus* test.⁵ While *Hinrichs* is not precedential,⁶ the ultimate result was an affirmation of a dismissal of a plaintiff’s personal injury complaint due to a want of personal jurisdiction over GM Canada because the allegedly defective pickup truck had been made in Canada and initially introduced into the U.S. market when sold to a dealership in Pennsylvania.⁷ Despite the effort of the plaintiff and his amici on rehearing, imploring the *Hinrichs* Court to continue to adhere to *DBI*, the Court elected instead to rely upon *Walden v. Fiore*, even though *Walden* was not a products liability action and was readily distinguishable.⁸

The back-and-forth nature of these Alabama Supreme Court decisions resulting from the imprecision of the United States Supreme Court’s personal jurisdiction opinions created opportunities for defendants to aggressively contest personal jurisdiction and to score occasional victories as in *Hinrichs*.

II. ANTICIPATION OF THE OUTCOME IN *FORD V. MONTANA*

All the foregoing explains the eager anticipation of the outcome in *Ford Motor Co. v. Montana Eighth Judicial District Court*. Litigators knew of the impending significance of *Ford v. Montana*, and efforts to influence that outcome

3. *Ex parte DBI*, 23 So. 3d at 648.

4. *Id.* at 653 (quoting *Burger King*, 471 U.S. at 473).

5. *Hinrichs v. Gen. Motors of Can., Ltd.*, 222 So. 3d 1114, 1138 (Ala. 2016).

6. The vote line was Stuart, Main, and Bryan, JJ., and Lyons, Special Justice, concur; Bolin, J., concurred in part and concurred in the result; Parker, J., dissented, with opinion; Murdock, J., dissented, with opinion, joined by Wise, J.; Shaw, J. recused himself. *See id.* at 1141.

7. *See id.*

8. *See id.* at 1137–38; *see also Walden v. Fiore*, 571 U.S. 277 (2014).

were reflected by the number and quality of amicus briefs filed in support of petitioner⁹ and respondents.¹⁰

III. THE SYMPOSIUM: *TEN YEARS OF THE SUPREME COURT'S PERSONAL JURISDICTION REVIVAL*

With all eyes on *Ford v. Montana*, four Alabama practitioners, two from the plaintiff side¹¹ and two from the defense side,¹² took part in the *Alabama Law Review's* Symposium on March 4, 2021, titled *Ten Years of the Supreme Court's Personal Jurisdiction Revival*. We were honored to participate alongside some of our country's preeminent legal scholars (some of whom participated as amici in *Ford v. Montana*), including Arthur Miller, Alan Morrison, Alexandra Lahav, Adam Steinman, Heather Elliott, Benjamin Spencer, Richard Freer, Robin Effron, Maggie Gardner, Lawrence Solum, and Max Crema. We were also excited to hear first-hand accounts from the two attorneys who argued *Ford v. Montana* before the Supreme Court, Sean Marotta for Ford and Deepak Gupta for respondents.

The four Alabama litigators focused our comments upon what happens when slugging it out in trial and appellate courts over personal jurisdiction issues. While we each lamented how the then-current unsettled state of the law created an environment for vigorous (and protracted and expensive) challenges to assertions of personal jurisdiction, each participant was optimistic that the

9. Amicus curiae briefs were filed in support of Ford by The Chamber of Commerce of the United States of America, the National Association of Manufacturers, the American Tort Reform Association, Product Liability Advisory Council, Inc., Washington Legal Foundation, the Alliance for Automotive Innovation and General Aviation Manufacturers Association, Institute of International Bankers, DRI-The Voice of the Defense Bar, the Pharmaceutical Research and Manufacturers of America, and the United States. See *Ford Motor Company v. Montana Eighth Judicial District Court*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/ford-motor-company-v-montana-eighth-judicial-district-court/> (last visited Mar. 3, 2022) (listing briefs filed in support of Ford).

10. Amicus curiae briefs were filed in support of respondents by Professor Jonathan R. Nash, Civil Procedure Professors (Professor Helen Hershkoff, Professor Arthur Miller, Professor John Sexton, and Professor Alan Morrison), Professors of Civil Procedure and Federal Courts (Professor Linda Sandstrom Simard, Professor Charles W. Rhodes, Professor Cassandra Burke Robertson, and Professor John Dever Drinko), The Center for Auto Safety, Professors of Jurisdiction (Professor Samuel Estreicher, Professor Edward A. Hartnet, Professor Troy A. McKenzie, Professor David L. Noll, and Professor Linda J. Silberman), Civil Procedure Professors (Professor Andrew D. Bradt, Professor Zachary D. Clopton, Professor Maggie Gardner, Professor D. Theodore Rave, and Professor Pamela K. Bookman), The Foundation for Moral Law, The National Association of Home Builders, Main Street Alliance, The American Association for Justice, Public Justice, P.C., and Minnesota, Texas, thirty-seven other states, and the District of Columbia. See *Ford Motor Company v. Montana Eighth Judicial District Court*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/ford-motor-company-v-montana-eighth-judicial-district-court/> (last visited Mar. 3, 2022) (listing briefs filed in support of respondents).

11. David G. Wirtes, Jr. of Cunningham Bounds, LLC in Mobile and Diandra ("Fu") Debrosse Zimmermann of Grant & Eisenhofer in Birmingham.

12. Gregory C. Cook of Balch & Bingham, LLP in Birmingham and Kim Martin of Bradley Arant Boulton Cummings in Huntsville.

Supreme Court's decision in *Ford* would bring clarity to the issue and perhaps begin to reverse the trend of jurisdictional trench warfare.

IV. *FORD*: THE RESULT

Ford arose from two automobile accident and products liability cases against Ford Motor Company, one occurring in Montana and the other in Minnesota.¹³ In both cases, the plaintiff was a resident of the state in which the accident and injury or death occurred.¹⁴ However, the Ford automobiles involved were initially sold in other states and later brought into each forum.¹⁵ Ford conceded it had extensive contacts with both Montana and Minnesota.¹⁶ Nevertheless, Ford argued it was not subject to specific personal jurisdiction in either case because the vehicles were not designed, manufactured, sold, or distributed in either Montana or Minnesota, and thus, according to Ford and its amici, there was no direct causal link between Ford's contacts with the forums and the injuries complained of.¹⁷ Lower courts in both cases held that jurisdiction was proper, and the Supreme Court granted certiorari to consider the issue.¹⁸

Three weeks after the Symposium, the Supreme Court released its opinion, authored by Justice Elana Kagan, with a unanimous vote line.¹⁹ The essential holding was straightforward: The connection between a plaintiff's product liability claim arising from an auto accident occurring in the plaintiff's state of residence and Ford's marketing activities concerning the auto in that state is sufficient to support specific personal jurisdiction, even though the automobile involved in the accident was designed, manufactured, sold, or distributed elsewhere.²⁰ *So long as the manufacturer or distributor cultivates a market for its product in the forum and the product causes injury there, a court may properly assert personal jurisdiction over the designer or manufacturer or seller or distributor.*²¹ Precision. Clarity. Predictability. Yay!

13. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1023 (2021).

14. *Id.*

15. *Id.*

16. *Id.* at 1022–23.

17. *Id.* at 1023.

18. *Id.* at 1023–24.

19. *Id.* Justice Samuel Alito filed an opinion concurring in the judgment. *Id.* at 1032. Justice Neil Gorsuch filed an opinion concurring in the judgment, in which Justice Clarence Thomas joined. *Id.* at 1034. Newly appointed Justice Amy Coney Barrett took no part in the consideration or decision of the case. *Id.* at 1032.

20. *Id.*

21. *See id.*

A. *The Impact of Ford on Litigation in Alabama*

The immediate impact of *Ford* on personal jurisdiction litigation in Alabama is obvious: *Ex parte DBI* was decided correctly, while *Hinrichs v. General Motors Canada* was not. Other Alabama state and federal district court personal jurisdiction opinions such as *McInnis*, *Alloy Wheels*, and *Thornton v. Bayerische Motoren Werke AG* must be disregarded as no longer controlling in light of *Ford*.

Will *Ford v. Montana* eliminate all Alabama personal jurisdiction skirmishes? Probably not altogether, but the fact that the Supreme Court *finally* spoke with a uniform voice on the subject should go a long way toward eliminating the uncertainty that spawned all the recent threshold discovery squabbles and tremendous costs spent fighting about the issue.

So, the landscape has now materially changed. Everything we discussed during the Symposium about challenges to personal jurisdiction and, in particular, combating weaponized challenges, may no longer be a concern in light of the clear holding of *Ford*. That said, there are lessons learned from years of protracted motion practice and appellate proceedings litigating personal jurisdiction issues that may still benefit litigators today. This, then, is the purpose of this Article: sharing insights and tools for combating weaponized challenges to personal jurisdiction.

B. *Rule 12(b)(2) Motions to Dismiss for Lack of Personal Jurisdiction: The Parties Shifting Burdens*

When addressing a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, “a court must consider as true the allegations of the plaintiff’s complaint not controverted by the defendant’s affidavits . . .”²² “[W]here the plaintiff’s complaint and the defendant’s affidavits conflict, the . . . court must construe all reasonable inferences in favor of the plaintiff.”²³

If the defendant produces evidence in support of a motion for lack of personal jurisdiction, “the burden traditionally shifts back to the plaintiff to produce evidence supporting jurisdiction unless [the defendant’s] affidavits contain only conclusory assertions that the defendant is not subject to jurisdiction.”²⁴ “However, if 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

22. *Ex parte DBI, Inc.*, 23 So. 3d 635, 642 (Ala. 2009) (quoting *Ex parte Bufkin*, 936 So. 2d 1042, 1044–45 (Ala. 2006)).

23. *Branded Trailer Sales, Inc. v. Universal Truckload Servs., Inc.*, 74 So. 3d 404, 410 (Ala. 2011) (quoting *Wenger Tree Servs. v. Royal Truck & Equip., Inc.*, 853 So. 2d 888, 894 (Ala. 2002)).

24. *Thornton v. Bayerische Motoren Werke AG*, 439 F. Supp. 3d 1303, 1307 (N.D. Ala. 2020) (alteration in original) (quoting *Meier v. Sun Int’l Hotels, Ltd.*, 288 F.3d 1264, 1269 (11th Cir. 2002)).

affidavits or other competent proof”²⁵ “[M]erely reiterat[ing] the factual allegations in the complaint” will be insufficient to overcome the motion to dismiss.²⁶

When a Rule 12(b)(2) motion has been properly supported, “the trial court has three procedural alternatives: ‘it may decide the motion upon the affidavits alone; . . . it may conduct an evidentiary hearing to resolve any apparent factual questions[,]’” or “it may permit [jurisdictional] discovery in aid of deciding the motion.”²⁷

C. Rule 12(b)(2) Motion to Dismiss: Standard of Review

In *Ex parte Bufkin*, the Alabama Supreme Court addressed the mandamus standard of review in a proceeding challenging the trial court’s ruling on a motion to dismiss for lack of personal jurisdiction, stating,

The writ of mandamus is a drastic and extraordinary writ, to be “issued only when there is: 1) a clear legal right in the petitioner to the order sought; 2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; 3) the lack of another adequate remedy; and 4) properly invoked jurisdiction of the court.”²⁸

Appellate review is *de novo*.²⁹

“[I]t must be remembered that [a] denial of a . . . motion to dismiss for want of personal jurisdiction is interlocutory and preliminary only.”³⁰ Even “[a]fter such a denial, the continuation of personal jurisdiction over a defendant who appropriately persists in challenging it in [an] answer to the complaint and by motion for summary judgment or at trial depends on the introduction of substantial evidence to prove the . . . jurisdictional allegations in the . . . complaint.”³¹ The most effective way for a plaintiff to accomplish this is by eliciting evidence through jurisdictional discovery.

25. *Branded Trailer Sales*, 74 So. 3d at 410 (quoting *Ex parte Covington Pike Dodge, Inc.*, 904 So. 2d 226, 229–30 (Ala. 2004)).

26. *Id.* (quoting *Ex parte Covington Pike Dodge*, 904 So. 2d at 229–30).

27. S.I. Strong, *Jurisdictional Discovery in United States Federal Courts*, 67 WASH. & LEE L. REV. 489, 507 (2010) (quoting *Hagen v. U-Haul Co. of Tenn.*, 613 F. Supp. 2d 986, 1002 n.10 (W.D. Tenn. 2009)); see also 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1351 (3d ed. 2004); ALABAMA RULES OF CIVIL PROCEDURE ANNOTATED § 12.3 (5th ed. 2018).

28. *Ex parte Bufkin*, 936 So. 2d 1042, 1044 (Ala. 2006) (quoting *Ex parte McWilliams*, 812 So. 2d 318, 321 (Ala. 2001)).

29. *Ex parte DBI, Inc.*, 23 So. 3d 635, 642 (quoting *Ex parte Bufkin*, 936 So. 2d at 1044–45).

30. *Ex parte Duck Boo Int’l Co.*, 985 So. 2d 900, 906 (Ala. 2007) (citing *Ex parte McInnis*, 820 So. 2d 795, 798 (Ala. 2001)).

31. *Id.* (alteration in original) (emphasis omitted).

