

**A Texan's Guide to Specific Personal Jurisdiction and the  
'Relatedness' Requirement**

William McCoy

## **I. Introduction**

Personal jurisdiction is a court's “power to bring a person into its adjudicative process.”<sup>1</sup> A court, when determining whether or not it has that power, must weigh several interests.<sup>2</sup> While the court considers the interest of the forum state and the plaintiff, the primary concern for a court is the burden on the defendant.<sup>3</sup> This burden is both a practical and an abstract one.<sup>4</sup> For example, a defendant might be forced to litigate in a forum where it is more complicated and costly to defend itself and also in a state with no real interest in adjudicating the suit.<sup>5</sup>

The Due Process Clause limits a state's power to exercise personal jurisdiction over a defendant.<sup>6</sup> A court may exercise its power over a non-resident defendant when “...the nonresident defendant has established minimum contacts with the forum state, and the exercise of jurisdiction comports with traditional notions of fair play and substantial justice.”<sup>7</sup> To

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<sup>1</sup> *GoldenTree Asset Mgmt. LP v. BNP Paribas S.A.*, 64 F. Supp. 3d 1179, 1187 (N.D. Ill. 2014) (quoting *N. Grain Mktg., LLC v. Greving*, 743 F.3d 487, 491 (7th Cir.2014)).

<sup>2</sup> *See Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cnty.*, 582 U.S. 255, 263 (2017).

<sup>3</sup> *See id.*

<sup>4</sup> *See id.*

<sup>5</sup> *See id.*

<sup>6</sup> *See Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007).

<sup>7</sup> *See id.*

determine whether or not a non-resident defendant has purposefully availed itself to the forum, a court must follow three principles.<sup>8</sup> First, the only contacts made by the defendant itself are relevant.<sup>9</sup> Activities of a third party or other persons cannot be considered the defendant's contacts.<sup>10</sup> Secondly, the contacts must be made on purpose by the defendant.<sup>11</sup> The court cannot consider contacts that are "...random, fortuitous, or attenuated."<sup>12</sup> Finally, the defendant must have gained in benefit, advantage, or profit from making contact with the forum state.<sup>13</sup> This final requirement injects fairness into the inquiry by allowing a defendant to intentionally avoid a forum by not reaching out to it for a profit.<sup>14</sup>

A court has two types of personal jurisdiction it can exercise depending on the circumstances.<sup>15</sup> The first option is general personal jurisdiction. If a non-resident defendant's contacts with the forum state are "...so continuous and systematic as to render [it] essentially at home in the forum State," then a court may exercise personal jurisdiction even if the defendant's contacts are unrelated to its potential liability.<sup>16</sup> This test is applied harshly in favor of

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<sup>8</sup> *See id.*

<sup>9</sup> *See id.*

<sup>10</sup> *See id.*

<sup>11</sup> *See id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See id.*

<sup>14</sup> *See id.*

<sup>15</sup> *See id.*

<sup>16</sup> *Old Republic Nat'l Title Ins. Co. v. Bell*, 549 S.W.3d 550, 565 (Tex. 2018).

defendants.<sup>17</sup> A court cannot exercise general jurisdiction over a non-resident defendant who is not essentially at home in the forum state even if the court finds continuous and systematic contacts with the forum.<sup>18</sup> The second type of personal jurisdiction and the focus of this discussion is specific personal jurisdiction. Unlike general jurisdiction, which only looks at the defendant's conduct, specific jurisdiction focuses on the relationship between the defendant, the forum, and the litigation.<sup>19</sup> To determine whether a court can exercise specific jurisdiction, a court looks to whether the defendant's alleged liability arises out of or is related to its contacts in the forum state.<sup>20</sup>

Understanding specific personal jurisdiction can be confusing and overwhelming. However, it is vital for every litigator to master the court's power, both in using it to compel a defense or resisting it to preserve a client's right to due process. The court's power over a non-resident defendant can be analogized to a marksman on the gun range. The court is the marksman. The analysis gives the court a target and can change in size and shape. The bullet in this scenario is the bundle of the defendant's "contacts" with the forum state. Once a court knows the size and shape of the target, it fires the bullet

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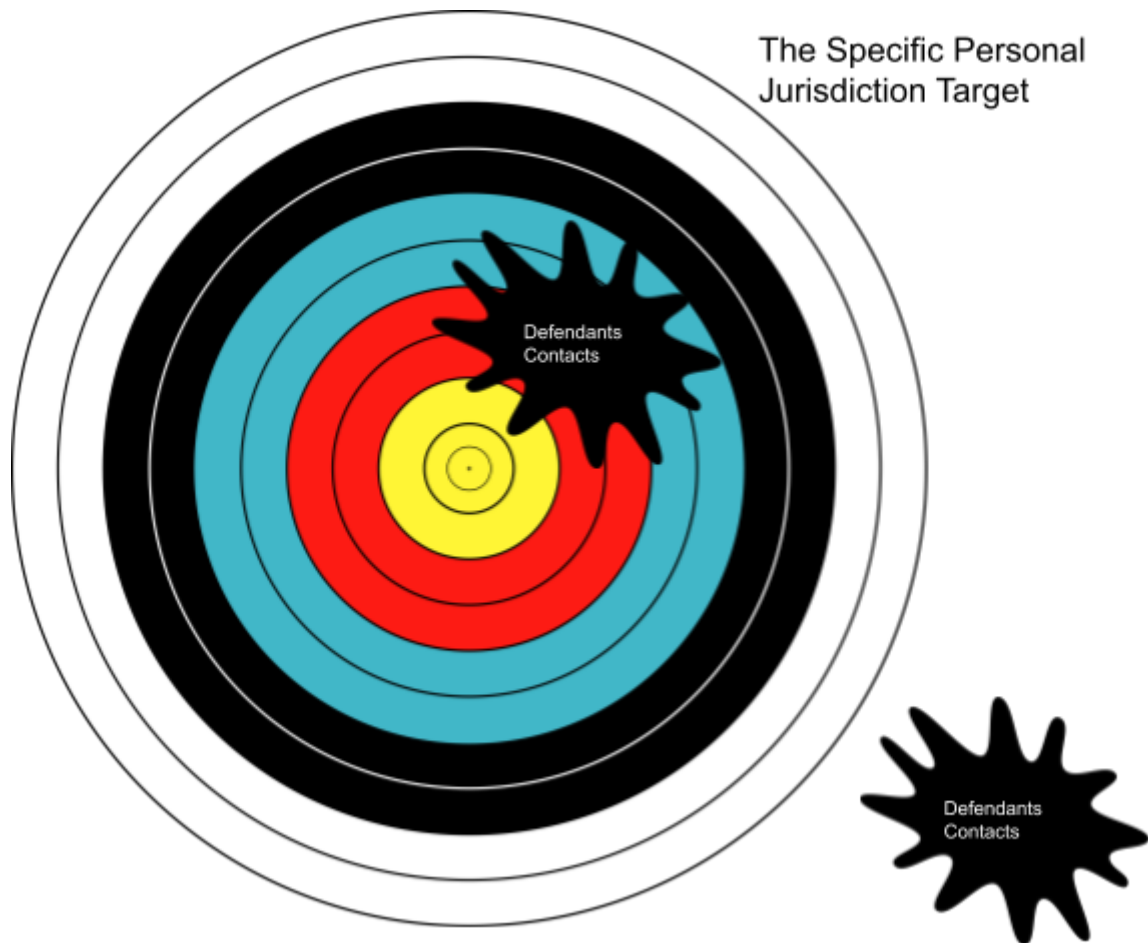
<sup>17</sup> *See id.*

<sup>18</sup> *See id.*

<sup>19</sup> *Moki Mac*, 221 S.W.3d at 575–576.

<sup>20</sup> *See id.* at 576.

to see whether or not those contacts “hit” and allow the court to exercise jurisdiction over the defendant.



