THE NEXUS REQUIREMENT AFTER *BRISTOL-MYERS*: DOES "ARISE OUT OF OR RELATE TO" REQUIRE CAUSATION?

Levi M. Klinger-Christiansen[*]

I. INTRODUCTION

In 2011, the Supreme Court took on the issue of minimum contacts personal jurisdiction for the first time since 1988. The two cases it heard, *J. McIntyre Machinery v. Nicastro* and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, resulted in opinions limiting the scope of both specific and general jurisdiction.[1] This trend of diminishing the Court's minimum contacts jurisprudence has continued throughout the decade, leading to the Court's 2017 opinion in *Bristol-Myers Squibb Co. v. Superior Court of California*.[2] The *Bristol-Myers* opinion also marked a first. It served as the first time the Court analyzed the "nexus requirement" of specific jurisdiction since the Court recognized the difference between general and specific jurisdiction in *Helicopteros De Colombia v. Hall* over thirty years earlier.[3] Specifically, the question of when a plaintiff's claim, "arise[s] out of or relate[s] to the [defendant's] activities in the forum state."[4]

Bristol-Myers presented an opportunity for the Supreme Court to provide much needed clarification to the nexus requirement after the Court left the meaning of the nexus requirement rather unclear in *Helicopteros*.

[*] J.D. Candidate, 2020, Seton Hall University School of Law; B.A, 2017, The College of New Jersey. I would like to thank Professor Denis McLaughlin for his insightful and careful guidance through the process of writing this Comment. Additionally, thank you Mom, George, and Jackie for your unconditional love and support.

[1] J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873 (2011); Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011).

[2] Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773 (2017).

[3] Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 414 (1984). To assert specific jurisdiction a court must first find that the defendant had "certain minimum contacts with [the forum]." *Id.* (quoting Int'l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945)). Second, the court must also find the "cause of action [to] arise out of or relate to [the defendant's] activities in the forum state." *Id.* Some courts and commenters use the term "nexus requirement" to refer to the second requirement; this Comment will borrow that language. *See, e.g.*, Shoppers Food Warehouse v. Moreno, 746 A.2d 320, 332 (D.C. 2000); Linda Sandstrom Simard, *Meeting Expectations: Two Profiles for Specific Jurisdiction*, 38 IND. L. REV. 343, 348 (2005).

[4] *Helicopteros*, 466 U.S. at 414.

As a result, courts and commenters have provided various interpretations of the nexus requirement's meaning since *Helicopteros.* Ultimately, *Bristol-Myers* did not clarify every aspect of the nexus requirement's meaning, leaving many competing interpretations untouched. On the other hand, despite the Court's insistence that it decided *Bristol-Myers* on "settled principles of personal jurisdiction," this Comment suggests that the opinion narrowed the understanding of what the nexus requirement means.[5]

This Comment argues that *Bristol-Myers* has largely narrowed the nexus requirement to require at-least but-for causation between the plaintiff's claim and the defendant's forum contacts in most situations;[6] however, not in every situation. Language from *Bristol-Myers* creates space for a narrow circumstance in which a non-causal connection between the plaintiff's claim and the defendant's forum contacts may remain viable. This narrow circumstance falls directly in line with Professor Sandstrom Simard's concept of "hybrid jurisdiction."[7] Furthermore, not only does this approach remain potentially viable, but the Court should also embrace it in the interest of fairness.[8]

Because an in-depth understanding of the nexus requirement is necessary to understand the implication of *Bristol-Myers*, Part II of this

---

[5] *Bristol-Myers*, 137 S. Ct. at 1783.

[6] But-for causation "is satisfied when the plaintiff's claim would not have arisen in the absence of the defendant's contacts" with the forum state. 16 *Moore's Federal Practice*, § 108.42(7)(b) (Mathew Bender 3d Ed.). Courts have different approaches on what kind of causation between the defendant's contacts and the plaintiff's injury the Due Process Clause requires. *See infra* Sec. III. A and B.

[7] Linda Sandstrom Simard, *Hybrid Personal Jurisdiction: It's Not General Jurisdiction, or Specific Jurisdiction, but is it Constitutional?*, CASE W. RES. L. REV. 559 (1998). Professor Sandstrom Simard describes "hybrid jurisdiction" as a combination of the "requirements of general jurisdiction and specific jurisdiction without satisfying either type of jurisdiction completely," though ultimately arguing that "hybrid jurisdiction may satisfy the underlying goals of specific jurisdiction and thus be constitutional." *Id.* at 563. This Comment suggests that the *Bristol-Myers* opinion has further bolstered the argument for hybrid jurisdiction's constitutionality.

[8] On January 17, 2020, the United States Supreme Court granted petitions for certiorari on two State Supreme Court cases coming out of Minnesota and Montana. *See* Bandemer v. Ford Motor Co., 931 N.W.2d 744 (Minn. 2019), *cert. granted*, 2020 WL 254152 (U.S. Jan. 17, 2020) (No. 19-369); Ford Motor Co., v. Mont. Eighth Jud. Dist. Ct., 443 P.3d 407 (Mont. 2019), *cert. granted*, 2020 WL 254155 (U.S. Jan. 17, 2020) (No. 19-368). The resolution of these two cases, *Ford Motor Company v. Montana Eighth Judicial District Court* and *Bandemer v. Ford Motor Co.*, which the United States Supreme Court has consolidated into one case, will necessarily require answering the question posed by this Comment: does "arise out of or relate to" require causation? Significantly, both the Minnesota and Montana Supreme Courts, in their respective opinions, accepted the viability of a non-causal test for the nexus requirement, with both opinions generally tracking the function of hybrid jurisdiction. *See Bandemer*, 931 N.W.2d at 751–55; *Ford*, 443 P.3d at 414–17. Thus, the Supreme Court now has the opportunity to embrace hybrid jurisdiction as a valid test under the nexus requirement, which this Comment suggests would be a prudent decision. *See infra* Sec. V.B.

Comment will provide an overview of the minimum contacts and nexus requirements of specific jurisdiction. This section will look to Justice Brennan's dissent in *Helicopteros* as a guiding framework for the rest of the Comment. Next, because the Court left the nexus requirement unclear in *Helicopteros,* Part III will survey the various interpretations that have arisen both before and after *Helicopteros*. This is also necessary for understanding the landscape that *Bristol-Myers* has now re-shaped. Part IV will then provide a review of the *Bristol-Myers* opinion. Part V will provide an analysis of what *Bristol-Myers* has changed. Part VI will argue why the Court should embrace hybrid jurisdiction. Part VII will discuss questions that require further examination if the Court does embrace hybrid jurisdiction. Finally, Part VIII will summarize and conclude.

II. OVERVIEW OF SPECIFIC JURISDICTION

A. *The Minimum Contacts Requirement*

In *International Shoe v. Washington,* the Supreme Court first established the "minimum contacts" test as a constitutionally valid basis for acquiring personal jurisdiction over a defendant.[9] The Court stated, "due process requires only that in order to subject a defendant to a judgment in *personam,* if he be not present within the territory of the forum, he have certain minimum contacts with [the forum]."[10]

In *Hanson v. Denckla,* the Court further emphasized that in order to acquire personal jurisdiction through minimum contacts "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws."[11] In effect, this requirement means, "the unilateral activity of [plaintiffs] who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."[12] In *Burger King Corp. v. Rudzewicz*, the Court further noted that "whether the defendant purposefully established 'minimum contacts' in the forum State" is the "constitutional touchstone" to a court's valid assertion of personal jurisdiction through minimum contacts.[13] This minimum contact requirement constitutes the first requirement of specific personal jurisdiction.[14]

---

[9] Int'l Shoe Co. v. Wash., 326 U.S. 310, 316 (1945) (emphasis added).