V. JURISDICTIONAL DISCOVERY

As its name implies, jurisdictional discovery is discovery requested by a plaintiff in order to obtain facts supporting a court's assertion of personal or subject matter jurisdiction over a defendant. In other words, jurisdictional discovery is "any preliminary discovery" conducted in order to establish whether a court has jurisdiction over a dispute.³²

The scope of personal jurisdictional discovery requests should include any and all information relevant to the defendant being subject to personal jurisdiction, which can be a vast and wide variety of information.³³ Discovery requests can be filed with the plaintiff's complaint (which these authors recommend), but they typically are not filed until a defendant objects to the jurisdiction of the court through a Rule 12(b)(2) motion to dismiss.³⁴ If the defendant fails to contest personal jurisdiction at the outset of the proceedings, a personal jurisdiction defense is usually (and should be) considered waived by the court.³⁵ In that instance, the defendant is considered to have consented to the court's jurisdiction.

Due to the substantial amount of judicial discretion afforded trial courts regarding whether to grant jurisdictional discovery, and if granted, what the scope of such jurisdictional discovery may be,³⁶ it is important for the plaintiff's lawyer to take steps to enhance the likelihood of such discovery requests being granted. These actions should include: (1) conducting extensive jurisdictional fact-finding regarding jurisdiction over the defendant prior to filing the complaint, (2) alleging all jurisdictional facts known or reasonably suspected in the complaint, and (3) filing anticipatory jurisdictional discovery requests along with the plaintiff's complaint.

A. The Basis for Jurisdictional Discovery

The U.S. Supreme Court has held that "where issues arise as to jurisdiction or venue, discovery is available to ascertain the facts bearing on such issues."³⁷

32. Strong, *supra* note 27, at 489–90; *see also* CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2008.3 (3d ed. 2004); ALA. R. CIV. P. 26.

33. We offer representative personal jurisdiction discovery requests *infra* Appendices A–D. Other helpful resources include 5 CYCLOPEDIA OF FEDERAL PROCEDURE § 15.412 (3d ed. 2012); WRIGHT & MILLER, *supra* note 32; 59 AM. JUR. 3d *Proof of Facts* § 1 (2000); 102 AM. JUR. 3d *Proof of Facts* § 1 (2008); David G. Wirtes, Jr., *Establishing Personal Jurisdiction in Alabama*, 29 ALA. ASS'N FOR JUST. J. 74 (2009).

34. *See* David G. Wirtes, Jr. & Lisa Ivey, *Personal Jurisdiction in Alabama following Ford v. Montana*, 42 ALA. ASS'N FOR JUST. J. 31, 34 (2021) ("The specific personal jurisdiction analysis arises most often . . . when a defendant files a motion to dismiss asserting lack of such jurisdiction.").

35. *See* 5C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1391 (3d ed. 2004).

36. *See infra* note 43.

37. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978).

Fed. R. Civ. P. 26(b)(1) states, in relevant part: “Parties may obtain discovery regarding any . . . matter [involved in the pending] action”³⁸ Rule 26(b)(1) may be relied upon to assert a right to jurisdictional discovery.³⁹ The *Seiz* court observed that “[t]he United States Court of Appeals for the Eleventh Circuit long has recognized a qualified right to jurisdictional discovery.”⁴⁰ “[A] plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum.”⁴¹

The Alabama Supreme Court has also acknowledged the legitimacy of jurisdictional discovery, stating, “It is well established that a . . . court has the power to require a defendant to respond to discovery requests relevant to his or her motion to dismiss for lack of jurisdiction.”⁴² This is because “[t]he trial court has broad and considerable discretion in controlling the discovery process and has the power to manage its affairs . . . to ensure the orderly and expeditious disposition of cases.”⁴³

B. Plaintiffs Must Show a Colorable Claim of Jurisdiction

While plaintiffs have a qualified right to jurisdictional discovery, “it is also well established that a plaintiff does not enjoy an automatic right to discovery pertaining to personal jurisdiction in every case.”⁴⁴ “In many cases courts have . . . limited or denied discovery on jurisdictional issues where the plaintiff failed to make some threshold showing—sometimes called a ‘*prima facie*’ . . . [or colorable] showing—of a plausible basis for exercising jurisdiction over [a] defendant.”⁴⁵ “Using their power to control discovery, courts should take care to ensure that litigation of the jurisdictional issue does not undermine the purposes of personal jurisdiction law in the first place.”⁴⁶ If a plaintiff is attempting to

subject a [foreign] defendant to discovery in order to determine whether sufficient contacts support jurisdiction, it is reasonable for a court exercising its power under Rule 26(b)(2) to expect the plaintiff to show a colorable basis

38. FED. R. CIV. P. 26(b)(1).

39. *Seiz v. Quirk*, No. 4:12-CV-272-HLM, 2013 WL 12290850, at *2 (N.D. Ga. Jan. 3, 2013) (first citing *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 729–31 (11th Cir. 1982); then citing *Chatham Condo Ass’n v. Century Vill., Inc.*, 597 F.2d 1002, 1012 (5th Cir. 1979)).

40. *Id.*

41. *Id.*

42. *Branded Trailer Sales, Inc. v. Universal Truckload Servs., Inc.*, 74 So. 3d 404, 411 (quoting *Ex parte Bufkin*, 936 So. 2d 1042, 1047–48 (Ala. 2006)).

43. *Id.* (quoting *Ex parte Vulcan Materials Co.*, 992 So. 2d 1252, 1259 (Ala. 2008)).

44. *Id.* (quoting *Andersen v. Sportmart, Inc.*, 179 F.R.D. 236, 241 (N.D. Ind. 1998)).

45. *Ellis v. Fortune Seas, Ltd.*, 175 F.R.D. 308, 312 (S.D. Ind. 1997).

46. *Id.*

for jurisdiction before subjecting the defendant to intrusive and burdensome discovery in that distant forum.⁴⁷

In *Branded Trailer Sales, Inc. v. Universal Truckload Services, Inc.*, the Alabama Supreme Court explained, “[a] request for jurisdictional discovery must offer the court ‘more than conjecture and surmise’” that the assertion of jurisdiction is proper.⁴⁸ Although the Court describes the standard as quite low, it holds that “a plaintiff’s discovery request will nevertheless be denied if it is only based upon ‘bare,’ ‘attenuated,’ or ‘unsupported’ assertions of personal jurisdiction, or when a plaintiff’s claim appears to be ‘clearly frivolous.’”⁴⁹ However, “[i]f a plaintiff presents factual allegations that suggest ‘with reasonable particularity’ the possible existence of the requisite ‘contacts between [the party] and the forum state,’ the plaintiff’s right to conduct jurisdictional discovery should be sustained.”⁵⁰

Ex parte Troncalli Chrysler Plymouth Dodge, Inc. is an example of when the Alabama Supreme Court determined the plaintiff did *not* allege a colorable claim of jurisdiction. In that case, the Court explained,

the only jurisdictional allegations are that Troncalli “is a foreign corporation doing business in Cumming, Georgia”; that Alexander Dodge discovered a vehicle in possession of Troncalli in Georgia; and that Case traveled to Georgia to take possession of the vehicle. A discovery request based on these allegations presents nothing but “conjecture and surmise” regarding the existence of general jurisdiction, and is, therefore, due to be denied.⁵¹