Federal Rule of Civil Procedure 4 and state long-arm statutes provide the framework for deciding whether a particular federal court has personal jurisdiction over a defendant.<sup>21</sup> Long-arm statutes were originally developed

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<sup>21</sup> Fed. R. Civ. P. 4; *E.g.* Tex. Civ. Prac. & Rem. Code Ann. § 17.042; *Bulkley & Associates, L.L.C. v. Dep't of Indus. Relations, Div. of Occupational Safety & Health of the State of California*, 1 F.4th 346, 351 (5th Cir. 2021).

from a need of the individual states to exercise jurisdiction over non-resident citizens and corporations acting within their borders.<sup>22</sup> The Texas long-arm gives the basis for personal jurisdiction in addition to laying out the mechanics for service of process in the State.<sup>23</sup><sup>24</sup> However, the scope of personal jurisdiction in Texas is actually governed primarily by the Supreme Court's interpretations of the Due Process Clause of the Constitution. The Texas long-arm statute extends to the limits of federal due process.<sup>25</sup> Therefore, the two-step inquiry of assessing the long-arm statute and due process in Texas actually “collapses into one federal due process analysis.”<sup>26</sup>

The first of the famous interpretations was the Supreme Court's decision in *Pennoyer v. Neff*, where the Court “laid down the broad principle that a State could not subject nonresidents to the jurisdiction of its courts unless they were served with process within its boundaries or voluntarily appeared, except to the extent they had property in the State.”<sup>27</sup> Justice Field’s interpretation limited the court's power in relation to society at the time. His interpretation made sense when travel between Baltimore and

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<sup>22</sup> See Elaine A. Carlson, *General Jurisdiction and the Exercise of In Personam Jurisdiction Under the Texas Long-Arm Statute*, 28 S. Tex. L. Rev. 307, 320-28 (1986) (discussing development of the Texas long-arm statute).

<sup>23</sup> Tex. Civ. Prac. & Rem. Code Ann. §§ 17.001 to 17.093.

<sup>24</sup> *Paramount Pipe & Supply Co. v. Muhr*, 749 S.W.2d 491, 495–96 (Tex. 1988).

<sup>25</sup> *Bulkley*, 1 F.4th 346, 351 (5th Cir. 2021).

<sup>26</sup> *Id.*

<sup>27</sup> *Hanson v. Denckla*, 357 U.S. 235, 260, 78 S. Ct. 1228, 1243 (1958) (discussing the Court's decision in *Pennoyer v. Neff*, 95 U.S. 714, 24).

Washington D.C. took a day and a half by carriage.<sup>28</sup> However, this power was simply not enough as Americans traveled to more states and were in each state for less time. Now, these “old jurisdictional landmarks have been left far behind”<sup>29</sup>

As discussed above, a court can exercise specific personal jurisdiction over a defendant when (1) the defendant has "made minimum contacts with [the forum state] by purposefully availing itself of the privilege of conducting activities [in the state]" and (2) the defendant's potential liability arose from or is related to those contacts.<sup>30</sup> This discussion will first focus on the development of this analysis through two landmark Supreme Court decisions. Next, a closer look will be taken at the “relatedness” language and the impact of modern courts' interpretations of the requirement.

## **II. Developing the specific personal jurisdiction analysis.**

Before diving into the modern analysis, it is crucial to understand the history of the doctrine. Three famous cases show the expansion of the

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<sup>28</sup> Seymour Dunbar, *A History of Travel in the America, Showing the Development and Transportation from the Crude Methods of the Canoe and the Dog-Sled to the Highly Organized System of the Present and Changing Social Conditions that Accompanied this Economic Conquest of the Continent: And Those Related Human Experiences, Changing Social Conditions and Governmental Attitudes Which Accompanied the Growth of a National Travel System* (Bobbs-Merrill Company, 1915; reprint, New York: Greenwood Press, Publishers, 1968), vol. 3, 743.

<sup>29</sup> *Hanson*, 357 U.S. 235, 260 (1958) (Black J. dissenting) (discussing the evolution of jurisdictional limits and state courts exercising power over nonresident defendants).

<sup>30</sup> *In re Christianson Air Conditioning & Plumbing, LLC*, 639 S.W.3d 671, 679 (Tex. 2022) (citing *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 576 (Tex. 2007)).

personal jurisdiction analysis into what it is today. As mentioned above, *Pennoyer v. Neff* stood for the principle that a court could not exercise personal jurisdiction over a non-resident defendant without personally serving that defendant in the forum state.<sup>31</sup> However, with the Supreme Court's decisions in *International Shoe* and *Volkswagen*, the power over non-residents was expanded within the limits of due process. The Court, in these cases, shapes the personal jurisdiction target for litigators.

#### **A. International Shoe: What does the target look like?**

*International Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement* gives the framework for the modern specific personal jurisdiction analysis. The Court, in this case, wrestles with the question of when a non-resident corporation can be forced to defend itself in a state where it is not incorporated or has its principal place of business.

In *International Shoe*, the state of Washington brought suit against International Shoe Company in Washington state court.<sup>32</sup> International Shoe, in this case, is a non-resident defendant being a "...Delaware corporation, having its principal place of business in St. Louis, Missouri, and is engaged in

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<sup>31</sup> See *Hanson*, 357 U.S. 235, 260 (1958) (discussing the Court's decision in *Pennoyer v. Neff*, 95 U.S. 714, 24); See generally *Pennoyer v. Neff*, 95 U.S. 714 (1877).

<sup>32</sup> *Int'l Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 313 (1945).



the manufacture and sale of shoes and other footwear”.<sup>33</sup> The company objected to a Washington state court's ability to exercise personal jurisdiction over it because the plaintiff did not serve the company within the forum state.<sup>34</sup>

The company was unaffiliated with the State of Washington in many ways. International Shoe did not have an office in the state.<sup>35</sup> It did not have any contracts to buy or sell its shoes in the state.<sup>36</sup> It did not keep a stock of its shoes in Washington.<sup>37</sup> The company did not even deliver its shoes to customers in the state.<sup>38</sup>

International Shoe Company’s connection to Washington State was a result of hiring sales clerks who lived in the area.<sup>39</sup> These salesmen were receiving their orders from the managers of the company in St. Louis but were acting for the company solely in Washington.<sup>40</sup> The employees received samples and showcased them to potential customers in the state.<sup>41</sup>

Occasionally, the employees would rent out showrooms, hotel rooms, or apartments to use to showcase their product.<sup>42</sup> These salesmen were paid on

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 311.

<sup>35</sup> *Id.* at 313.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 313–14.

<sup>42</sup> *Id.* at 314.

a commission basis and were limited to showing the samples, taking orders from customers, and relaying those orders back to the office in St. Louis.<sup>43</sup> The agents were not authorized to enter into contractual agreements with the customers.<sup>44</sup>

The trial court and subsequent state appellate courts ruled in favor of the plaintiff agency that the court could exercise personal jurisdiction over the company.<sup>45</sup> International Shoe took the position that exercising Washington's long-arm statute against a non-resident defendant for collections violated its due process rights.<sup>46</sup> That the company's activities in the state were not enough to rise to the level of presence in the state.<sup>47</sup> Additionally, the company argued that the notice required by the statute was not enough to allow the court to subject the company to its jurisdiction.<sup>48</sup>

The Supreme Court responded to those arguments first by pointing out that "...the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, it is clear that unlike an individual, its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *See id.*

<sup>46</sup> *See id.* at 312.

<sup>47</sup> *Id.* at 315.

<sup>48</sup> *See id.* at 312.

for it.”<sup>49</sup> The Court went on to explain that “presence” in the context of fictional entities is used to symbolize the activities of the corporation's agents acting within a state.<sup>50</sup> These activities can rise to the level in which a court can find that through these activities, they have subjected the corporation itself to jurisdiction in the forum state within the bounds of due process.<sup>51</sup>

The Court in *International Shoe* understands the fiction of a corporation's presence in a forum state and famously adopts the minimum contacts analysis. In its opinion, the Court recognizes that

...’Presence’ in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given.<sup>52</sup>

On the other hand, the Court notes that casual or isolated activities are not enough to subject a corporation to be sued in the forum state when those activities are not connected to the litigation.<sup>53</sup> Importantly for future discussions, the contacts have to be such that the maintenance of the suit “does not offend traditional notions of fair play and substantial justice.”<sup>54</sup>

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<sup>49</sup> *Id.* at 315 (internal citations omitted).

<sup>50</sup> *See id.* at 317.

<sup>51</sup> *See id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 316.

What can be taken from the Court's analysis in *International Shoe*? The shape of our target going forward is such that to successfully hit the personal jurisdiction target, a non-resident defendant must have (1) “contacts” in the forum state and (2) those contacts have to “give rise to the liabilities” at issue. However, as future cases will show, the meaning of “give rise to the liabilities” is not what it seems.



## **B. Volkswagen: Who can shoot at the target?**

In *World-Wide Volkswagen Corporation v. Woodson*, the plaintiffs brought a products liability suit in an Oklahoma state court against World-Wide Volkswagen Corporation.<sup>55</sup> The plaintiffs were once residents of New York and bought the car on which the suit was based in that state.<sup>56</sup> They suffered the accident which prompted the suit while driving their car through Oklahoma.<sup>57</sup> Volkswagen was also a New York corporation and did not do any business in Oklahoma.<sup>58</sup> The company "... distributes vehicles, parts, and accessories, under contract with Volkswagen, to retail dealers in New York, New Jersey, and Connecticut".<sup>59</sup> The Court explicitly found that

[Plaintiffs] adduced no evidence that either World-Wide or Seaway does any business in Oklahoma, ships or sells any products to or in that State, has an agent to receive process there, or purchases advertisements in any media calculated to reach Oklahoma. In fact, as respondents' counsel conceded at oral argument, there was no showing that any automobile sold by World-Wide or Seaway has ever entered Oklahoma with the single exception of the vehicle involved in the present case.<sup>60</sup>

Thinking back to the analysis in *International Shoe*, would these facts hit on our personal jurisdiction target? There is contact by the non-resident defendant, the car. The contact was in the forum state of Oklahoma and gave

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<sup>55</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 286 (1980).