[10] *Id.*

[11] Hanson v. Denckla, 357 U.S. 235, 253 (1958).

[12] *Id.*

[13] Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (citing *Int'l Shoe*, 326 U.S. at 316.).

[14] *See* Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 413 n.8 (1984) (stating that due process requires "'certain minimum contacts with [the forum]'" and then

B. *The Nexus Requirement*

Starting with *International Shoe*, the Supreme Court hinted at the existence of two types of personal jurisdiction through minimum contacts.[15] The Court explained:

> [T]o the extent that a [defendant] exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the [defendant] to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.[16]

The Court also stated, however, that "there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities."[17] Hence, the Court suggested two situations in which a forum may be able to assert personal jurisdiction by means of minimum contacts: one where the claim is connected to the defendant's activity in the forum and one where it is not.[18] Professors Von Mehren and Trautman defined the former as "specific jurisdiction" and the latter as "general jurisdiction."[19]

The Supreme Court officially adopted Professors Von Mehren and Trautman's framework in *Helicopteros*.[20] The case was a wrongful death action resulting from a helicopter crash in Peru that killed four American citizens.[21] The defendant helicopter company, Helicol, was a Colombian corporation that provided helicopter transportation in South America for a pipeline project by the decedents' employer.[22] The defendant purchased the helicopter involved in the crash in Texas.[23] The defendant and the decedents' employer also negotiated the helicopter transportation contract in Texas that resulted in the fatal crash in Peru.[24] Furthermore, the

noting that when such contacts are coupled with the nexus requirement "the State is exercising 'specific jurisdiction' over the defendant." (quoting *Int'l Shoe*, 326 U.S. at 319.)).

15 *See Int'l Shoe*, 326 U.S. at 319.

16 *Id.*

17 *Id.* at 318.

18 *See id.*

19 Arthur Von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966).

20 Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 414 nn.8–9 (1984).

21 *Id.* at 410.

22 *Id.* at 409.

23 *Id.* at 426 (Brennan, J., dissenting).

24 *Id.* at 410–11.

defendant "sent prospective pilots to Fort Worth[, Texas] for training," and the pilot who crashed the helicopter in question received his training in Texas.[25] The families of the American citizens sued the foreign helicopter company in Texas state court.[26]

The Court used this case as an opportunity to adopt Professors Von Mehren and Trautman's concepts of "specific" and "general" jurisdiction.[27] The Court stated that "when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising 'specific jurisdiction' over the defendant."[28] Conversely, the Court then explained that "when a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be exercising 'general jurisdiction' over the defendant."[29]

With the adoption of Professors Von Mehren and Trautman's framework, the nexus requirement officially entered the Court's minimum contacts jurisprudence and serves as the second requirement for specific jurisdiction.[30] The Court, however, did not go any further in attempting to clarify what the nexus requirement actually means; rather, "[b]ecause the parties [did not] argue[] any relationship between the cause of action and Helicol's contacts with the State of Texas [the Court] assert[ed] no 'view' with respect to that issue."[31] The Court only considered "whether [Helicol's contacts with Texas] constitut[ed] the kind of continuous and systematic general business contact" necessary to assert general jurisdiction, and ultimately held that Helicol's contacts were not sufficient to assert general jurisdiction.[32] Thus, the Court declined to answer:

> (1) whether the terms 'arising out of' and 'related to' describe different connections between a cause of action and a defendant's contacts with a forum, and (2) what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection

---

[25] *Id.* at 411; *id.* at 426 (Brennan, J., dissenting). Helicol had other contacts with Texas including the purchasing of "helicopters (approximately 80% of its fleet), spare parts, and accessories for more than $4 million from Bell Helicopter Company in Fort Worth." *Id.* at 411.

[26] *Helicopteros*, 466 U.S. at 412.

[27] *Id.* at 414 nn.8–9.

[28] *Id.* at 414 n.8 (citing Von Mehren & Trautman, *supra* note 19, at 1144–64).

[29] *Id.* at 414 n.9 (citing Von Mehren & Trautman, *supra* note 19, at 1144–64).

[30] *See id.* at 414.

[31] *Id.* at 415 n.10. Justice Brennan contested this finding. *Id.* at 425 n.3 (Brennan, J., dissenting) ("Nor do I agree with the Court that the respondents have conceded that their claims are not related to Helicol's activities within the State of Texas.").

[32] *Helicopteros*, 466 U.S. at 416.

exists.[33]

This Comment seeks to pose potential answers to both of those questions. Justice Brennan's dissent, in which he argued that Texas could have asserted specific jurisdiction, provides a suitable starting point for this task.[34] On the question of specific jurisdiction, Justice Brennan first took issue with the majority for not considering "any distinction between contacts that are 'related to' the underlying cause of action and contacts that 'give rise' to the underlying cause of action."[35] In distinguishing the two phrases, Justice Brennan agreed that the "cause of action did not formally 'arise out of' specific activities initiated by Helicol in the State of Texas."[36]

Justice Brennan, however, argued that the "relate to" phrase could mean something much different. Though not defining the parameters of the phrase "relate to," Justice Brennan's application of the phrase to the facts of *Helicopteros* suggested he viewed the phrase as allowing specific jurisdiction when there is but-for causation between the plaintiff's claim and the defendant's contacts with the forum.[37] This is so because Justice Brennan noted that the pilot involved in the crash acquired his training in Texas, Helicol negotiated the contract in Texas, and Helicol bought the particular helicopter involved in the Peru crash in Texas.[38] From these contacts Justice Brennan argued "[t]his is simply not a case, therefore, in which a state court has asserted jurisdiction over a nonresident defendant on the basis of wholly unrelated contacts with the forum."[39]

Unfortunately, aside from finding that the Helicol's contacts in Texas did in fact "relate to" the cause of action, Justice Brennan did not further

---

[33] *Id.* at 415 n.10.

[34] *Id.* at 424 (Brennan, J., dissenting).

[35] *Id.* at 425.

[36] *Id.* Justice Brennan did not explicitly define what he meant for a "cause of action to formally ar[i]se out of the defendant's contacts with the State," but his criticism of limiting specific jurisdiction to such instances shed light on his formulation of the term. *Id.* He argued that "limiting specific jurisdiction of a forum" to causes of action that formally arise out of a defendant's contacts with the forum "would subject constitutional standards under the Due Process Clause to the vagaries of the substantive law or pleading requirements of each State." *Id.* In criticizing such a result, Justice Brennan noted that "if the respondents had simply added an allegation of negligence in the training provided for the Helicol pilot, then presumably the [majority] would [have] concede[d] that the specific jurisdiction of the Texas courts was applicable." *Id.* at 427.

[37] *Id.* at 425–26.

[38] *Helicopteros*, 466 U.S. at 426.