In contrast, in *Ex parte Bufkin*, the Court found,

Unlike the complaint in *Troncalli*, which was devoid of allegations necessary to sustain personal jurisdiction, the complaint in this proceeding alleges that “[Bufkin] was the agent, servant or employee of [Williamson] and/or was involved in a joint venture with [Williamson].” Williamson, of course, is a resident of Alabama. Bufkin admits in his affidavit that he visited Alabama during the month in which the accident occurred, and it is undisputed that Bufkin was driving Williamson’s truck at the time of the accident. Therefore, in contrast to the situation presented this Court in *Troncalli*, Roberts has “at least alleg[ed] facts that would support a colorable claim of jurisdiction.” Limited discovery could flesh out Roberts’s allegations and could lead to a conclusion that the trial court can exercise personal jurisdiction over Bufkin.⁵²

47. *Id.*

48. *Branded Trailer Sales*, 74 So. 3d at 411 (quoting *Crist v. Republic of Turkey*, 995 F. Supp. 5, 13 (D.D.C. 1998)).

49. *Id.* (quoting *Ex parte Troncalli Chrysler Plymouth Dodge, Inc.*, 876 So. 2d 459, 468 (Ala. 2003)).

50. *Id.* at 412 (alteration in original) (quoting *Mellon Bank (East) PSFS, Nat’l Ass’n v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992)).

51. *Ex parte Troncalli*, 876 So. 2d at 468.

52. *Branded Trailer Sales*, 74 So. 3d at 411–12 (alterations in original) (emphasis omitted) (citations omitted).

In *Branded*, the Court held that “the trial court exceeded its discretion when it granted [the defendant’s] motion to dismiss without first providing [the plaintiff] an opportunity to conduct jurisdictional discovery.”⁵³ This is because the plaintiff “made detailed assertions regarding its theories of personal jurisdiction, and it presented evidence to support those assertions.”⁵⁴ Thus, the Court found that “*Branded* has alleged sufficient facts that could establish a colorable claim of personal jurisdiction against [the defendant].”⁵⁵

Similarly, in *Ex parte United Insurance Companies, Inc.*, the Court denied a defendant’s motion to dismiss and permitted jurisdictional discovery upon holding that that the plaintiff

did plead in detail the corporate relationship of the petitioners and the role each petitioner allegedly played in the alleged civil conspiracy. Indeed, [the plaintiff] pleaded her facts supporting her conspiracy claim with such specificity that the petitioners were able to file affidavits in which each petitioner denied the control and involvement alleged in the civil-conspiracy claim. . . . These statements address [the plaintiff’s] allegations of the existence of a civil conspiracy among the petitioners with such specificity that it is clear that [the plaintiff’s] complaint contained more than “bald speculation” and “conclusory statements” that the petitioners were involved in a conspiracy. Therefore, [the plaintiff’s] reliance on her factual allegations in the complaint did adequately rebut the petitioners’ affidavits to survive the motions to dismiss to the extent that she is entitled to further discovery on personal jurisdiction.⁵⁶

These cases illustrate the importance of including jurisdictional facts and allegations in the complaint in order to maximize the chance of obtaining jurisdictional discovery and thereby survive a challenge to personal jurisdiction.

C. *Timing and Nature of Jurisdictional Discovery Requests*

It is important to note “[t]he standards for permitting jurisdictional discovery vary by circuit, and very few reported decisions of the Eleventh Circuit address the issue.”⁵⁷ “Based on [the] scant case law and decisions of district courts within the Eleventh Circuit . . . it is clear that whether to permit jurisdictional discovery hangs on ‘the time and nature of any jurisdictional discovery request.’”⁵⁸

In *Mother Doe I v. Al Maktoum*, for example, the District Court for the Southern District of Florida held that because the Plaintiff did not seek “leave

53. *Id.* at 418.

54. *Id.*

55. *Id.* at 412.

56. *Ex parte United Ins. Cos., Inc.*, 936 So. 2d 1049, 1055 (Ala. 2006).

57. *Seiz v. Quirk*, No. 4:12-CV-272-HLM, 2013 WL 12290850, at *2 (N.D. Ga. 2013) (footnote omitted) (citing *Mother Doe I v. Al Maktoum*, 632 F. Supp. 2d 1130, 1144 (S.D. Fla. 2007)).

58. *Id.*

of [the] court to take limited jurisdictional discovery . . . [and] [t]hey did not do so when apprised of Defendants' intention to seek a dismissal prior to the Motion being filed," nor did they "upon being formally challenged on the basis of lack of personal jurisdiction," Plaintiff's request for jurisdictional discovery was denied.⁵⁹ In that case, the court explained that "in the over six months it has taken the parties to fully brief the Motion, no motion seeking jurisdictional discovery was filed."⁶⁰ The court explicitly held that it would not

postpone its decision concerning personal jurisdiction to allow Plaintiffs an opportunity, *almost a year after the suit was filed* and after all arguments have been presented in writing and orally, and in the absence of a formal motion or other showing as to the scope of any proposed jurisdictional discovery request and on the factual showing made by Plaintiffs, to engage in such discovery.⁶¹

In contrast, in *Eaton v. Dorchester Development, Inc.*, the court held "that the [trial] court's dismissal [of a complaint] for lack of subject matter jurisdiction was premature" as it was before jurisdictional discovery was taken.⁶² This was because, at the time of dismissal, the "[plaintiff] had served subpoenas duces tecum" on the defendant.⁶³ In that case, "[t]he trial court dismissed the complaint less than one week before the requested discovery would have been received," and after the plaintiffs "had asked the court to reserve ruling on the [question of jurisdiction] until they could obtain" jurisdictional discovery.⁶⁴ The Eleventh Circuit highlighted cases holding that jurisdictional discovery is not entirely discretionary.⁶⁵ Thus, the *Eaton* court reversed with instructions that the plaintiff be given an opportunity to develop facts to support a finding of jurisdiction.⁶⁶

These cases emphasize the importance of requesting jurisdictional discovery as soon as possible. Including jurisdictional discovery requests with the filing of a complaint increases the likelihood of the motion for leave to conduct such discovery being granted.

59. *Mother Doe*, 632 F. Supp. 2d at 1144.

60. *Id.*

61. *Id.* (emphasis added).

62. *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 731 (11th Cir. 1982).

63. *Seitz*, 2013 WL 12290850, at *3.

64. *Id.*

65. See *Eaton*, 692 F.2d at 730 (citing *Blanco v. Carigulf Lines*, 632 F.2d 656 (5th Cir. 1980) (reversing where answers to interrogatories were overdue at time of dismissal); *Chatham Condo. Ass'ns v. Century Village, Inc.*, 597 F.2d 1002, 1012 (5th Cir. 1979) ("dismissal for lack of subject matter jurisdiction . . . prior to giving the plaintiff ample opportunity for discovery, should be granted sparingly"); *Williamson v. Tucker*, 645 F.2d 404, 414 (5th Cir. 1981) (holding that prior to Rule 12(b)(1) dismissal where jurisdictional facts are in dispute, court must give the plaintiff opportunity to discover facts necessary to establish jurisdiction)).