<sup>56</sup> *See id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 289

<sup>60</sup> *Id.* (internal citation omitted).

rise to the litigation. On its face, this dispute is one that hit the target under *International Shoe*. In fact, the state courts of Oklahoma thought the same.<sup>61</sup> However, in this case, the Supreme Court found otherwise.

The Court, in its opinion, attempted to clarify the purpose of the minimum contacts analysis from *International Shoe*.<sup>62</sup> The Court defined its function as “... [protecting] the defendant against the burdens of litigating in a distant or inconvenient forum” and to ensure that states, by way of their courts, do not go beyond their status as a coequal with other states in the federal system.<sup>63</sup> These are the principles behind the reasonableness requirement discussed in *International Shoe*. However, the Court recognized that these principles have to be balanced against the forum state's interest in adjudicating the case in its own court.<sup>65</sup>

Additionally, the Court had to analyze the Due Process Clause protections in the context of the federal system at the time the case was decided.<sup>66</sup> A lot of time had passed since *International Shoe* at the time of this case and jurisdictional limitation via the Due Process Clause had been

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<sup>61</sup> *See id.*

<sup>62</sup> *See id.* at 291-292

<sup>63</sup> *Id.* at 292.

<sup>64</sup> *See id.*

<sup>65</sup> *See id.*

<sup>66</sup> *See id.* at 293.

relaxed up to this point. The Court attributed the change to the increasing trend of commerce flowing across state lines:

Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.<sup>67</sup>

The Court concludes that “[Volkswagen has] no contacts, ties, or relations” with the State of Oklahoma.<sup>68</sup> It is clear, however, that Volkswagen, through its sale of the car to the plaintiff, made one contact, the car that the plaintiff drove to the state. But, the Court found that a mere “unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.”<sup>69</sup> In line with the principles of the minimum contacts analysis discussed above, the Court fine-tunes the analysis going forward. The Court clarifies that to have minimum contacts, a corporation must

purposefully [avail] itself of the privilege of conducting activities within the forum State, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the

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<sup>67</sup> *Id.* at 292 (quoting *McGee v. International Life Ins. Co.*, 55 U.S., at 222–223 (1957)).

<sup>68</sup> *Id.* at 299.

<sup>69</sup> *Id.* at 289 (quoting *Hanson*, 357 U.S. 235 (1958)).

expected costs on to customers, or, if the risks are too great, severing its connection with the State.<sup>70</sup>

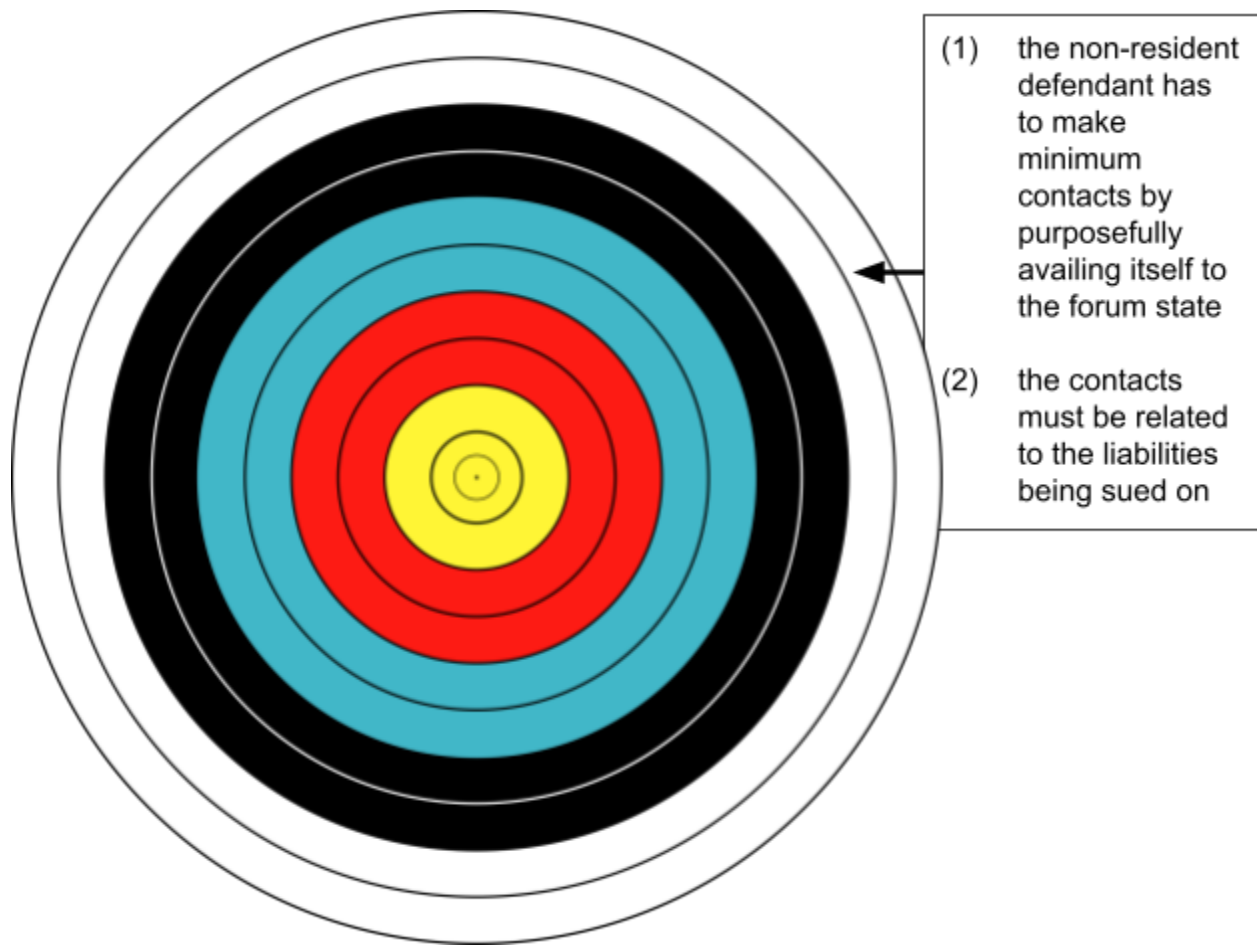
This purposeful availment requirement effectively incorporates the “reasonableness” requirement from *International Shoe* directly into the analysis.

Taking from the opinion in *Volkswagen*, the final “shape” of the specific personal jurisdiction target is revealed. First, the non-resident defendant has to make minimum contacts by purposefully availing itself to the forum state. Second, the contacts must be related to the defendant’s potential liabilities.

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<sup>70</sup> *Id.* at 287.





### **III. The modern specific personal jurisdiction analysis.**

As discussed, a court can exercise specific personal jurisdiction over a defendant when (1) the defendant has "made minimum contacts with [the forum state] by purposefully availing itself of the privilege of conducting activities [in the state]," and (2) the defendant's potential liability arose from or is related to those contacts.<sup>71</sup> While this seems like a straightforward

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<sup>71</sup> *In re Christianson Air Conditioning & Plumbing, LLC*, 639 S.W.3d 671, 679 (Tex. 2022) (citing *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 576 (Tex. 2007)).

analysis, it begs the question: When is the defendant's liability related to its contacts? That is a very broad and blurry question without a clear answer. Nevertheless, finding an answer to this question will define the size of the hypothetical personal jurisdiction target.

Three cases aid in narrowing that view. First, *Moki Mac River Expeditions v. Drugg*; next, *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cnty*; and lastly, *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*.

Courts have taken varying approaches to the relatedness requirement.<sup>72</sup> In 2007, the Texas Supreme Court adopted a new approach in *Moki Mac*, holding that a nonresident defendant's forum contacts will support an exercise of specific jurisdiction when there is a substantial connection between those contacts and the operative facts of the litigation.<sup>73</sup>

Since *Moki Mac*, the United States Supreme Court has decided two cases regarding the relatedness requirement.<sup>74,75</sup> The question for this discussion is what effect, if any, the *Bristol-Myers* and *Ford Motor Co.* opinions have on the relatedness approach for Texas Courts exercising specific personal jurisdiction over nonresident defendants. Moreover, what

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<sup>72</sup> See *Moki Mac* 221 S.W.3d at 579-85 (discussing approaches used by courts to assess the relationship between the defendant's contacts and the litigation).