[39] *Id.* Justice Brennan also argued that the jury in the original Texas trial had "specifically found that 'the pilot failed to keep the helicopter under proper control,' [and] . . . that 'such flying was negligence' . . . ." *Id.* at 426 n.4. This further solidifies that Justice Brennan's theory of "relate to" in this particular case was based on broad but-for causation.

clarify or promulgate an operative test to define any parameters of how far a court can go in finding that a defendant's contacts with a forum "relate to" the plaintiff's injury. Therefore, while Justice Brennan's dissent provided some analysis of the nexus requirement and a way of separating the requirement's two key phrases, the dissent still left the nexus requirement extremely broad and unclear. The Court did not analyze the application of the nexus requirement again until *Bristol-Myers*.[40]

III. VARYING INTERPRETATIONS OF THE NEXUS REQUIREMENT

The Supreme Court has never clarified what it means for a plaintiff's claim to "arise out of or relate to" the defendant's contacts with the forum State. As a result, lower courts and commenters have filled the void with varying interpretations of the nexus requirement. This Comment will use Justice Brennan's separation of "arise out of" and "relate to" as a way of categorizing these different interpretations. Under Justice Brennan's lens, most of these interpretations can be classified as an application of "relate to," as opposed to "arise out of." Hence, most of these interpretations allow a court to assert personal jurisdiction over a defendant even when an element of a claim does not formally "arise out of" the defendant's contacts with the forum State as Justice Brennan's articulation of "arise out of" requires.[41] This expansion of "relate to" is largely in response to an issue Professor Richman aptly described:

> An issue that surfaces from time to time is whether jurisdiction is proper in a case that falls between these two paradigms [general and specific jurisdiction]: one where the defendant has substantial contacts with the forum, but not so many as to justify general jurisdiction, and where the plaintiff's cause of action does not arise out of the defendant's forum activities, although it is not totally unrelated to them.[42]

Courts and commenters have tackled this issue by applying various interpretations of what the nexus requirement can mean. This section discusses the three various interpretations of the nexus requirement, which include (A) the two causation approaches, (i) but-for causation and (ii)

---

[40] To be sure, the Court did describe the nexus requirement in both *Goodyear* and *Daimler AG v. Bauman*. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 923–24 (2011); Daimler AG v. Bauman, 571 U.S. 117, 127 (2014). *Bristol-Myers*, however, was the first time the Court's holding required an application of the nexus requirement. *See infra* Sec. IV.

[41] *See Helicopteros*, 466 U.S. at 424. Note that courts do not necessarily rely on Justice Brennan's framework, often referring to "arise out of or relate to" as one standard. This Comment simply uses Justice Brennan's framework as a useful guide and classification system.

[42] William M. Richman, *A Sliding Scale to Supplement the Distinction Between General and Specific Jurisdiction*, 72 CALIF. L. REV. 1328, 1337 (1984).

proximate causation, and (B) the similarity approach.[43] This section then considers two scholarly contributions toward analyzing the nexus requirement: (C) the sliding scale, and (D) hybrid jurisdiction.

A. *The Causation Approaches*

The Courts of Appeals for each of the federal circuits use some form of causation as the basis of their nexus requirement analysis.[44] Courts and commenters have generally narrowed the causal tests into two major categories: but-for causation and proximate causation.[45] As noted above, but-for causation is satisfied when the plaintiff's claim would not have arisen but-for the defendant's contacts with the forum.[46] Proximate causation, on the other hand, requires a closer connection between the plaintiff's injuries and the defendant's contacts with the forum; in many ways it more closely resembles Justice Brennan's formulation of "arise out of."

1. But-for causation

But-for causation uses a relaxed causal test.[47] As the name suggests, "this standard is satisfied when the plaintiff's claim would not have arisen in the absence of the defendant's contacts."[48] Hence, but-for causation resembles the analysis Justice Brennan performed in his *Helicopteros* dissent.[49] The Ninth Circuit is the primary adherent to this test.[50]

The Ninth's Circuit's analysis in *Shute v. Carnival Cruise Lines* provides a classic example of but-for causation.[51] The case involved an injury the plaintiff sustained while on a cruise.[52] The plaintiff purchased a ticket for the cruise through a sales agent in the plaintiff's home state of Washington; while on the cruise in international waters off the coast of

---

[43] Bender, *supra* note 6 ("Three general approaches have emerged."). These approaches are but-for causation, proximate causation, and the "substantial connection" or the "discernable relationship standard." *Id.* Under the third approach, "causation is of no special importance." *Id.* I have labeled the third approach the "similarity approach."

[44] *See id.*

[45] *Id.*

[46] *Id.*

[47] O'Connor v. Sandy Lane Hotel Co., 496 F.3d 312, 319 (3d Cir. 2007) ("A . . . more relaxed test requires only 'but-for' causation.").

[48] *Id.* (citing Shute v. Carnival Cruise Lines, 897 F.2d 377, 385–86 (9th Cir. 1990)).

[49] *See* Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 425–26 (1984) (Brennan, J., dissenting).

[50] Shute v. Carnival Cruise Lines, 897 F.2d 377, 385 (9th Cir. 1990) *rev'd on other grounds*, 499 U.S. 585 (1991); Bender, *supra* note 6.

[51] *See Shute*, 897 F.2d at 379.

[52] *Id.*

Mexico, the plaintiff slipped and injured herself.[53] The plaintiff sued Carnival Cruise in the federal district court in Washington State.[54] Carnival Cruise argued that while it had contacts in Washington, the claim did not "arise out of or relate to" those contacts because the injury occurred in international waters off the coast of Mexico.[55] The district court agreed and dismissed the case on grounds of lack of personal jurisdiction.[56] The Ninth Circuit reversed.[57]

In its personal jurisdiction analysis, the Ninth Circuit first asserted that Carnival Cruise had sufficient minimum contacts with the state of Washington, as Carnival Cruise reached out to the individuals in the state to sell cruise tickets, advertised on local media, and promoted its cruises through in-state travel agents.[58]

The Ninth Circuit then moved to its analysis of the nexus requirement.[59] The court first rejected the "stringent standard of causation" used by the First and Eighth Circuits, which Carnival Cruise urged the Ninth Circuit to employ as well.[60] Instead, the court applied the but-for causation test, finding that "[i]n the absence of Carnival's activity, the Shutes would not have taken the cruise, and Mrs. Shute's injury would not have occurred."[61] The court found a substantial nexus because "[i]t was Carnival's forum-related activities that put the parties within 'tortious striking distance' of one another."[62] Under Justice Brennan's framework, this test necessarily falls under "relate to," because it does not require that an element of the claim—such as duty, breach or proximate causation—to

53 *Id.*

54 *Id.* at 377.

55 *See id.* at 379.

56 *Id.*

57 *Shute*, 897 F.2d at 379.

58 *Id.* at 382 ("[I]t is difficult to conclude that Carnival did not purposefully avail itself of the laws of Washington. It advertised in local media, promoted its cruises through brochures sent to travel agents in that state, and paid a commission on sales of cruises in that state.").

59 *Id.* at 383 ("[T]he claim must 'arise out of' the defendant's forum-related activities."). Note that the Ninth Circuit only used the terms "arise out of" and not "relate to," suggesting how some courts do not necessarily see a difference between these terms. This further demonstrates the confusion over the nexus requirement, as there is no clearly established vocabulary that courts use when referring to the nexus requirement.

60 *Id.* (citing Marino v. Hyatt Corp., 793 F.2d 427 (1st Cir. 1986); Pearrow v. Nat'l Life & Accident Ins. Co., 703 F.2d 1067 (8th Cir. 1983)). The court then agreed that "[w]ere this court to apply the 'arising from' analysis of *Marino* and *Pearrow* to this case, we would conclude that Mrs. Shute's fall did not arise out of Carnival's solicitation of business in Washington." *Id.*

61 *Id.* at 386.

62 *Id.*

formally arise out the defendant's forum contacts.[63]

2. Proximate Causation

In *United Electric, Radio & Machine Workers v. 163 Pleasant St. Corp.*, the First Circuit articulated a more stringent interpretation of the nexus requirement under the label of proximate causation.[64] The court noted that "we steadfastly reject the exercise of personal jurisdiction whenever the connection between the cause of action and the defendant's forum-state contacts seems attenuated and indirect."[65] Rather, the First Circuit requires the defendant's forum contacts to "form an 'important, or [at least] material, element of proof' in the plaintiff's case."[66] Hence, the court has "suggested an analogy between the [nexus] requirement and the binary concept of causation in tort law under which both elements—[but-for causation] and legal cause (i.e., the defendant's in-state conduct gave birth to the cause of action)—must be satisfied to find causation sufficient to support specific jurisdiction."[67]

The federal district court of Massachusetts's opinion in *Rodriguez v. Samsung Electronics Co.*, provides a useful modern application of the proximate causation test articulated in *United Electric*.[68] This case involved an employee of Axcelis Technologies, Inc. ("Axcelis-US") who sued Samsung after he sustained permanent injuries when he traveled to Korea to install an ion implanter on Samsung premises.[69] During discovery, Samsung indicated that, a separate company, Axcelis-Korea, supervised and directed the installation.[70] Axcelis-Korea is a wholly-owned subsidiary of Axcelis-US with its principal place of business in Korea, providing sales and support services in both Korea and China.[71] Plaintiff then amended his complaint to include Axcelis-Korea; the subsidiary filed a motion to dismiss for lack of personal jurisdiction.[72]

The district court interestingly began its analysis with the nexus requirement rather than the minimum contacts requirement.[73] Applying the

63 *See* Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 425–27 (1984).