66. *Id.* at 734.

VI. PERSONAL JURISDICTION, GENERALLY, FOLLOWING FORD

In *Ford*, the Court reiterated that there are “two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.”⁶⁷

A. *General Personal Jurisdiction, Generally, Following Ford*

When a court asserts “[g]eneral jurisdiction, as its name implies, [it] extends to ‘any and all claims’ brought against a defendant.”⁶⁸ 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.”⁶⁹ However, “[o]nly a select ‘set of affiliations with a forum’ will expose a defendant to such sweeping jurisdiction.”⁷⁰ For individuals, a court only has “general jurisdiction in her place of domicile.”⁷¹ For corporations, a court only has general jurisdiction in “its place of incorporation and principal place of business.”⁷²

B. *General Jurisdiction: Individuals*

Earlier, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the 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.”⁷³ In *Goodyear*, the Court declared that an individual is subject to general jurisdiction in the place of his or her “domicile.”⁷⁴ “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.’”⁷⁵ Accordingly, a “person is [also] a citizen of the state in which he is ‘domiciled.’”⁷⁶

Essentially, “domicile (or citizenship) consists of two elements: residency in a state and intent to remain in that state.”⁷⁷ In *Smith v. Marcus & Millichap*,

67. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1024 (2021).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

74. *Id.* at 924.

75. *Smith v. Marcus & Millichap, Inc.*, 991 F.3d 1145, 1149 (11th Cir. 2021) (alteration in original) (quoting *McCormick v. Aderholt*, 293 F.3d 1254, 1267 (11th Cir. 2002)).

76. *Id.*

77. *Id.*

Inc., the Eleventh Circuit held that while “[r]esidency is necessary,” it is “insufficient . . . to establish citizenship [or domicile] in a state.”⁷⁸ In *Molinos Valle Del Cibao C. por A. v. Lama*, the court held “[d]omicile is not synonymous with residence; one may temporarily reside in one location, yet retain domicile in a previous residence.”⁷⁹

When determining “a person’s intent to remain in a state,” courts consider “various factors.”⁸⁰ 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.”⁸¹ “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.”⁸²

So, what discovery requests should accompany the filing of a plaintiff’s complaint against an individual when anticipating a challenge to general personal jurisdiction? Whether using interrogatories, requests for production, requests for admissions, or deposing appropriate witnesses, the discovery should be calculated to establishing the facts set out in Appendix A.

While there are, of course, distinctions in the ways the states determine “domicile,” discovery requests calculated to elicit these facts should provide the information necessary to prove an individual’s contact with the putative forum is “continuous and systematic” enough to render the defendant “essentially at home in the forum State.”⁸³

C. General Jurisdiction - Corporations

Before *Ford*, but after *Daimler AG v. Bauman* and *BNSF Railway Co. v. Tyrell*, 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.⁸⁴ For corporations, general jurisdiction was usually restricted to the state of incorporation and principal place of business.⁸⁵ 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.⁸⁶ Obviously, this can make it difficult to know

78. *Id.*

79. *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1341–42 (11th Cir. 2011).

80. *Smith*, 991 F.3d at 1149.

81. *Id.*

82. *Slate v. Shell Oil Co.*, 444 F. Supp. 2d 1210, 1215 (S.D. Ala. 2006).

83. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

84. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021).

85. *See, e.g., Goodyear*, 564 U.S. at 924 (explaining that these are the “‘paradigm[us]’ bases for the exercise of general jurisdiction”).

86. *Id.* at 919.

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.⁸⁷ In *Hertz Corp. v. Friend*, the Court acknowledged that "the phrase 'principal place of business' has proved more difficult to apply than its originators likely expected."⁸⁸ Accordingly, the Court attempted "to find a single, more uniform interpretation of the statutory phrase"⁸⁹ 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 have often metaphorically called that place the corporation's 'nerve center.'"⁹⁰ When applying this analysis, "the 'nerve center'" will typically be found at a corporation's headquarters.⁹¹

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)."⁹² "[T]he Supreme Court specifically noted that the 'mere filing of a form . . . listing a corporation's 'principal executive offices' is, without more,' 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."⁹³

So, what jurisdictional discovery requests should be made to establish general jurisdiction over a corporate defendant? Again, the menu options include interrogatories, requests for production, requests for admissions, and targeted depositions, but whichever device(s) are chosen, the plaintiff should strive to prove the facts listed in Appendix B, *infra*.

D. Specific Personal Jurisdiction Following Ford

Specific personal jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower class of claims."⁹⁴ Put another way,

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

88. *Id.* at 78.

89. *Id.* at 92.

90. *Id.* at 80–81.

91. *Id.* at 81.

92. *Wylie v. Red Bull N. Am., Inc.*, 627 Fed. App'x 755, 757–58 (11th Cir. 2015) (quoting *Hertz*, 559 U.S. at 93).

93. *Id.* at 758 (quoting *Hertz*, 559 U.S. at 97).

94. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021).

specific jurisdiction applies when “a defendant has had few contacts with the forum state, but those contacts gave rise to the lawsuit.”⁹⁵

After *Ford*, 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.⁹⁶ Courts must then determine if the claims “arise out of or relate to” the defendant’s contact with the forum.⁹⁷ And if these facts are established, a court must then assess whether the assertion of specific jurisdiction comports with “fair play and substantial justice.”⁹⁸ While the specific jurisdiction doctrine has long caused much imprecision and confusion, the *Ford* opinion provides much-needed clarity with respect to each element of this analysis.

E. Contacts

It is settled that “[t]he 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.’”⁹⁹ Accordingly, the first prong of the specific jurisdiction analysis requires the court to “focus on those contacts the ‘defendant [itself] creates with the forum State[.]’”¹⁰⁰ In *Ford v. Montana*, the Court explains that these contacts “often go by the name ‘purposeful availment.’”¹⁰¹

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.”¹⁰² These contacts “must be the defendant’s own choice and not ‘random, isolated, or fortuitous.’”¹⁰³ “They must show that the defendant deliberately ‘reached out beyond’ its home—by, for example, ‘exploiting a market’ in the forum State or entering a contractual relationship centered there.”¹⁰⁴

“[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

95. *Branded Trailer Sales, Inc. v. Universal Truckload Servs.*, 74 So. 3d 404, 410 (Ala. 2011) (quoting *Ex parte Covington Pike Dodge, Inc.*, 904 So. 2d 226, 229–30 (Ala. 2004)).

96. *Ford*, 141 S. Ct. at 1024.

97. *Id.* at 1025.

98. *Id.* at 1024.

99. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 286 (1980) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

100. *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1316 (11th Cir. 2018) (alteration in original).