<sup>73</sup> See *id.* at 585.

<sup>74</sup> See generally *Bristol-Myers Squibb Co.*, 137 S. Ct. 1773 (2017).

<sup>75</sup> *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S. Ct. 1017 (2021).

does the Texas Supreme Court's application of *Ford* in *Luciano v.*

*SprayFoamPolymers.com, LLC* mean for litigators representing non-resident defendants in Texas?

**A. *Moki Mac* & the differing specific personal jurisdiction target sizes.**

In *Moki Mac River Expeditions v. Drugg*, the plaintiffs brought suit against Moki Mac River Expeditions after their thirteen-year-old son passed away while on an expedition with the defendant company.<sup>76</sup> The plaintiffs were residents of Texas. Moki Mac is a Utah-based company, but the guided trip in question took place in Arizona.<sup>77</sup>

The Plaintiff brought a wrongful death action against Moki Mac in Texas state court. Moki Mac specially appeared in order to contest the court's jurisdiction. It argued that the non-resident company's liabilities, in this case, did not arise from or relate to its contacts with Texas.<sup>78</sup> The trial court did not buy that argument from the company and denied the special appearance.<sup>79</sup> At the appellate level, the court of appeals agreed and found that the Texas court could exercise specific jurisdiction.<sup>80</sup>

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<sup>76</sup> *Moki Mac River*, 221 S.W.3d at 573 (Tex. 2007)).

<sup>77</sup> *See id.* at 573.

<sup>78</sup> *See id.* at 573-574.

<sup>79</sup> *See id.* at 573-574.

<sup>80</sup> *See id.* at 574.

The dispute left for the Texas Supreme Court was whether Moki Mac's contacts with Texas were related to its alleged liabilities in the case.<sup>81</sup> The company did not solicit the plaintiff directly.<sup>82</sup> Instead, the plaintiff learned about the company from a friend.<sup>83</sup> Through this friend, the plaintiff viewed brochures that promised the safety of someone who participated in the expedition.<sup>84</sup><sup>85</sup> The plaintiff viewed additional information with similar language via the defendant's website.<sup>86</sup> The accident itself allegedly was a result of the negligence of Moki Mac's employee when guiding the ground in Arizona.<sup>87</sup>

The Supreme Court began by defining definitively that the Texas long-arm statute "... [reaches] as far as the federal constitutional requirements of due process will allow."<sup>88</sup> The Court also described the requirements for exercising specific personal jurisdiction.<sup>89</sup> That a Texas court can exercise specific jurisdiction if the non-resident defendant purposely avails itself to the forum state and "...if the defendant's alleged

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<sup>81</sup> *See id.*

<sup>82</sup> *See id.* at 573.

<sup>83</sup> *See id.*

<sup>84</sup> *See id.*

<sup>85</sup> *See id.* at 585.

<sup>86</sup> *See id.* at 573.

<sup>87</sup> *See id.*

<sup>88</sup> *Id.* at 575 (quoting *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex.1991)).

<sup>89</sup> *See id.*

liability aris[es] out of or [is] related to” an activity conducted within the forum.”<sup>90</sup>

The United State Supreme Court, by 2007, had given “...relatively little guidance as to how closely related a cause of action must be to the defendant's forum activities.”<sup>91</sup> As a result, courts across the country had adopted various approaches in attempt to answer that question.<sup>92</sup> The Texas Supreme Court, however, had not adopted any approach and analyzed each option in order to resolve the split in the Texas appellate courts.<sup>93</sup>

The first test the Court discussed is the “But-For” relatedness test used by the 9th Circuit Court of Appeals.<sup>94</sup> This test holds that “...a cause of action arises from or relates to a defendant's forum contacts when, but for those contacts, the cause of action would never have arisen.”<sup>95</sup> A court applying the “But-For” test would not only consider “... isolated contacts that relate to a specific element of proof or the proximate cause of injury, the but-for analysis considers jurisdictional contacts that occur over the “entire course of events” of the relationship between the defendant, the forum, and the litigation.”

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 579.

<sup>92</sup> *See Moki Mac*, 221 S.W.3d at 579–85 (discussing approaches used by courts to assess the relationship between the defendant's contacts and the litigation).

<sup>93</sup> *See id.*

<sup>94</sup> *See id.* at 580.

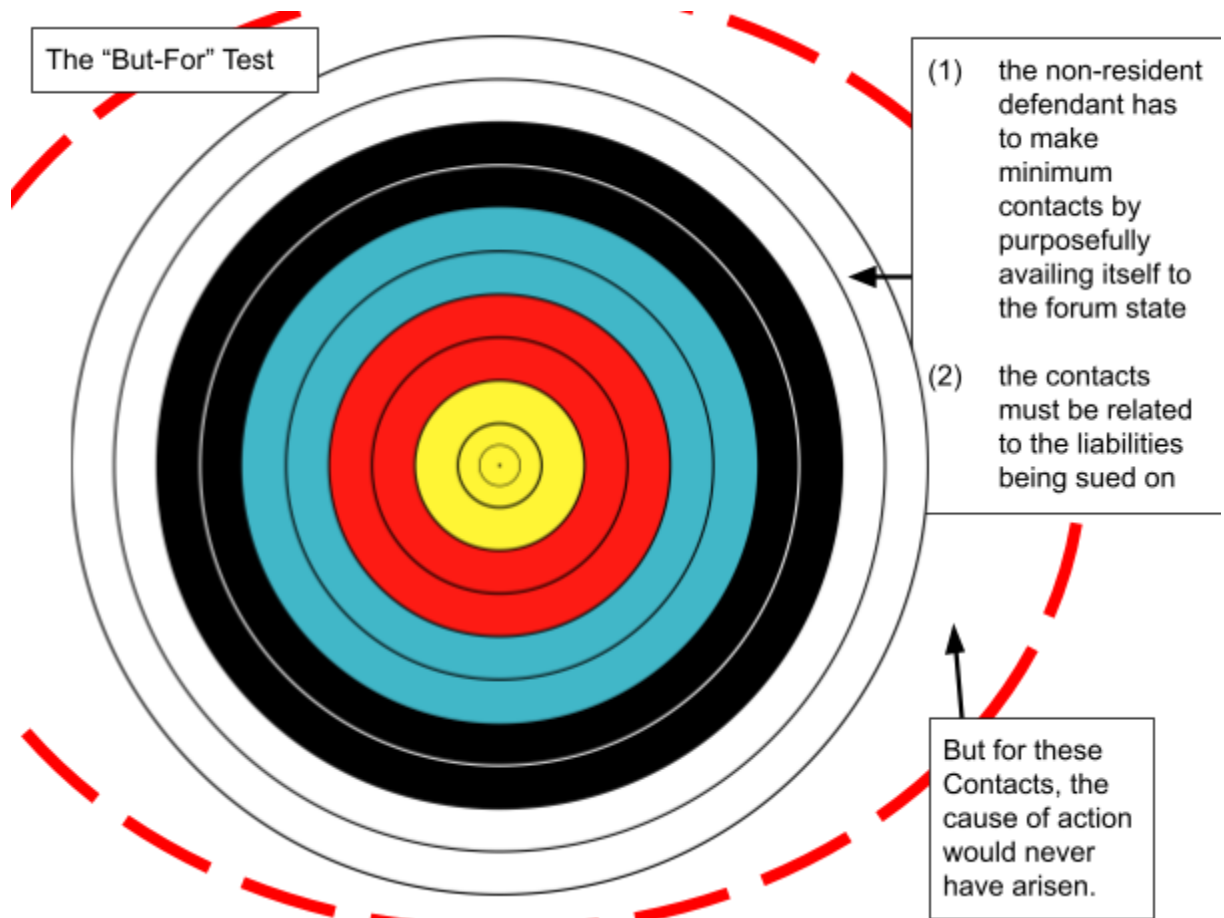
<sup>95</sup> *Id.*

The 9th Circuit’s view is quite an expansive view of a court's power to exercise specific personal jurisdiction. The “ ...‘but for’ requirement ... has in itself no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain.”<sup>96</sup> For example, if Moki Mac had never established its website, the plaintiff would never have read the representations listed there, and the misrepresentation claim, in this case, would never have accrued. It seems like a stretch to say that the development of a website, without the allegedly misrepresented conduct itself, is related to the accrual of a misrepresentation cause of action. However, it would be a but-for-cause. As a result of the seemingly limitless power given to courts over non-resident defendants under the 9th Circuit’s approach, many courts, including the Texas Supreme Court here, have rejected this test as overly broad.<sup>97</sup> The specific personal jurisdiction target receives a significant expansion due to the large amount of power a court has under the “But-for” test.