64 United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp., 960 F.2d 1080, 1089 (1st Cir. 1992).

65 *Id.*

66 *Id.* (alteration in original) (quoting Marino v. Hyatt Corp., 793 F.2d 427, 430 (1st Cir. 1986)).

67 *Id.*

68 Rodriguez v. Samsung Elecs. Co., 827 F. Supp. 2d 47 (D. Mass. 2011).

69 *Id.* at 50.

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.* at 51. After finding that specific jurisdiction did not exist under the nexus

proximate causation test, the court first noted that "Axcelis-Korea's in-state contract with Axcelis-US was surely a but-for cause of Rodriguez's injury."[74] Nonetheless, the court found that proximate causation did not exist because the plaintiff's "negligence claim sounds in tort, not contract, and it arose directly out of allegedly tortious conduct which occurred entirely in Korea."[75] Hence, Axcelis-Korea's "limited contacts with Massachusetts [were] not . . . an important or material element of proof in plaintiffs' case."[76]

The proximate causation test is quite similar to Professor Brilmayer's "substantive relevance" test.[77] Professor Brilmayer's test provides that, "[a] contact is related to the controversy if it is the geographical qualification of a fact relevant to the merits."[78] This means that a specific contact must be relevant to an element of the claim the plaintiff asserts.[79] For example, had the contract in *Rodriguez* included a clause imposing a duty of reasonable care on Axcelis-Korea, the duty element of the negligence claim may have been sufficiently linked to the contract in Massachusetts and therefore allow for specific jurisdiction in the forum. Thus, the proximate causation test and the substantive relevance test fall under Justice Brenan's definition of "arise out of," as both require that a formal element of the claim arises out of the defendant's contacts with the forum.[80]

---

requirement, the court then performed a minimum contacts analysis and found that Axcelis-Korea did not even have sufficient minimum contacts with Massachusetts. *Id.* at 52. This is interesting because typically courts analyze the minimum contacts requirement first, likely because it is often an easier inquiry.

74 *Rodriguez*, 827 F. Supp. 2d at 51 ("Had Axcelis-Korea not entered into a contract in Massachusetts with Axcelis-US to perform services in Korea, its managers would not have been present at Samsung's facility to supervise the installation and Rodriguez would not have been injured as a result of their allegedly negligent acts or omissions.").

75 *Id.*

76 *Id.*

77 Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 77 SUP. CT. REV. 77, 82 (1980). *See also* O'Connor v. Sandy Lane Hotel Co., Ltd., 496 F.3d 312, 318–19 (3d. Cir. 2007) ("The most restrictive standard is the 'proximate cause' or 'substantive relevance' test.") (citing *id.*). Other commenters, however, disagree with this conflation. Charles W. Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. DAVIS. L. REV. 207, 237 (2014) (noting the "erroneous conflation of [substantive relevance] with the proximate cause approach adopted by some lower courts and commentators . . . .").

78 Brilmayer, *supra* note 77, at 82.

79 *Id.*

80 *O'Connor*, 496 F.3d at 319 ("Justice Brennan, dissenting in *Helicopteros*, similarly described [proximate causation or substantive relevance] as a requirement that 'the cause of action . . . formally "arise out of" the [defendant's] contacts.'") (quoting Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 426–27 (1984) (Brennan, J., dissenting)).

B. *The Similarity Approach*

The similarity approach is the broadest possible reading of "relate to," as it does not require a causal connection between the plaintiff's claim and the defendant's contacts at all.[81] Though rejecting it outright, Professor Brilmayer explains that the similarity approach authorizes a forum to assert specific jurisdiction over a defendant for an injury that occurred outside the forum if there is a "similarity between the forum activity and the activity which gave rise to the controversy."[82]

While none of the Courts of Appeals currently use a similarity approach,[83] Professor Brilmayer pointed to an instance where the California Supreme Court seemed to do so.[84] In *Cornelison v. Chaney*, the California Supreme Court upheld specific jurisdiction over a defendant truck driver who delivered goods into California approximately twenty times per year for an injury that the driver caused in Nevada while he was on his way to California.[85] After finding that the truck driver had minimum contacts with California, but not enough to establish general jurisdiction,[86] the court explained that its "inquiry is directed to whether plaintiff's cause of action . . . arises out of or has a *substantial connection* with a business relationship defendant has purposefully established with California."[87] The court then held "[t]he accident arose out of the driving of a truck, the very activity which was the essential basis of defendant's contacts with this state[,]" and then concluded that this created a "substantial connection" between the defendant's forum contacts and the plaintiff's cause of action.[88]

Shoppers Food Warehouse v. Moreno presents another example of the similarity approach. In this case, the District of Columbia Court of Appeals used what it called the "discernible relationship" test.[89] The case

81 Brilmayer, *supra* note 77, at 83.

82 *Id.*

83 Bender, *supra* note 6.

84 Brilmayer, *supra* note 77, at 83.

85 Cornelison v. Chaney, 545 P.2d 264, 266 (Cal. 1976).

86 *Id.* at 267 ("In our view, these contacts are not sufficient to justify the exercise of jurisdiction over defendant without regard to whether plaintiff's cause of action is relevant to California activity.").

87 *Id.* (emphasis added).

88 *Id.* at 268.

89 Shoppers Food Warehouse v. Moreno, 746 A.2d 320, 335 (D.C. 2000). This test is directly analogous to the "substantial connection" test used in *Cornelison.* Indeed, the District of Columbia Court of Appeals directly cited *Cornelison*, and then stated that under its discernable relationship test, "for the Superior Court to have jurisdiction over Ms. Moreno's claim, the claim had to be related to or *substantially connected* with Shoppers' advertising activity in the District." *Id.* (emphasis added). I have labeled both these tests as the "similarity approach," because both tests only seem to require "similarity between the

involved a District of Columbia resident who slipped and injured herself at a Shoppers store in Maryland.[90] Shoppers advertised its stores, located in Virginia and Maryland, in the District of Columbia.[91] The plaintiff sued in the Superior Court of the District of Columbia.[92] On appeal, the court of appeals held that jurisdiction over Shoppers was valid because a "discernible relationship" existed between Shoppers's continuous conduct in the District of Columbia and the conduct that caused the claim of action.[93] The court found a "discernable relationship" noting: "it is reasonably foreseeable that, as a result of advertising extensively and over a substantial period of time in the District's major circulation newspaper, Shoppers could be sued in the District on a claim *similar* to that filed by Ms. Moreno [plaintiff]."[94] Hence, the "discernable relationship" test, as used in *Shoppers*, uses similarity as a basis of establishing the nexus requirement. Under Justice Brennan's framework, the similarity approach must fall under Justice Brennan's definition of "relate to" if it fits into the framework at all, as it certainly does not fulfill the requirements of Justice Brennan's definition of "arise out of."