101. *Ford*, 141 S. Ct. at 1024 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)); see also *Ex parte DBI, Inc.*, 23 So. 3d 635, 654–55 (discussing purposeful availment factors in the context of a foreign manufacturer servicing the Alabama market under a stream-of-commerce analysis).

102. *Ford*, 141 S. Ct. at 1024 (alterations in original) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

103. *Id.* at 1025.

104. *Id.* (emphasis added) (citing *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

state; *advertis[ed] or market[ed] in that state*; or establish[ed] channels for providing advice to that state's residents."¹⁰⁵

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."¹⁰⁶ The Court does "not limit [specific] jurisdiction to where the [product] was designed, manufactured, or first sold."¹⁰⁷ Nor does the Court limit specific jurisdiction to require "proof of causation."¹⁰⁸

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."¹⁰⁹ 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[.]'"¹¹⁰ 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."¹¹¹

F. "Arise out of or relate to"

Courts next assess whether "[t]he plaintiff's claims . . . 'arise out of or relate to the defendant's contacts' with the forum."¹¹² "[F]or specific *in personam* jurisdiction, there must exist 'a clear, firm nexus between the acts of the defendant and the consequences complained of.'"¹¹³ "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.'"¹¹⁴

In *Bristol-Myers Squibb*, the Court made it 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."¹¹⁵

105. *Thornton v. Bayerische Motoren Werke AG*, 439 F. Supp. 3d 1303, 1309 (N.D. Ala. 2020) (emphasis added) (quoting *Avendano-Bautista v. Kimball Gin Mach. Co.*, No. CV116-108, 2017 WL 6003080, at *2 (S.D. Ga. Dec. 4, 2017)).

106. *Ford*, 141 S. Ct. at 1027.

107. *Id.* at 1028.

108. *Id.* at 1026.

109. *Id.* at 1029.

110. *Thornton*, 439 F. Supp. 3d at 1308–09.

111. *Ford*, 141 S. Ct. at 1024 (emphasis added).

112. *Id.* at 1025.

113. *Elliott v. Van Kleef*, 830 So. 2d 726, 731 (Ala. 2002) (quoting *Duke v. Young*, 496 So. 2d 37, 39 (Ala. 1986)).

114. *Ford*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017)).

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

There, the Supreme Court employed the phrase “aris[e] out of or relat[e] to”¹¹⁶ with no suggestion that there might be a distinction between the two. However, in *Ford*, the Supreme Court provides that distinction, holding 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.”¹¹⁷

G. Reasoning for These Requirements

In *Ford*, the Court explains that “purposeful availment” and “arise out of or relate to” “derive from and reflect two sets of values—treating defendants fairly and protecting ‘interstate federalism.’”¹¹⁸ These requirements aim to ensure that defendants should reasonably anticipate being haled into court in the foreign jurisdiction and protect defendants from being subject to “a jurisdiction as a result of ‘the unilateral activity of another person or a third person.’”¹¹⁹

A defendant foreseeing it may be subject to suit in a particular forum is able to safeguard against that possibility if it so chooses.¹²⁰ “When a corporation ‘purposefully avails itself of the privilege of conducting activities within the forum State,’ it has clear notice that it is subject to suit there,” and thus, the corporation “can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.”¹²¹

H. Fairness Factors

Courts next consider whether “the maintenance of the suit” offends “traditional notions of fair play and substantial justice.”¹²² In *World-Wide Volkswagen Corp. v. Woodson*, the Supreme Court explained that this phrase refers to the “reasonableness” of requiring a defendant to defend itself in a particular forum.¹²³ 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.”¹²⁴ These factors include “the forum State’s interest in

116. *Id.* at 1780.

117. *Ford*, 141 S. Ct. at 1026.

118. *Id.* at 1025 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

119. *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)).

120. See *World-Wide Volkswagen*, 444 U.S. at 297.

121. *Id.*

122. *Id.* at 292 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

123. *World-Wide Volkswagen*, 444 U.S. at 292.

124. *Id.*

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 the several States in furthering fundamental substantive social policies."¹²⁵

The Supreme Court held 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.”¹²⁶

Put another way, in *Bristol-Myers 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.”¹²⁷ “[R]estrictions on personal jurisdiction ‘are more than a guarantee of immunity from inconvenient or distant litigation. They are [also] a consequence of territorial limitations on the power of the respective States.’”¹²⁸ In regard to fairness and interstate federalism, the *Ford* opinion 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. 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.” 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). 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.

Finally, principles of “interstate federalism” support jurisdiction over these suits in Montana and Minnesota. Those States have significant interests at

125. *Id.*; see also *Ex parte DBI, Inc.*, 23 So. 3d 635, 656–57 (Ala. 2009) (discussing burdens of foreign defendant on being required to litigate a wrongful death case in an Alabama state court).

126. *World-Wide Volkswagen*, 444 U.S. at 294 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251, 254 (1958)).

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

128. *Id.*; see also *Ex parte DBI*, 23 So. 3d at 656–57.

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. 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.” 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.”¹²⁹

Given all the foregoing considerations of the elements of specific personal jurisdiction, what then should a plaintiff seek by way of discovery requests to prove each element against individuals and corporations? The facts discovery should seek to establish specific personal jurisdiction over an individual are included in Appendix C, and facts discovery should seek to establish specific personal jurisdiction over a corporation are included in Appendix D. “The key factor in crafting written discovery in a [specific] personal jurisdiction dispute is the nature of the defendant’s activities. What sort of business is it in? How does it earn revenue?”¹³⁰ Establishing any and all contacts a defendant has *with the forum* is always the first step in proving the court has specific personal jurisdiction over the defendant.

CONCLUSION

What are the things you, as a plaintiff’s trial lawyer, must do:

1. Read *Ford*. Better yet, read *Ford* and read all the underlying briefs. Go to www.scotusblog.com and read them.
2. Read *Ex parte DBI, Inc.* and be familiar with how *Ford* should now impact Alabama’s personal jurisdiction jurisprudence.
3. Assume a personal jurisdiction challenge is forthcoming prior to filing the complaint; accordingly, learn facts material to an assertion of personal jurisdiction over the defendant(s) beforehand, and plan to plead those facts in the plaintiff’s complaint.
4. While Fed. R. Civ. P. 8 requires a plaintiff to plead the bases of personal jurisdiction, Alabama’s equivalent rule does not; nevertheless, the prudent trial lawyer will include jurisdictional allegations in the complaint and plead all jurisdictional facts you know or reasonably think you know.

129. *Ford Motor Co. v. Mont.* Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1029–30 (2021) (citations omitted).

130. 59 AM. JUR. 3d *Proof of Facts* § 14 (2000).

5. Use all available discovery tools, including 30(b)(6) deposition requests, *duces tecum* requests for pertinent documents, requests for production, interrogatories, and requests for admissions calculated to elicit facts proving personal jurisdiction and file these discovery requests with your complaint.