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<sup>96</sup> *Id.* at 581 (quoting *Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996)).

<sup>97</sup> *See id.*



The next approach discussed by the Texas Supreme Court is the “Substantive-Relevance” test.<sup>98</sup> This test requires that the non-resident defendant’s contacts are substantially relevant or necessary to prove the claim against it.<sup>99</sup> The First, Second, and Third Circuits follow a modified version of this approach called the “Proximate Cause” test.<sup>100</sup> Courts applying

<sup>98</sup> See *id.* 581–82.

<sup>99</sup> See *id.* at 582.

<sup>100</sup> See *id.* at 583.

this version of the test look to whether a contact is the proximate or legal cause of an injury.<sup>101</sup> If the contact is the proximate cause, then it is deemed substantively relevant to a cause of action that arises from it.<sup>102</sup> In contrast to the “But-For” approach, the more restrictive “Proximate Cause” test requires both that the contact be a but-for cause and a foreseeable cause of the injury in question.<sup>103</sup>

The Texas Supreme Court rejected the “Substantive-Relevance/Proximate Cause tests.” While the test has the benefits of being a bright-line take on resolving personal jurisdiction questions, the approach was too narrow.<sup>104</sup> The Court added that a personal jurisdiction analysis should not “... [shift] a court's focus from the relationship among the defendant, the forum, and the litigation to the relationship among the plaintiff, the forum ... and litigation.”<sup>105</sup> An analysis under this approach would require a court to determine whether a particular plaintiff was foreseeable when the defendant made contact with the forum state.<sup>106</sup> The Texas Supreme Court found this fact-intensive inquiry out of place and unduly restrictive of a court looking to exercise jurisdiction.<sup>107</sup>

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<sup>101</sup> *See id.*

<sup>102</sup> *See id.*

<sup>103</sup> *See id.*

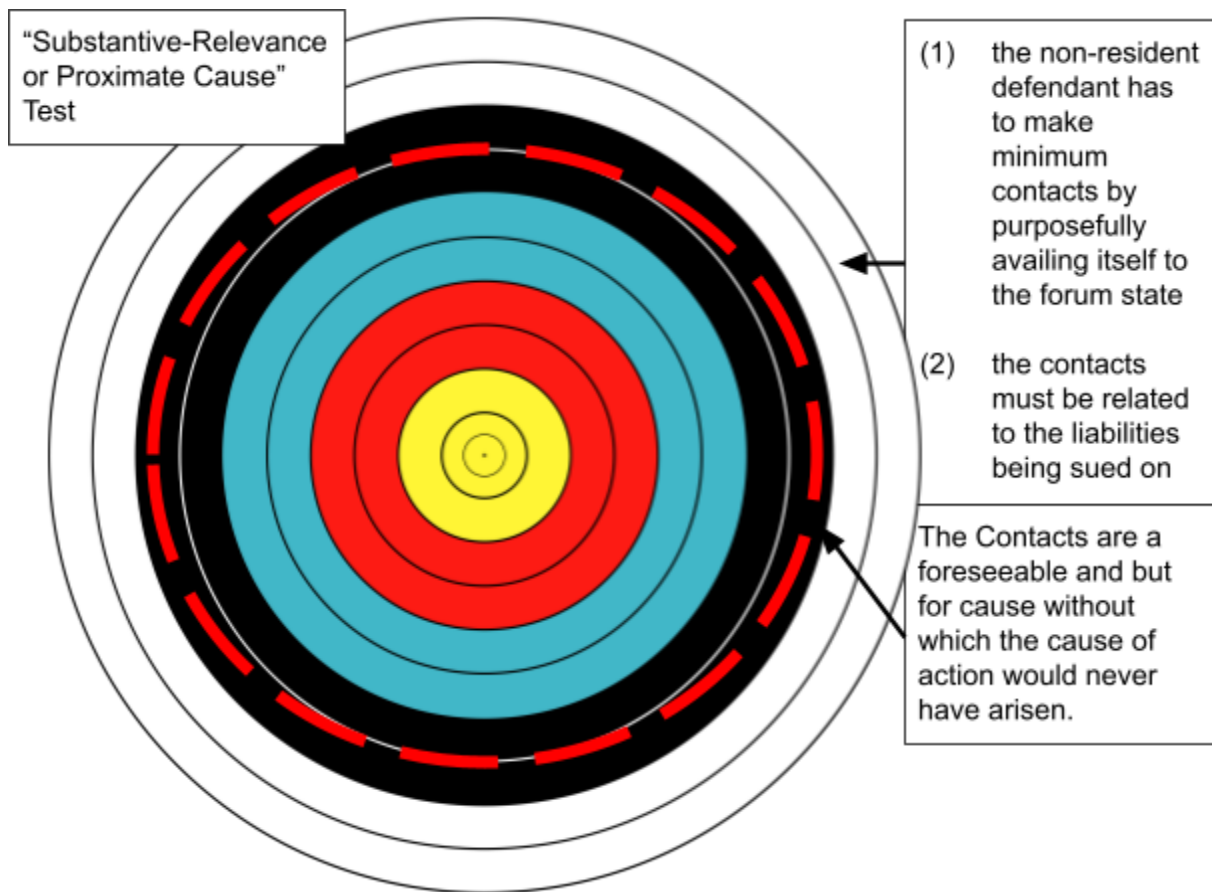
<sup>104</sup> *See id.*

<sup>105</sup> *Id.* at 583 (quoting *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777 (Tex. 2005)).

<sup>106</sup> *See id.*

<sup>107</sup> *See id.*





The next test discussed by the Texas Supreme Court is the “Sliding Scale” relationship approach.<sup>108</sup> At the time of the *Moki Mac* decision, this was the analysis used in California courts.<sup>109</sup> Under this approach, the more contacts made by the non-resident defendant, the less related those contacts have to be to the litigation for a court to exercise jurisdiction.<sup>110</sup>

<sup>108</sup> *See id.*

<sup>109</sup> *Id.*

<sup>110</sup> *See id.*

The developing courts designed the approach with fairness in mind. The logic employed by the California Supreme Court is that “as the relationship of the defendant with the state seeking to exercise jurisdiction over him grows more tenuous, the scope of jurisdiction also retracts, and fairness is assured by limiting the circumstances under which the plaintiff can compel him to appear and defend.”<sup>111</sup> As acknowledged by the Texas Supreme Court, the “Sliding Scale” relationship test avoids the problems of the other tests described above.<sup>112</sup> By allowing for flexibility, the test avoids defining a court's power to haul in a non-resident defendant as overly narrow or overly broad.<sup>113</sup>

However, a significant problem with the test is that “... deciding jurisdiction based on a sliding continuum blurs the distinction between general and specific jurisdiction.”<sup>114</sup> General jurisdiction contemplates “... when a defendant's contacts with the forum state are “continuous and systematic,” allowing the court to exercise jurisdiction over that defendant for causes of action unrelated to the defendant's connections to the state.”<sup>115</sup> The “Sliding Scale” relationship approach taken to its logical conclusion

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<sup>111</sup> *Id.* (quoting *Vons Companies, Inc. v. Seabest Foods, Inc.*, 926 P.2d 1085, 1094 (1996)).

<sup>112</sup> *See id.*

<sup>113</sup> *See id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Eagle Metal Products, LLC v. Keymark Enterprises, LLC*, 651 F. Supp. 2d 577, 584 (N.D. Tex. 2009).

effectively combines both the general and specific jurisdiction analysis.<sup>116</sup> The effect of this convergence is that a non-resident has no way of anticipating whether it has subjected itself to the jurisdiction of a state until a court makes a determination on the sliding scale.<sup>117</sup>

The United States Supreme Court later echoed these problems with the “Sliding Scale” in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*.<sup>118</sup> The approach allowed a California court to exercise jurisdiction over a non-resident defendant with extensive contacts with the forum without identifying any connection between the contacts and the litigation. The Court rejected the approach because for “... specific jurisdiction, a defendant's general connections with the forum are not enough.”<sup>119</sup> For the California test to be a valid analysis of specific personal jurisdiction, it must require a “... connection between the forum and the specific claims at issue.”<sup>120</sup> Without that connection, the approach is, at best, “...a loose and spurious form of general jurisdiction.”<sup>121</sup>

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<sup>116</sup> See *Moki Mac*, 221 S.W.3d at 583.