C. *The Sliding Scale*

Professor Richman's solution to the problem of the grey area between general and specific jurisdiction is the "sliding scale" approach.[95] This test can plausibly operate as a supplement to either the causal tests or the similarity approach. The concept rests on the idea of viewing general and specific jurisdiction as the opposite poles of a spectrum.[96] Across this spectrum, Professor Richman considered two key variables: the "extent of the defendant's forum contacts" and the "proximity of the connection between those contacts and the plaintiff's claim."[97] He noted that as the

forum activity and the activity which gave rise to the controversy." Brilmayer, *supra* note 77, at 83. It is also worth noting that specific jurisdiction likely could have been asserted in this case under a but-for causation theory, but the court explicitly rejected the causal tests in favor of the "discernable relationship" test, thus suggesting that this test is less stringent than even but-for causation. *Shoppers*, 746 A.2d at 335 ("Based upon our review of nexus tests [the court discussed but-for causation in this review] . . . we see no reason to deviate from . . . our past decisions which have interpreted the 'arise from' language of [the District of Columbia's long arm statute] flexibly and synonymously with 'relate to' or having a 'substantial connection with' . . . .").

90 *Shoppers*, 746 A.2d at 323.

91 *Id.*

92 *Id.*

93 *Id.* at 336.

94 *Id.* (emphasis added).

95 Richman, *supra* note 42, at 1345.

96 *Id.* ("The concepts of general jurisdiction and specific jurisdiction are simply the two opposite ends of this sliding scale.").

97 *Id.*

defendant's forum contacts increase, the proximity to the plaintiff's claim may decrease, leading to the one polar extreme of general jurisdiction.[98]

On the other hand, as the defendant's forum contacts decrease, the test requires a stronger connection between those contacts in order to assert jurisdiction.[99] This connection could, of course, be a causal connection. As the contacts become stronger, the more attenuated the causal connection can be until reaching the point of a highly attenuated, but-for causation; as the contacts decrease, perhaps something akin to proximate causation would be more appropriate.[100] The test, can also conceivably lead to the assertion of jurisdiction even when there is not a causal link between the plaintiff's claim and the defendant's forum activities, or at least so attenuated a causal link that a court would not even entertain the assertion of personal jurisdiction under a but-for causation analysis.

Professor Richman provides a factual hypothetical that suggests the use of the sliding scale approach when a potentially non-causal relationship exists between the defendant's forum contacts and the plaintiff's claim.[101] He uses an example of a California resident who regularly uses a drug in California.[102] The manufacturer advertises and sells the drug in California.[103] The plaintiff then travels to New York, buys a dosage of the drug in New York, and sustains injuries in New York from the drug.[104] The plaintiff sues in California.[105] In this example, the defendant's actions in California do not cause the plaintiff's claim.[106] Under the sliding scale approach, Professor Richman suggests that the continuous contacts with California and the plaintiff's relationship to California should be enough to allow for specific jurisdiction over the drug company.[107] Further, because the continuous contacts are identical to the actions by the company in New York that caused the injury, there would be no unreasonableness or

98 *Id.*

99 *Id.*

100 *See id.* ("As the quantity and quality of the defendant's forum contacts increase, a weaker connection between the plaintiff's claim and those contacts is permissible; as the quantity and quality of the defendant's forum contacts decrease, a stronger connection between the plaintiff's claim and those contacts is required.").

101 Richman, *supra* note 42, at 1344.

102 *Id.*

103 *Id.*

104 *Id.*

105 *Id.*

106 *Id.* Of course, one can argue that the plaintiff would not have bought the drug in New York had the drug company in California not exposed him to the drug in California. This scenario, however, clearly differs from the other examples where but-for causation has been found, when the defendant enters the contract in the forum and then the plaintiff gets injured somewhere else. Here, the actual contract of sale for the drug occurs in New York. *Id.*

107 Richman, *supra* note 42, at 1344.

unfairness in allowing a court to assert personal jurisdiction in California.[108]

D. *Hybrid Jurisdiction*

Professor Sandstrom Simard referred to "hybrid jurisdiction" as the grey area between general and specific jurisdiction.[109] This Comment views Professor Sandstrom Simard's concept of hybrid jurisdiction as an approach to the nexus requirement of specific jurisdiction under specific factual circumstances.[110] When viewed as an interpretation of the nexus requirement, hybrid jurisdiction builds upon the similarity approach, as it does not require causation.[111] Professor Sandstrom Simard characterized hybrid jurisdiction by relying on the following language found in a uniform long-arm statute:

> A court may exercise personal jurisdiction over a person, who acts directly or by an agent . . . causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state . . . .[112]

Professor Sandstrom Simard further added that the contacts with the state must be shown to possibly "result in factual circumstances similar to those that gave rise to the plaintiff's claim."[113] The key difference between hybrid jurisdiction and the similarity approach is that, while hybrid jurisdiction allows for mere similarity to satisfy the nexus requirement, as opposed to causation between the defendant's contacts with the forum and the plaintiff's claim, the injury itself must occur in the forum.[114] Thus, like

---

[108] *Id.*

[109] Sandstrom Simard, *supra* note 7, at 563 ("[Hybrid Jurisdiction] appears to combine the requirements of general jurisdiction and specific jurisdiction without satisfying either type of jurisdiction completely.").

[110] Indeed, Professor Sandstrom Simard ultimately found hybrid jurisdiction to be most reconcilable with specific jurisdiction. *Id.* ("The Article suggests that although hybrid jurisdiction does not satisfy the traditional test for specific jurisdiction requiring a claim to 'arise out of' the defendant's purposeful contacts with the forum, some instances of hybrid jurisdiction may satisfy the underlying goals of specific jurisdiction and thus be constitutional.").

[111] Sandstrom Simard, *supra* note 7, at 588 (stating that in analyzing hybrid jurisdiction "we must consider whether the purposes and goals of specific jurisdiction can be satisfied in the absence of a causal relationship between the plaintiff's claim and the defendant's forum contacts").

[112] Sandstrom Simard, *supra* note 7, at 562 (quoting Unif. Interstate and Int'l Procedure Act § 1.03, 13 U.L.A. 361 (1962)).

[113] Sandstrom Simard, *supra* note 7, at 589.

[114] After *Daimler AG v. Bauman* (discussed below), Professors Rhodes and Robertson suggested a similar means of establishing specific jurisdiction. Rhodes and Robertson,

the similarity approach, hybrid jurisdiction falls under Justice Brennan's category of "relate to" as opposed to "arise out of."[115]

Professor Sandstrom Simard pointed out that not many courts have explicitly adopted hybrid jurisdiction, but some have functionally used it.[116] For example, in *Vermeulen v. Renault*, the Eleventh Circuit found specific jurisdiction in a factual situation implicating hybrid jurisdiction.[117] In *Vermeulen*, the plaintiff bought a used Renault vehicle in North Carolina.[118] She then moved to Georgia where she was involved in a car accident.[119] Renault regularly sold cars in Georgia, though the plaintiff did not buy her specific vehicle there.[120] The plaintiff sued Renault in Georgia.[121] The federal district court dismissed the case for lack of personal jurisdiction; the

supra note 77, at 240. Their proposal, however, relies on Professor Brilmayer's substantive relevance. Rhodes and Robertson, *supra* note 77, at 237 ("Professor Brilmayer's substantive relevance . . . is probably the best candidate."). Rhodes and Robertson noted that substantive relevance asks whether "any of the factual occurrences that are conditions for the claim," including "injury . . . arose from the defendant's actions within or directed at the forum." *Id.* Therefore, when the injury occurs in a state that the defendant has continuous and similar contacts with, that state can assert personal jurisdiction because an element of the claim, "injury," arose out of the defendant's contacts with the forum. *Id.* This ends in the same result as hybrid jurisdiction. Rhodes and Robertson's proposal, however, used the word "arose," which still seems to suggest that causation is needed, and thus creating tension within their proposal. This Comment argues that hybrid jurisdiction is a more sound way of reaching the same goal, considering causation is necessarily lacking in the situations where either approach would allow a court to assert specific jurisdiction. Additionally, Robertson and Rhodes' proposal differs from hybrid jurisdiction in that they also suggest that their formulation of substantive relevance be expanded to also allow a court to assert jurisdiction in a forum the defendant has continuous contacts in and that the plaintiff resides in even though they were not injured in the forum. Rhodes and Robertson, *supra* note 77, at 242. ("[I]f the defendant is conducting extensive forum activities similar to the episode in dispute, and the suit implicates another sovereign state interest (such as providing a convenient forum for state citizens or protecting against harms suffered in the state), the relevant state interests will typically outweigh the minimal litigation burdens on the defendant.").