APPENDIX A – GENERAL JURISDICTIONAL DISCOVERY FOR INDIVIDUALS

1. State your domicile.
2. State your residence address.
3. State whether you intend to remain a resident of [FORUM STATE].
4. State the address(es) at which you have received mail during each of the past three years.
5. State the address(es) shown on your driver's license and any professional license(s).
6. State the state(s) to which you have paid state income tax in the three years preceding the date of plaintiff's claim(s).
7. State the address(es) of the home you own or rent in which you live.
8. State the state(s) in which you have voted in any public election during each of the past three years.
9. State the location/address of any real or personal property (including automobiles) you own in [FORUM STATE].
10. State the location/address of any business(es) you own or operate in [FORUM STATE].
11. State the location/address of any bank, savings & loan, credit union, or other financial institution at which you maintain accounts.

APPENDIX B – GENERAL JURISDICTIONAL DISCOVERY FOR CORPORATIONS

1. State this defendant's place of incorporation.
2. State this defendant's principal place of business.
3. State where this defendant's officers work while directing this defendant's corporate affairs.
4. State where this defendant's managers work while managing this defendant's corporate affairs.
5. State this defendant's nerve center or headquarters.
6. Has defendant been sued in any state or federal court in the United States for alleged defects in the design, manufacture, or adequacy of warnings of any of its [PRODUCTS or SERVICES]? If so:
 - a. Produce a true and correct list of all such suits and provide the style, court, docket number, and the names and addresses of plaintiffs' and defendants' attorneys;
 - b. Describe the nature of the allegations and the [products or services] complained of; or, in the alternative, attach a copy of each plaintiff's complaint in each action, as last amended;
 - c. State the result of each such action, e.g., judgment for plaintiff(s), judgment for defendant(s), or other disposition.
7. Did defendant contest personal jurisdiction in any of the suits identified above? If so:
 - a. Produce a true and correct copy of each such motion to dismiss or other legal document whereby personal jurisdiction was contested;
 - b. Produce a true and correct copy of any plaintiff's opposition to the motion to dismiss or other document concerning personal jurisdiction;
 - c. Produce a true and correct copy of each court's opinion or order or other ruling on the motion to dismiss.
8. Does defendant own any assets in [FORUM STATE]? If so, state or produce the following:
 - a. True and correct copies of all deeds, mortgages, bills of sale, bills of lading, or other documents evidencing ownership of any such assets.

9. Has defendant ever qualified at any time to do business in any state in the United States? If so, state or produce the following:
 - a. True and correct copies of each statement by the Secretary of State of each applicable state evidencing or documenting that defendant qualified to do business in such state.

APPENDIX C – SPECIFIC PERSONAL JURISDICTION FOR INDIVIDUALS

1. State your full legal name.
2. State your residence.
3. State each mailing address you have used in [FORUM STATE] and anywhere else in the United States during the past three years.
4. State if you received in-person service within [FORUM STATE] regarding this lawsuit.
5. State each location in which you are licensed or otherwise authorized to do business and provide the date of issuance and nature of such license or authorization.
6. State any property (real or personal) you own, or have owned, in [FORUM STATE], including but not limited to real estate, bank accounts, businesses, automobiles, mortgages or notes, and any other personal property.
7. State each contract you have entered into with any person or entity in [FORUM STATE] and provide the nature and dates of each said contract.
8. State any insurance policies you have acquired regarding ownership of property or activities in [FORUM STATE] and the nature and dates of such policies.
9. State each place, office, and/or business operation at which you work or perform services in [FORUM STATE].
10. State each interaction or transaction you had with the plaintiff(s) prior to the filing of this lawsuit and provide the nature, place(s), and date(s) of each such interaction or transaction.
11. State any communication(s) you had to, from, or in [FORUM STATE], or on your behalf (whether written or oral) with any individual or entity for the purpose of conducting business for you or on your behalf, including but not limited to communications to, from, or in [FORUM STATE] with the plaintiff(s).
12. State each occasion in which you travelled to [FORUM STATE] and the purpose and dates of such travel.

APPENDIX D – SPECIFIC PERSONAL JURISDICTION FOR CORPORATIONS

1. State defendant's legal name and trade name(s).
2. State defendant's place of incorporation and date of incorporation.
3. State each mailing address used by the defendant.
4. State each agent appointed by defendant to accept service of process within the forum on behalf of defendant.
5. State with specificity defendant's corporate legal structure.
6. State any and all business defendant conducts within [FORUM STATE] including the dollar volume of defendant's sales for each of the past three years within [FORUM STATE], the number of employees and/or agents defendant has within [FORUM STATE], the number of customers defendant has within [FORUM STATE], each customer service or repair center defendant has in [FORUM STATE], each parent and/or subsidiary/joint venture defendant has within [FORUM STATE], the nature of the corporate relationship between defendant and any subsidiary corporations of Defendant.
7. List all property defendant owns or leases within [FORUM STATE] including all real estate, bank accounts, investments in business, mortgages, loans to persons and/or other corporations, leases of equipment and/or production facilities, warehouse/storage of inventory or supplies, and merchandise on consignment.
8. State the existence and nature of any regular sales defendant has within the [FORUM STATE].
9. State each contract defendant has entered into with any party or other legal entity in [FORUM STATE].
10. State the name and title of each person or entity who conducted business for or acted on behalf of defendant in [FORUM STATE], including but not limited to any individuals who had personal, direct, or telephonic contact with plaintiff or their representatives in [FORUM STATE].
11. State each occasion when in [FORUM STATE] any employee or other representative of defendant or anyone else or other entity acting on defendant's behalf or at its direction, made a purchase in excess of [DOLLAR AMOUNT] on behalf of defendant.
12. State the name and address of each bank or other financial institution in [FORUM STATE] where defendant had or has an account or through which defendant has conducted or does conduct any business or financial transactions.

13. List all communications to, from, or in [FORUM STATE] by defendant whether by letter, facsimile, e-mail, text message, or telephone, or on defendant's behalf with any individual or entity for the purpose of conducting business for or otherwise acting on behalf of defendant, including but not limited to communications to, from, or in [FORUM STATE] with plaintiff or their representatives.
14. List each payment, filing, license, report, submission or response, by defendant to any [FORUM STATE] governmental entity, department, or body or to any federal governmental entity, department, or body relating to defendant's activities or properties in [FORUM STATE], including but not limited to pleadings filed in lawsuits in which defendant was or is a party.
15. State the location/residence of each owner, officer, and/or principal of defendant, including their address.
16. State each insurance policy the defendant had and/or currently has pertaining to property or activities in [FORUM STATE], including additional insured endorsements naming defendant and providing coverage owned by defendant for activities conducted by defendant in [FORUM STATE].
17. List all business travel to, from, or in [FORUM STATE] by any officer, employee, or agent of defendant, or on behalf of defendant, including but not limited to expense reports and requests for reimbursement.
18. State each State where defendant is licensed/registered/authorized to do business.
19. State the nature of defendant's business and the length of time defendant has been conducting said business.
20. List by title, date, location, and docket number every civil case, criminal case, administrative hearing, state or federal court proceeding, arbitration, or mediation in [FORUM STATE], in which defendant was or is a plaintiff, complainant, petitioner, or defendant or respondent.
21. List all advertising activity directed towards [FORUM STATE], including but not limited to direct mail/catalogues, television, radio, newspaper/magazines, and internet advertisements.
22. List each instance in which defendant designed, manufactured, produced, distributed, and/or sold products or services to wholesalers, retailers, or consumers in [FORUM STATE].
23. List each instance defendant accepted orders from customers in [FORUM STATE].