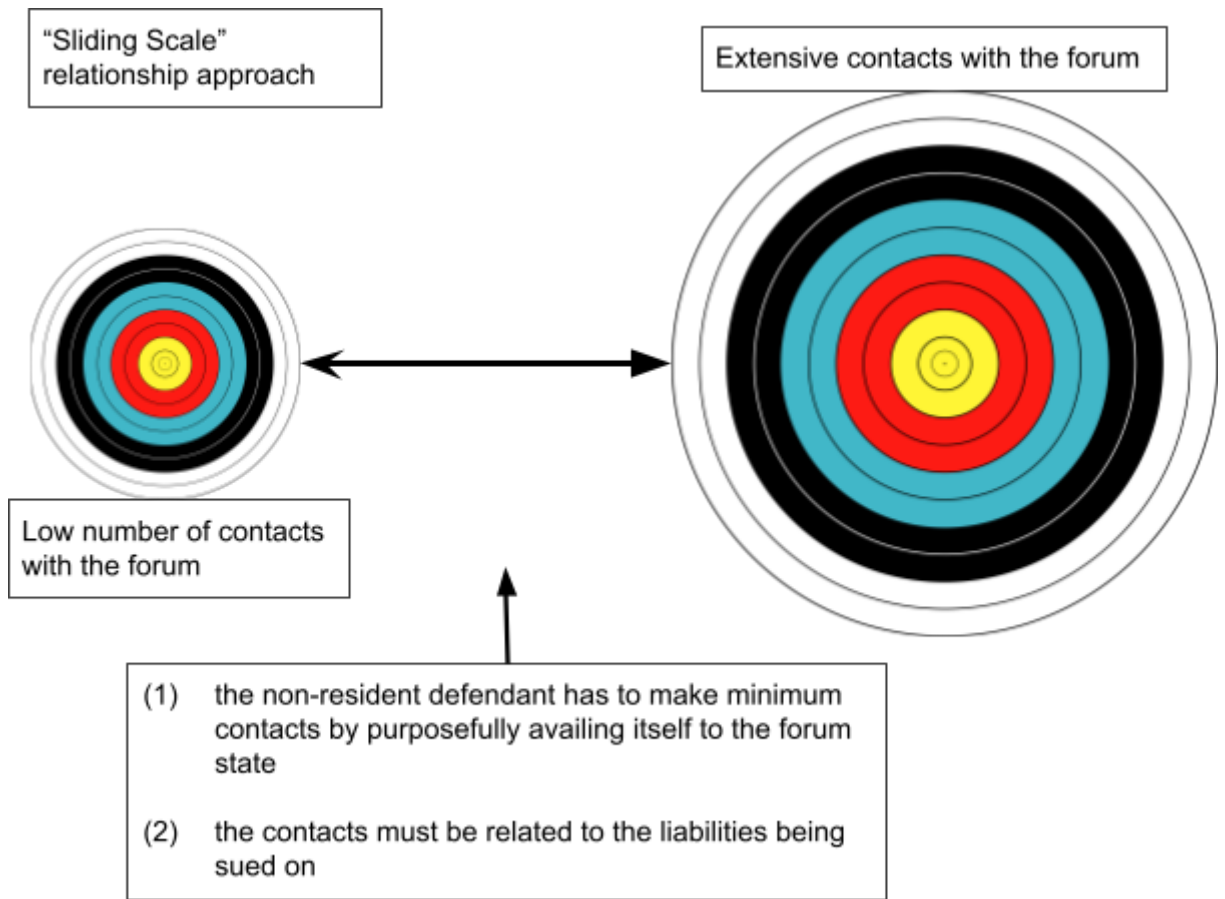
<sup>117</sup> See *id.*

<sup>118</sup> See generally *Bristol-Myers Squibb Co.*, 582 U.S. 255 (2017).

<sup>119</sup> *Id.* at 264.

<sup>120</sup> See *id.* at 265.

<sup>121</sup> *Id.* at 264.



The last approach discussed and ultimately adopted by the Texas Supreme Court in *Moki Mac* is the “Substantial Connection to Operative Facts” approach.<sup>122</sup> With this approach, the court aimed to strike a middle ground between the “But-For” and “Substantive Relevance/Proximate Cause” tests.

The Texas court noted that the United States Supreme Court had not given an explicit degree of relatedness required to satisfy the arising under or related to language.<sup>123</sup> However, there was language from the Supreme Court

<sup>122</sup> *Moki Mac*, 221 S.W.3d at 584.

<sup>123</sup> *Id.*

in *Rush v. Savchuk* that a court could not exercise personal jurisdiction over a non-resident defendant without “significant contacts between the litigation and the forum.”<sup>124</sup> Using this language, the Texas Supreme Court articulated the “Substantial Connection to Operative Facts” approach: “... that for a non-resident defendant's forum contacts to support an exercise of specific jurisdiction, there must be a substantial connection between those contacts and the operative facts of the litigation.”<sup>125</sup>

When analyzing the facts of the case at hand, the court found that “... the operative facts of the [plaintiff’s] suit concern principally the guides' conduct of the hiking expedition and whether they exercised reasonable care in supervising [the child].”<sup>126</sup> The plaintiff here claimed that the injury would not have occurred without the statement Moki Mac River Expeditions made through its brochures and the release it sent.<sup>127</sup> However, the alleged negligence of the company was based on the conduct of the guides and whether or not they exercised reasonable care.<sup>128</sup> Even the misrepresentation claim required looking at the employee's conduct rather than the statements made by the company to the plaintiff.<sup>129</sup> Concluding, the court held that “...

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<sup>124</sup> *Id.* (quoting *Rush v. Savchuk*, 444 U.S. 320, 329 (1980)).

<sup>125</sup> *Id.* at 585.

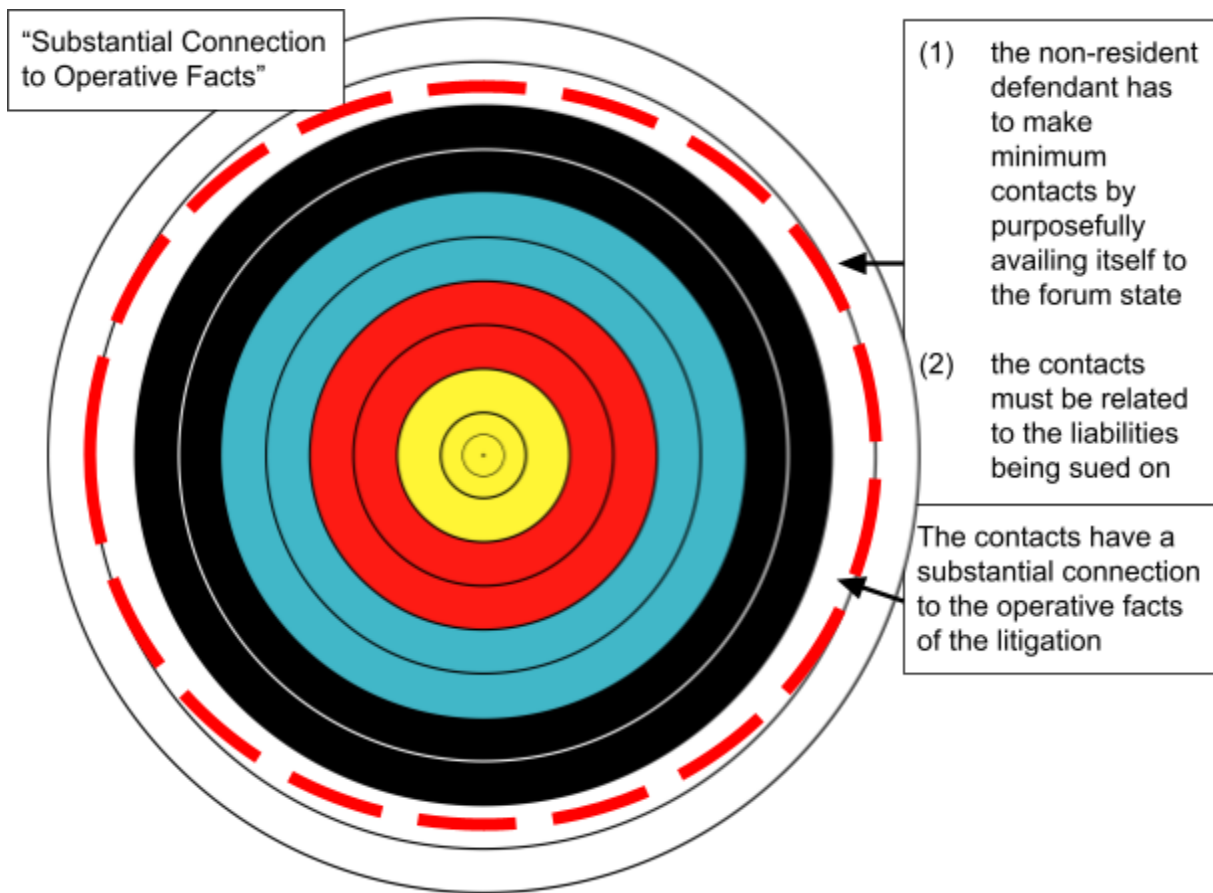
<sup>126</sup> *Id.*

<sup>127</sup> *See id.*

<sup>128</sup> *See id.*

<sup>129</sup> *See id.*

the injuries for which the [plaintiffs] seek recovery are based on [the child's] death on the hiking trail in Arizona, and the relationship between the operative facts of the litigation and Moki Mac's promotional activities in Texas are simply too attenuated to satisfy specific jurisdiction's due-process concerns.”<sup>130</sup>



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<sup>130</sup> *Id.* at 588.