115 Professor Sandstrom Simard indicated that hybrid jurisdiction fails the nexus requirement completely, stating that hybrid jurisdiction does not "require the plaintiff's cause of action to arise out of (or even relate to) the defendant's forum contacts." Sandstrom Simard, *supra* note 7, at 575. Instead, Professor Sandstrom Simard argued that hybrid jurisdiction is constitutional, based on a functionalist argument that hybrid jurisdiction still achieves the constitutional rationales of specific jurisdiction, without necessarily fulfilling the formal nexus requirement. Sandstrom Simard, *supra* note 7, at 582–83. Under Justice Brennan's framework, there is no indication that hybrid jurisdiction cannot fit into his sweeping definition of "relate-to." Furthermore, as this comment later argues, hybrid jurisdiction likely fulfills the nexus requirement even under *Bristol-Myers*. *Infra* Sec. V. B.

116 *See* Sandstrom Simard, *supra* note 7, at 602, 608.

117 Sandstrom Simard, *supra* note 7, at 601–02.

118 Vermeulen v. Renault, U.S.A., Inc., 975 F.2d 746, 748 (11th Cir. 1992).

119 *Id.*

120 *Id.* at 748–50.

121 *Id.* at 747.

Eleventh Circuit reversed.[122]

The Eleventh Circuit found that Renault's contacts with Georgia were "sufficiently related to [the plaintiff's] cause of action to confer specific jurisdiction" because its "activities . . . were inextricable links in the advertising and distribution network by which the [plaintiff] obtained her vehicle . . . ."[123] As Professor Sandstrom Simard argued, the Eleventh Circuit attempted to show a causal connection in its "inextricable link" argument, when in reality there was "no evidence of a causal link between the defendant's contacts with Georgia and the plaintiff's cause of action."[124] Therefore, while the court attempted to shoehorn its analysis to fit a causal test, its analysis more properly fit the requirements of hybrid jurisdiction.

Another factual scenario where a court implicitly applied hybrid jurisdiction, though labeled it as general jurisdiction, is in *Lemke v. St. Margaret Hospital*.[125] In *Lemke*, Dr. U.H Patel, a surgeon, worked for St. Margaret—a hospital based in Indiana.[126] The hospital regularly advertised in Illinois.[127] Dr. Patel treated the plaintiff's son, an Illinois resident, in the Indiana hospital.[128] The record, however, did not reveal any evidence that the plaintiff's son came to St. Margaret because of the advertisements in Illinois.[129] The plaintiff's son returned to Illinois and then died because of alleged malpractice by Dr. Patel.[130] The plaintiff sued the hospital and Dr. Patel in Illinois state court, and the defendants removed to the United States District Court for the Northern District of Illinois.[131] Here, the facts created a textbook hybrid jurisdiction situation, as the defendant caused tortious injury in Illinois "by an act or omission outside [a] state" in which the defendant "regularly [conducted] or solicit[ed] business."[132] The court, however, asserted personal jurisdiction over the hospital by finding that the hospital's solicitations in Illinois constituted strong enough contacts to implicate general jurisdiction.[133]

---

122 *Id.* at 747–48.

123 *Id.* at 760.

124 Sandstrom Simard, *supra* note 7, at 602.

125 Lemke v. St. Margaret Hosp., 552 F. Supp. 833 (N.D. Ill. 1982).

126 *Id.* at 835.

127 *Id.* at 835–36.

128 *Id.* at 835.

129 *Id.*

130 *Id.*

131 *Lemke*, 552 F. Supp. at 835.

132 Sandstrom Simard, *supra* note 7, at 562 (quoting Unif. Interstate and Int'l Procedure Act § 1.03, 13 U.L.A. 361 (1962)).

133 *Lemke*, 552 F. Supp. at 838–39.

Professor Sandstrom Simard argued that applying hybrid jurisdiction would have been a much sounder approach, as the court unnecessarily diluted the meaning of general jurisdiction.[134] Of course, in the wake of *Goodyear Dunlop Tires Operations, S.A. v. Brown* and *Daimler AG v. Bauman,* the Illinois court would no longer be able to make such a strained general jurisdiction analysis, leaving hybrid jurisdiction or the similarity approach as the only way to assert jurisdiction in such a case.[135]

IV. THE *BRISTOL-MYERS* OPINION[136]

The opinion marked a narrowing of the above jurisprudence as to when a claim properly arises out of or relates to a defendant's forum contacts. The opinion implicitly rejected the similarity approach and explicitly rejected the sliding scale as a supplement to the similarity approach. This Comment argues, however, that the opinion still leaves room for hybrid jurisdiction.

A. *Situating the Opinion within the Supreme Court's Recent Personal Jurisdiction Decisions*

Bristol-Myers did not occur in a vacuum; the opinion is part of a restrictive trend in the Supreme Court's recent opinions. *Bristol-Myers* is the sixth case in the past decade to mark a tightening by the Court in its personal jurisdiction jurisprudence.[137] In two of these cases, *J. McIntyre Machinery, Ltd. v. Nicastro* and *Walden v. Fiore*, the Court declined to exercise personal jurisdiction, finding a lack of minimum contacts.[138] The Court also released three rulings that restricted the scope of general jurisdiction.[139] Due to the important link between the nexus requirement and the concepts of specific and general jurisdiction, these decisions narrowing the scope of general jurisdiction are relevant in understanding the effect of *Bristol-Myers*. Therefore, this section will begin with a brief review of *Goodyear*.[140]

Goodyear involved a bus accident in France, allegedly connected to

134 Sandstrom Simard, *supra* note 7, at 608–09.

135 *Infra* Section IV. A. i.

136 The remainder of this Comment will refer to the *Bristol-Myers* opinion as "the opinion" or *"Bristol-Myers*."

137 *See* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549 (2017); Daimler AG v. Bauman, 571 U.S. 117 (2014); Walden v. Fiore, 571 U.S. 277 (2014); Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011); J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873 (2011).

138 *Walden*, 571 U.S. at 277; *J. McIntyre*, 564 U.S. at 873.

139 *BNSF*, 137 S. Ct. at 1549; *Daimler*, 571 U.S. at 117; *Goodyear*, 564 U.S. at 915.

140 *Goodyear*, 564 U.S. at 915.

defective tires that resulted in the deaths of two American children.[141] The children's parents sued Goodyear USA and three of Goodyear USA's European subsidiaries[142] in North Carolina.[143] Goodyear USA, an Ohio corporation with plants in North Carolina, "regularly engaged in commercial activity" in the forum and did not contest jurisdiction.[144] Conversely, the three foreign subsidiaries ("petitioners"), which "manufacture tires primarily for sale in European and Asian Markets," but whose products had been "distributed within North Carolina by other Goodyear USA affiliates," contested personal jurisdiction.[145]

The North Carolina Court of Appeals disagreed with the defendants and invoked general jurisdiction over petitioners.[146] The Court of Appeals held that the petitioners' contacts with North Carolina reached the threshold of general jurisdiction, "when petitioners placed their tires 'in the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina.'"[147] Moreover, the Court of Appeals found that the "tires made by petitioners reached North Carolina as a consequence of a 'highly-organized distribution process' involving other Goodyear USA subsidiaries."[148]

After the North Carolina Supreme Court denied review, the United States Supreme Court granted the defendants' writ of certiorari and struck down the Court of Appeals' assertion of general jurisdiction.[149] The Supreme Court explained that a "stream of commerce" theory can often be invoked to prove contacts with a forum by a defendant acting outside the forum whose products reached the forum and caused an injury inside the forum; but such cases are specific jurisdiction cases.[150] Here, however, the stream of commerce theory, which indicated that some of petitioner's tires reached the forum, "f[e]ll far short of the 'the continuous and systematic

---

141 *Id.* at 920.