24. List each website defendant operates, including the web address, the purpose of each site, and whether such sites provide for, allow, or contain: online ordering of products, online customer service, online order tracking, links to other sites that facilitate ordering of defendant's products, or interactivity of site users with a central computer operated by or on behalf of defendant.
25. Has defendant received any consumer complaints or incident reports from anywhere in the United States regarding any of its products or services? If so:
 - a. Produce a true and correct copy of any such consumer complaints or incident reports and related documents;
 - b. Produce a true and correct copy of any correspondence, letters, e-mails, or other documents reflecting any response of defendant to any such consumer complaint or incident report.
26. Have any of defendant's designs, products, or services been the subject of any inquiry, investigation, or other proceeding by any federal, state, or private entity in the United States, including, without limitation, any federal or state agency, regulatory body, standards commission, certifying body, or any similar entity? If so:
 - a. Give the name of the federal, state, or private agency, regulatory body, standards commission, certifying body, or other such entity that initiated any such inquiry, investigation, case opening, or proceeding;
 - b. Produce a true and correct copy of all documents regarding the inquiry, investigation, case opening, or proceeding;
 - c. Produce a true and correct copy of the transcript of any testimony given by witnesses during proceedings on any such inquiry, investigation, case opening, or proceeding.
27. Did defendant design, manufacture, produce, distribute or sell its products or services to comply with any United States regulation, standard, or guideline, whether issued by a federal or state agency, regulatory body, standards commission, or other similar entity? If so:
 - a. Name the federal or state agency, regulatory body, standards commission, or other entity;
 - b. Name and cite the regulation, standard, or guideline;
 - c. Produce a true and correct copy of any such regulation, standard, or guideline;
 - d. Produce a true and correct copy of any certificate of compliance or any marking on any [product] stating that the

[PRODUCT] meets or complies with such regulation, standard, or guideline.

28. Has defendant engaged or retained any business, individual, or other entity in the United States to analyze or test any product or service to determine whether it met United States standards, regulations, or guidelines? If so:
 - a. Describe all such testing for any occasion since [DATE];
 - b. Produce true and correct copies of all correspondence, contracts, agreements, memoranda of understanding, and other such documents reflecting the engagement of testing companies, personnel, or other entities within the United States to analyze or test the [PRODUCT];
 - c. Produce true and correct copies of all analyses or testing and results from such analyses or testing companies or personnel.
29. Has defendant at any time since [DATE] indemnified or agreed to indemnify any entity, including wholesalers, retailers, or distributors, for liability for property damage, personal injury, or wrongful death arising out of alleged defects in its product(s) or service(s)? If so:
 - a. Identify the entity or entities that defendant has indemnified or agreed to indemnify and the years each such agreement existed;
 - b. Produce a true and correct copy of each such indemnity agreement;
 - c. Produce a true and correct copy of any document requesting indemnification by any such entity on any occasion since [DATE];
 - d. Produce a true and correct copy of any negotiable instrument, warrant, check, or other record of payment of such indemnity on any occasion since [DATE];
 - e. Produce a true and correct copy of any document containing any response of defendant to any such request for indemnity;
 - f. Produce a true and correct copy of the opinion, order, or other ruling of any court in the United States, state or federal, on any dispute over a request for indemnification.
30. Has defendant at any time since [DATE] had liability insurance to cover risks attributable to the alleged design, manufacturing, or warning defects of any of its products in the United States in general or in [FORUM STATE] in particular? If so, produce a true and correct copy of all such insurance policies.

31. Produce a true and correct copy of all records reflecting sales and shipments by defendant to retailers or consumers in [FORUM STATE] of any replacement parts for [PRODUCT] and/or of replacement product or component parts at any time since [DATE].
32. Has defendant at any time since [DATE] employed any business(es) or personnel for marketing and advertising in [FORUM STATE]? If so, state or produce the following:
 - a. The name and description of the division, group, or part of defendant that engaged in marketing or advertising for each year since [DATE];
 - b. The person or persons in charge of each division, group, or part of defendant that engaged in marketing or advertising for each year since [DATE];
 - c. True and correct copies of marketing or advertising plans or analyses that were presented to, reviewed, and/or approved by the head of the division, group, or part, any officer of defendant, and/or any member of the Board of Directors of defendant for any year since [DATE];
 - d. True and correct copies of all documents reflecting money budgeted and/or expended by defendant for marketing and/or advertising in the [FORUM STATE] each year since [DATE];
 - e. Attach true and correct copies of print, poster, photographic, or other media advertisements used to market or advertise defendant's [product] in the [FORUM STATE] at any time from [DATE] to present. For each such item produced, state the approximate date and location each item was used for marketing and/or advertising in the [FORUM STATE].
33. Have any defendant's directors, officers, agents, or employees ever traveled to [FORUM STATE] for or on behalf of Defendant at any time since [DATE]? If so, state or produce:
 - a. The identity or identities of the director, officer, or employee of [DEFENDANT] who traveled to [FORUM STATE];
 - b. The reason each such director, officer, or employee traveled to [FORUM STATE];
 - c. The date or dates of travel to and from [FORUM STATE] by each such director, officer, or employee;

- d. True and correct copies of the sum of money budgeted or expended by any such director, officer, or employee for travel to or within [FORUM STATE] at any time since [DATE].
34. Does defendant own, operate, control, or maintain a website on the worldwide web? If so, state or produce:
- a. The correct URL address for any such website;
 - b. Its purpose.
 - c. Is any such website accessible to consumers throughout the United States, including [FORUM STATE]?
 - d. Has defendant taken any steps or made any decisions to prevent access to its website by people in [FORUM STATE]
35. Has defendant maintained any location in the United States for users or consumers of defendant's [PRODUCT or SERVICES] to contact or communicate with concerning warranty claims or concerns about defects attributable to design, manufacturing, inadequacy of warnings, performance, or safety? If so, state or produce:
- a. The name, address, and telephone number of any such location for each year it was in existence since [DATE];
 - b. The name, address, and job title of the person(s) most familiar with the receipt since [DATE] by [DEFENDANT] and any of its wholly-owned subsidiaries of warranty claims or consumer complaints at said location(s).