## **B. Ford Motor Company: Turning off the lights.**

*Moki Mac* gives a clear picture of what courts were making of the “relatedness” requirement up to that point. After *Bristol-Myers Squibb Co.*, the “But-For,” “Substantive Relevance/Proximate Cause,” and “Substantial Connection to Operative Facts” are all left standing. Each approach had its pros and cons. However, the validity of each approach was about to be called into question.

In March of 2021, the United States Supreme Court published a new decision that wrestled with the “relatedness” requirement *Ford Motor Company v. Montana Eighth Judicial District Court*.<sup>131</sup> The opinion deals with two nearly identical products liability cases.<sup>132</sup> Although the facts are more or less the same, this discussion will focus on the case from the Montana Supreme Court.

The representative of Markkaa Gullet brought a products liability suit against Ford after Gullet died allegedly due to a defect in a vehicle manufactured and sold by Ford.<sup>133</sup> Gullet purchased the car from another consumer (unaffiliated with Ford) who was located outside of Montana.<sup>134</sup> The car was also initially sold outside of the forum state and was manufactured in

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<sup>131</sup> See generally *Ford Motor Co.*, 141 S. Ct. 1017 (2021).

<sup>132</sup> See *id.* at 1022.

<sup>133</sup> See *id.*

<sup>134</sup> See *id.*

Washington.<sup>135</sup> While driving the car in Montana, the tire and tread separated, and the plaintiff lost control of the vehicle and crashed.<sup>136</sup> The estate subsequently brought suit against Ford in Montana state court. At the state trial court, Ford moved to dismiss the suit for lack of personal jurisdiction.<sup>137</sup> The trial court denied Ford’s motion, and the Montana appellate courts affirmed.<sup>138</sup>

Ford’s argument was simple: its contacts to Montana were not related to Gullet's cause of action.<sup>139</sup> The company had plenty of contacts in Montana.<sup>140</sup> It markets its vehicles there and intentionally seeks to serve the Montana market.<sup>141</sup> In fact, Ford even agreed that it has “purposefully avail[ed] itself of the privilege of conducting activities” in Montana.<sup>142</sup> Instead, Ford’s view is that its contacts, the marketing, and selling of other vehicles were not related to the plaintiff’s product liability because the vehicle that was the subject of the suit was not bought from a Ford dealer in Montana or manufactured in the state.

In this case, the Supreme Court found that Ford was subject to personal jurisdiction. However, applying the approaches discussed to this

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<sup>135</sup> *See id.* at 1023.

<sup>136</sup> *See id.* at 1022.

<sup>137</sup> *See id.* at 1023.

<sup>138</sup> *See id.*

<sup>139</sup> *See id.* at 1026.

<sup>140</sup> *See id.*

<sup>141</sup> *See id.*

<sup>142</sup> *Id.*



point will help decipher the Court's analysis before diving into the opinion.

First, the "But-For" test is satisfied when but for the non-resident defendants contacts, the cause of action would never have arisen.<sup>143</sup> Keeping in mind that this is the most expansive view with "no limiting principle," any number of things could satisfy jurisdiction in this case. It is likely that if the Supreme Court applies the "But-For" test here, it would affirm and find that Montana has jurisdiction over Ford in this case.

Second, the "Substantive-Relevance/Proximate Cause" gives us a different result. The proximate cause version of the test is what Ford is arguing in this case.<sup>144</sup> Its position is that the company's contacts are not a cause of Gullet's death.<sup>145</sup> Instead, under this approach, the company would be subject to personal jurisdiction in the state(s) where the car was sold, manufactured, or designed. Looking at this case through the lens of the "Substantive-Relevance" variant produces the same outcome. Ford's purposeful availment to Montana by selling and marketing its vehicles there is not substantially relevant to this specific products liability case because the car in question was sold outside of the state by a third party.<sup>146</sup>

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<sup>143</sup> See *Moki Mac*, 221 S.W.3d at 580.

<sup>144</sup> See *Ford Motor Co.*, 141 S.Ct. at 1026.

<sup>145</sup> See *id.*

<sup>146</sup> See *id.* at 1029.

Third, Ford still would not be subject to a Montana court when applying the “Substantial Connection to Operative Facts” approach. There must be a substantial connection between Ford’s contacts and the operative facts of the litigation for a Montana court to exercise jurisdiction over it under this approach.<sup>147</sup> The contacts by Ford, in this case, are very similar to the facts in *Moki Mac*. Both companies had contacts with the forum state largely involving marketing.<sup>148</sup><sup>149</sup> Moreover, the *Moki Mac* defendant made contact with the defendant in the forum state.<sup>150</sup> The litigation in each case primarily focused on conduct occurring outside of the forum state.<sup>151</sup><sup>152</sup> In this product liability cause of action, all conduct giving rise to the litigation occurred where the car was manufactured and where the car was sold by Ford, not in Montana.<sup>153</sup> Similarly, in the *Moki Mac* negligence and misrepresentation causes of action, all of the conduct that allegedly violated the standard of care occurred outside of the forum in Arizona.<sup>154</sup> As a result, if the Supreme Court decides to apply the “Substantial Connection to Operative Facts,” it would likely find that Ford’s contacts were not related to the litigation and reverse the Montana Supreme Court.

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<sup>147</sup> *Moki Mac*, 221 S.W.3d at 586.

<sup>148</sup> *See Ford Motor Co.*, 141 S.Ct. at 1026.

<sup>149</sup> *See Moki Mac*, 221 S.W.3d at 585.

<sup>150</sup> *See id.*

<sup>151</sup> *See id.*

<sup>152</sup> *See Ford Motor Co.*, 141 S.Ct. at 1029.

<sup>153</sup> *See id.* at 1026.

<sup>154</sup> *See Moki Mac*, 221 S.W.3d at 585.

Lastly, although explicitly overruled in *Bristol-Myers Squibb Co.*, applying the “Sliding Scale” approach gives an interesting result when compared to the *Ford* Court’s opinion. As a reminder, under this approach, “... as the extent of forum contacts goes up, the degree of relatedness to the litigation necessary to establish specific jurisdiction goes down, and vice versa.”<sup>155</sup> Here, as discussed previously, Ford has a pervasive list of contacts with Montana.<sup>156</sup> Arguably its contacts with the state are more significant than the defendant in *Bristol-Myers Squibb Co.* The connection of those Montana contacts to the litigation is mainly limited to the company's brand and marketing influencing Gullet to purchase a Ford in the first place. However, because of the extent of those contacts, the connection to the litigation required can be slim or even non-existent. As a result, it is likely that if the Supreme Court applied the “Sliding Scale” approach here, it would find that Ford is subject to personal jurisdiction in Montana.

With these applications in mind, Justice Kagan’s opinion seems out of place. The rule at issue here restated by the Court is that a suit must “... arise out of or relate to the defendant's contacts with the forum.”<sup>157</sup> Agreeing with Ford, Justice Kagan explains that the words “arise out of” indeed ask

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<sup>155</sup> *Id.* at 583 (quoting *Vons Companies, Inc. v. Seabest Foods, Inc.*, 926 P.2d 1085, 1094 (1996)).

<sup>156</sup> *See Ford Motor Co.*, 141 S.Ct. at 1026.

<sup>157</sup> *Id.*

about causation.<sup>158</sup> However, the “relate to” language “contemplates that some relationships will support jurisdiction without a causal showing.”<sup>159</sup> In the context of this case, Justice Kagan explains the rule as follows:

So the case is not over even if, as Ford argues, a causal test would put jurisdiction in only the States of first sale, manufacture, and design. A different State's courts may yet have jurisdiction, because of another “activity [or] occurrence” involving the defendant that takes place in the State. And indeed, this Court has stated that specific jurisdiction attaches in cases identical to the ones here—when a company like Ford serves a market for a product in the forum State and the product malfunctions there.<sup>160</sup>

The Court goes on to explain how Ford’s contacts are related to the product liability claim here.<sup>161</sup> Ford has advertised, sold, and serviced the same model of vehicle in the forum state that Plaintiff alleges caused the harm.<sup>162</sup> And as a result, has “systematically served” the Montana market for the vehicles that the Plaintiff alleges caused the harm.<sup>163</sup> So therefore, “... there is a strong ‘relationship among the defendant, the forum, and the litigation’—the “essential foundation” of specific jurisdiction.”<sup>164</sup>

The Court’s analysis most closely resembles the “Sliding Scale” test. Ford’s Montana contacts pointed out by the court are the advertisements,

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<sup>158</sup> *See id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 1026–1027.