142 The three Goodyear USA subsidiaries were organized in and operated out of Luxembourg, Turkey and France, respectively. *Id.* at 918.

143 *Id.*

144 *Id.*

145 *Id.* at 918, 920–21 ("In contrast to . . . Goodyear USA . . . petitioners are not registered to do business in North Carolina. They have no place of business, employees, or bank accounts in North Carolina. They do not design, manufacture, or advertise their products in North Carolina.").

146 *Goodyear*, 564 U.S. at 921–22 ("Acknowledging that the claims neither 'related to, nor . . . ar[o]se from, [petitioners'] contacts with North Carolina,' the Court of Appeals confined its analysis to 'general rather than specific jurisdiction. . . .'") (alterations in original).

147 *Id.* at 922.

148 *Id.*

149 *Id.* at 929.

150 *Id.* at 926.

general business contacts' necessary to empower North Carolina to entertain suit against [petitioners] on claims unrelated" to the forum.[151]

Goodyear involved forum contacts by the defendants that constituted the kind of "continuous and systematic" general business contacts necessary to implicate general jurisdiction under prior case law.[152] The Court's language describing general jurisdiction in the early portion of the opinion, however, marked a potential narrowing of general jurisdiction. The majority explained that "[a] court may assert general jurisdiction over foreign (sister-state or foreign country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them *essentially at home in the forum State*."[153] The Court cited to *International Shoe* for this proposition; however, *International Shoe* never used the words "essentially at home" to describe (what would become) general jurisdiction.[154] The Court then elaborated that "[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home," which can include the place of incorporation or the principal place of business.[155] Hence, the case suggested a conflation between "domicile," a distinct method of asserting personal jurisdiction,[156] and general jurisdiction, a subset of the minimum contacts method of asserting personal jurisdiction.

This framework has now been further entrenched in the Court's jurisprudence, as the Court reaffirmed the requirement that a corporation be "essentially at home" in *Daimler AG v. Bauman*.[157]

---

151 *Id.* at 929.

152 *See* Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 416 (1984).

153 *Goodyear*, 564 U.S. at 919 (quoting Int'l Shoe Co. v. Wash., 326 U.S. 310, 317 (1945)) (emphasis added).

154 Int'l Shoe Co. v. Wash., 326 U.S. 310, 318 (1945) ("there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities."). While the Goodyear Court's "essentially at home" language is a logical extension of this, it certainly marked a narrowing.

155 *Goodyear*, 564 U.S at 924 (citing Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEX. L. REV. 723, 728 (1988)).

156 Milliken v. Meyer, 311 U.S. 457, 462 (1940) ("Domicile in the state is alone sufficient to bring an absent defendant within the reach of the state's jurisdiction for purposes of a personal judgment . . . .").

157 Daimler AG v. Bauman, 571 U.S. 117 (2014). In *Daimler*, the Court explained that "*Goodyear* did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums." *Id.* at 137. The Court, however, did not provide an example of when a court could assert general jurisdiction absent those examples, as it restated that the test for general jurisdiction is "not whether a foreign corporation's in-forum

B. *The* Bristol-Myers *Opinion*

1. Facts of the Case

Bristol-Myers Squibb ("BMS") is a pharmaceutical company incorporated in Delaware, headquartered in New York, and with substantial operations in New Jersey.[158] The company also operates in other states including California.[159] At the time of *Bristol-Myers*, the company had five research labs and employed approximately 300 people in California.[160] One of BMS's most popular drugs is a blood thinner called Plavix.[161] While BMS did not manufacture Plavix or develop marketing schemes for Plavix in California, it did sell a lot of Plavix there.[162] Indeed, BMS sold approximately 187 million Plavix pills in California from 2006 through 2012.[163] This represented over $900 million in sales, about one percent of BMS's nationwide sales.[164]

Six hundred seventy-eight plaintiffs sued BMS in a mass tort action in California state court, alleging injuries linked to Plavix.[165] Eighty-six of these plaintiffs were from California while the other 592 were from thirty-three other states.[166] Asserting various tort claims under California law, "[t]he nonresident plaintiffs did not allege that they obtained Plavix through California physicians or from any other California source; nor did they claim that they were injured by Plavix or treated for their injuries in California."[167]

2. Procedural History

BMS moved for dismissal for lack of personal jurisdiction as to the nonresident claims.[168] The California trial court denied this motion, finding that California could assert general jurisdiction over BMS because of its continuous business activity in the state.[169] Hence, according to the California trial court, the claim did not have to relate to BMS's activities in

---

contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so "continuous and systematic" as to render [it] essentially at home in the forum State.'" *Id.* at 138–39 (citing *Goodyear*, 564 U.S. at 919).

158 Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773, 1777–78 (2017).

159 *Id.* at 1778.

160 *Id.*

161 *Id.* at 1784 (Sotomayor, J., dissenting).

162 *Id.*

163 *Id.*

164 *Bristol-Myers*, 137 S. Ct. at 1778.

165 *Id.*

166 *Id.*

167 *Id.*

168 *Id.*

169 *Id.*

California.[170] The California court of appeals affirmed, but in response to the United States Supreme Court's opinion in *Daimler*, which further limited general jurisdiction, the California Supreme Court reversed the court of appeals.[171]

Instead of vacating its order asserting personal jurisdiction over BMS, the court of appeals changed its opinion and found that specific jurisdiction existed over BMS as to the claims of the nonresident plaintiffs.[172] The California Supreme Court affirmed this conclusion by using the sliding scale approach, finding that "'BMS's extensive contacts with California permitted the exercise of specific jurisdiction 'based on a less direct connection between BMS's forum activities and plaintiffs' claims than might otherwise be required.'"[173]

3. The United States Supreme Court Opinion

In an 8-1 opinion written by Justice Alito, the Supreme Court reversed the California Supreme Court.[174] The Court began its analysis by describing the difference between general and specific jurisdiction.[175] Here the Court once again reaffirmed the *Goodyear* framework for general jurisdiction.[176] Then moving to specific jurisdiction the Court further explained:

> In order for a state court to exercise specific jurisdiction, 'the *suit*' must 'aris[e] out of or relat[e] to the defendant's contacts with the *forum.*'[177] In other words, 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.' For this reason, 'specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.'[178]

---

170 *See Bristol-Myers*, 137 S. Ct. at 1778.

171 *Id.*

172 *Id.*

173 *Id.* at 1779 (quoting Bristol-Myers Squibb Co. v. Superior Court, 377 P.3d 874, 889 (2016)).

174 *Id.* at 1777.

175 *Id.* at 1779–80.

176 *Bristol-Myers*, 137 S. Ct. at 1780 ("'For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place . . . .'") (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011)).

177 *Id.* (quoting *Daimler*, 134 S. Ct., at 754 (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984)) (emphasis added by the Court in *Bristol-Myers*).

178 *Id.* (quoting *Goodyear*, 564 U.S. at 919).