<sup>161</sup> *See id.* at 1028.

<sup>162</sup> *See id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

selling of other Ford vehicles of the same model, and servicing those models.<sup>165</sup> All of which is likely done frequently all over the State. But, as articulated in *Bristol-Myers Squibb Co.*, “... for specific jurisdiction, a defendant's general connections with the forum are not enough.”<sup>166</sup> The defining characteristic of this case that makes Ford amenable to suit is that the alleged injury occurred in the forum state.<sup>167</sup> However, the Court here has not identified the “... connection between the forum and the specific claims at issue.”<sup>168</sup>

Justice Kagan unsatisfactorily concludes that “the connection between the plaintiffs’ claims and Ford's activities in those States—or otherwise said, the relationship among the defendant, the forum[s], and the litigation—is close enough to support specific jurisdiction.”<sup>169</sup> But what is close enough? Justice Gorsuch, in his concurrence, sums up the frustration with this decision:

Where this leaves us is far from clear. For a case to “relate to” the defendant's forum contacts, the majority says, it is enough if an “affiliation” or “relationship” or “connection” exists between them. But what does this assortment of nouns mean? Loosed from any causation standard, we are left to guess. The majority promises that its new test “does not mean anything goes,” but that hardly tells us what does. In some cases, the

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<sup>165</sup> *See id.*

<sup>166</sup> *Bristol-Myers Squibb Co.*, 582 U.S. at 265 (2017).

<sup>167</sup> *See id.* at 1028.

<sup>168</sup> *See id.*

<sup>169</sup> *Ford Motor Co.*, 141 S.Ct. at 1032 (internal quotations omitted).

new test may prove more forgiving than the old causation rule. But it's hard not to wonder whether it may also sometimes turn out to be more demanding. Unclear too is whether, in cases like that, the majority would treat causation and “affiliation” as alternative routes to specific jurisdiction, or whether it would deny jurisdiction outright.<sup>170</sup>

### C. Luciano: Shooting in the dark.

Where the law stands after *Ford* is hard to parse. Even Justice Gorsuch admits that these cases leave him with more questions than answers.<sup>171</sup> From a Texas perspective, it is hard to reconcile the application of the “Substantial Connection to Operative Facts” approach to the facts of *Ford* with the Supreme Court's decision. However, looking at the test and the *Ford* analysis outside of the context of the case, it seems that the two are not in conflict. No causal link is necessarily required in either the test or the Supreme Court's articulation of the rule.<sup>172</sup><sup>173</sup> However, the Supreme Court in *Ford* based its analysis on contacts unrelated to the products liability cause of action at issue.<sup>174</sup>

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<sup>170</sup> *Id.* at 1034–1035 (Gorsuch J. concurring in judgment) (internal citation omitted).

<sup>171</sup> *Id.* at 1039 (Gorsuch J. concurring in judgment).

<sup>172</sup> *See id.* at 1029.

<sup>173</sup> *See Moki Mac*, 221 S.W.3d at 585.

<sup>174</sup> *Ford Motor Co.*, 141 S.Ct. at 1032 (Gorsuch J. concurring in judgment) (notes that the majority could have based its decision on a causal link “The majority stresses that the Montana and Minnesota plaintiffs before us “might” have purchased their cars because of Ford's activities in their home States. They “may” have relied on Ford's local advertising. And they “may” have depended on Ford's promise to furnish in-state servicers and dealers. If the majority is right about these things, that would be more than enough to establish a but-for causal link between Ford's in-state activities and the plaintiffs’ decisions to purchase their allegedly defective vehicles.”).

The Texas Supreme Court addressed the *Ford* opinion in *Luciano v. SprayFoamPolymers.com, LLC*.<sup>175</sup> In *Luciano*, the plaintiffs purchased a spray foam insulation service from a Texas-based installation company.<sup>176</sup> After allegedly suffering injuries from the insulation, the plaintiffs sued the non-resident insulation manufacturer SprayFoam.<sup>177</sup> SprayFoam filed a special appearance which the trial court denied.<sup>178</sup> The court of appeals reversed, holding that the plaintiffs had not established personal jurisdiction over SprayFoam.<sup>179</sup>

The *Luciano* Court starts and ends its discussion of *Ford* by restating the Supreme Court's analysis.<sup>180</sup> The Court refrains from commenting on the *Ford* analysis other than citing *Moki Mac* when restating the *Ford* Court's conclusion.<sup>181</sup> Importantly, the *Luciano* opinion carefully lays out the language in Justice Kagan's opinion that both accidents at issue in *Ford* happened in the forum state.<sup>182</sup>

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<sup>175</sup> See *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 14-18 (Tex. 2021).

<sup>176</sup> *Id.* at 6.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 15.

<sup>181</sup> *Id.* at 16 (“Because the United States Supreme Court has confirmed that due process does not mandate a causation-only approach, we reject SprayFoam's narrow conception of the relatedness requirement. See *Moki Mac*, 221 S.W.3d at 582–83 (rejecting a substantive-relevance or proximate-cause approach”).

<sup>182</sup> See *id.*

The *Luciano* Court relied on two main points in finding that the trial court could exercise personal jurisdiction over the non-resident company SprayFoam.<sup>183</sup> First, the Court focused on the location of the plaintiff’s injury. While the Court did not find a separate requirement for the plaintiff’s residence, it did find that “when [a] lawsuit arises from an injury which occurred in the forum state [the plaintiff’s residence] is a relevant part of the relatedness prong of the analysis.”<sup>184</sup> Additionally, the Court notes that a lack of residence will not defeat jurisdiction if the defendant’s contacts independently meet the requirements.<sup>185</sup> Secondly, the Court found that SprayFoam “served a market” in Texas for the spray foam that allegedly caused the plaintiff’s injury. In conclusion, the Court found that

In light of the alleged injury in Texas giving rise to the lawsuit and evidence of additional conduct evincing an intent to serve the Texas market, we hold that the evidence supports the trial court's conclusion that SprayFoam has sufficient minimum contacts to support specific jurisdiction in Texas.<sup>186</sup>

Although the *Luciano* Court cites *Moki Mac*, it is hard to say how the case is not implicitly overruled by *Luciano*.<sup>187</sup> Had the Court still relied on *Moki Mac*, it would have been required to find a substantial connection between SprayFoam’s contacts with Texas and the operative facts of the

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<sup>183</sup> *See id.* at 16–17.

<sup>184</sup> *Id.* at 16–17 (internal citations omitted).

<sup>185</sup> *Id.* at 16–17.

<sup>186</sup> *Id.* at 17.

<sup>187</sup> *Id.* at 16.



litigation. Instead, the Court turned away from the *Moki Mac* analysis and instead looked at the defendant's connection to the forum as a whole and the location of the plaintiff's injury.<sup>188</sup>

#### IV. Conclusion

After traveling through the case law, it is sometimes hard to remember that a strong relationship between the defendant, the forum, and the litigation is the essential foundation of specific jurisdiction.<sup>189</sup> That core principle is why the development of this analysis is so important. Lurking behind all of the messy language is the fact that the definition of these words also defines a court's power to make defendants come to court and defend themselves as an advocate, which should not be lost on you.

In a Texas court, an advocate for a non-resident defendant should cling to that core principle. Attorneys representing out-of-state defendants should be terrified by this language from *Luciano*:

While plaintiff's residence in the forum State is not a separate requirement for specific jurisdiction and *lack of residence will not defeat jurisdiction established on the basis of defendant's contacts* that the lawsuit arises from an *injury which occurred in the forum state* is a relevant part of the relatedness prong of the analysis.<sup>190</sup>

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<sup>188</sup> *See id.* at 17.

<sup>189</sup> *Ford Motor Co.*, 141 S. Ct. at 1019.

<sup>190</sup> *Luciano*, 625 S.W.3d at 16–17 (internal citations omitted) (emphasis added).

Ultimately, *Ford* and *Luciano* are focused more on the plaintiff than on the defendant's contacts. The emphasized language is a lose-lose for non-resident defendants in a doctrine created to protect non-resident defendants. In advocating for a defendant, an advocate should still cite *Moki Mac*. While *Ford* and *Luciano* likely overrule that precedent, there may still be a way for the Texas Supreme Court to reconcile these cases. Until then, the specific personal jurisdiction analysis remains as tangled as ever. And we are just shooting in the dark.