Based on this standard, the Court held that its "settled principles regarding specific jurisdiction control this case."[179] The Court first dispensed with the California Supreme Court's use of the sliding scale approach, holding that the approach "is difficult to square with our precedents."[180] Furthermore, the Court explained that this particular case exposes the danger of the sliding scale approach because "[t]he State Supreme Court found that specific jurisdiction was present without identifying any adequate link between the State and the nonresidents' claims." [181] The Court defended this assertion by stating:

> [T]he nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California. The mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents' claims . . . . This remains true even when third parties (here, the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents . . . . What is needed—and is missing here—is a connection between the forum and the specific claims at issue.[182]

The Court then reversed the California Supreme Court's assertion of specific jurisdiction and remanded for a decision not inconsistent with its opinion.[183]

4. Justice Sotomayor's Dissent

Although the majority opinion held that "settled principles regarding specific jurisdiction control this case,"[184] Justice Sotomayor's dissent suggests that it is not necessarily a straightforward application of precedent.[185] Justice Sotomayor noted that the nexus requirement used to only require that the claim "relate to" the defendant's contacts in the

---

179 *Id.* at 1781. As this comment later argues, this characterization of the law as "settled" seems somewhat strained, because the formulation the Court relies upon comes largely from dicta describing specific jurisdiction in *Goodyear*, a general jurisdiction case, which the Court decided only six years earlier.

180 *Id.* at 1781. ("[T]his approach . . . resembles a loose and spurious form of general jurisdiction.").

181 *Id.*

182 *Bristol-Myers*, 137 S. Ct. at 1781 (emphasis in original).

183 *Id.* at 1784. I have omitted the Court's discussions of *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) and *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985) because those discussions do not directly pertain to the Court's formulation of the nexus requirement.

184 *Id.* at 1781.

185 *See id.* at 1787–88 (Sotomayor, J., dissenting).

forum.[186] She then pointed out that the nonresidents' claims "concern conduct materially identical" to the conduct that caused the residents' claims; thus, the nonresidents' claims "related to" BMS's minimum contacts with California.[187] As stated by Justice Sotomayor, "[o]ur cases require no connection more direct than that."[188]

Conversely, Justice Sotomayor noted that if a negligently maintained sidewalk outside of BMS's New York office caused injury to a plaintiff, there would be no connection because the claim does not arise out of or relate to BMS's pharmaceutical-related conduct in California.[189] Justice Sotomayor's dissent, therefore, appears to approve of the similarity approach.

As this Comment points out in the next section, Justice Sotomayor's dissent flags that the majority opinion was not necessarily a straightforward application of personal jurisdiction jurisprudence. Instead, *Bristol-Myers* marked a narrowing of the nexus requirement, as it ultimately rejected the similarity approach.

V. EFFECT ON THE NEXUS REQUIREMENT

Despite the Court's indication that it decided *Bristol-Myers* through a "straightforward application . . . of settled principles of personal jurisdiction," this Comment suggests that the opinion altered the analysis under the nexus requirement.[190] The classifications of the varying interpretations of the nexus requirement using Justice Brennan's framework provides a frame of reference for the landscape of the nexus requirement. Using these reference points, the opinion can now be applied to each of the interpretations of the nexus requirement to determine which interpretations have been affected by the opinion.

First, under Justice Brennan's framework, it is apparent that the Court in *Bristol-Myers* did not implicate or alter the meaning of "arise out of" because BMS's contacts in California did not give rise to an element of the nonresidents' prima facie case.[191] Moving to the more inclusive "relate to" portion of the nexus requirement, *Bristol-Myers* did not affect the causal approaches because the nonresidents' claims were not caused by BMS's contacts in California.[192] On the other hand, as the next section will

186 *Id.* at 1786.

187 *Id.*

188 *Bristol-Myers*, 137 S. Ct. at 1781.

189 *Id.*

190 *Id.* at 1783.

191 *Id.* at 1781.

192 *Id.* The opinion avoided the question of *which* causation approach (but-for or proximate) due process may require, as it dispensed with the argument that BMS contracted

explain, the opinion clearly stamped out the similarity approach as well as the sliding scale approach, at least as far as the sliding scale approach may be used to supplement the similarity approach. This Comment argues, however, that the opinion did not categorically reject a non-causal approach, as the opinion still likely left room for hybrid jurisdiction.

A. *The Sliding Scale Approach and Similarity Approach*

Though short of explicitly calling the sliding scale approach unconstitutional in all facets, the opinion clearly did not look favorably on the approach and certainly invalidated its use in a non-causal context.[193] Indeed, some commenters have taken the opinion to mean that the sliding scale approach has been rejected outright.[194] The opinion, however, still arguably leaves room for the implementation of the sliding scale, providing there is an "*adequate link* between the State and the nonresidents' claims."[195] The Court appeared to only take issue with the sliding scale approach because it allowed the California Supreme Court to "f[i]nd that specific jurisdiction was present without identifying any adequate link . . . ."[196] Hence, the opinion does not allow a court to use the sliding scale to create an "adequate link."[197] While the opinion did not define what an "adequate link" must consist of, the Court's language immediately following its insistence on an "adequate link" provides some clarity. The Court pointed out that "the nonresidents were not prescribed Plavix in California [nor did they] purchase Plavix in California . . . ."[198] This language potentially provides examples of what would have constituted a necessary "adequate link." These examples provide factual scenarios where, under the but-for causation approach, a court would be able to assert

"with a California company . . . to distribute [Plavix] nationally," on evidentiary grounds. *Id.* at 1783. Had the Court found that BMS did in fact use a California company as a means of nationally distributing Plavix, and that a nonresident claimant was injured by a pill the California company distributed, then the opinion would have implicated the causation approaches. Had this been the case, the Court would have likely needed to decide whether the causal connection between BMS and the nonresident, through the California distributor, was strong enough to assert specific jurisdiction. The Court did not perform this type of analysis. Hence, the causation approaches are constitutionally unaffected by the opinion.

193 *Id.* at 1781.

194 *Personal Jurisdiction*, 30 APPELLATE ADVOCATE 9, 32 (2017) ("The United States Supreme Court reversed and . . . clearly rejected the sliding scale standard . . . .").

195 *Bristol-Myers*, 137 S. Ct. at 1781 (emphasis added). The remainder of this Comment will use the term "adequate link" as a short hand for "an adequate link between the State and the nonresidents' claims" or, alternatively stated, "a connection between the forum and the specific claims at issue." *Id.*

196 *Id.*

197 If it did allow the sliding scale to create a connection between the claim and the forum, the Court would not have found that such a connection was missing. *See id.*

198 *Id.*

personal jurisdiction.[199] Therefore, one can speculate that a causal connection between the plaintiff's claim and the forum would constitute an "adequate link."

This suggests that the sliding scale approach may remain viable as a supplement to the but-for causation approach. If perhaps the causal connection between the plaintiff's claim and the forum is attenuated, but the defendant's contacts with the forum are very strong, a court may use the sliding scale's logic to find that the stronger contacts have the effect of allowing specific jurisdiction despite a relatively weak causal connection. Or conversely, if there is a weak causal connection and the defendant also has weak contacts with the forum, a court could slide the other way, finding that the connection is not adequate.

Nonetheless, the opinion clearly rejects the sliding scale approach when used to supplement the similarity approach, considering that this is the exact way the California Supreme Court used the sliding scale approach.[200] Therefore, the Court also necessarily rejected the pure similarity approach as a potential means of creating an "adequate link."[201] Without the similarity approach, the opinion only leaves the causation approaches, and potentially hybrid jurisdiction,[202] as viable interpretations of the nexus requirement. Considering that hybrid jurisdiction, only operates under narrowly specified circumstances, *Bristol-Myers* has reasonably mandated that causation between the defendant's forum contacts and the plaintiff's claim must serve as the necessary "connection between the forum and the specific claims at issue" in the vast majority of cases.[203]

B. *Hybrid Jurisdiction*

Though the Court has clearly disallowed similarity between the defendant's continuous forum contacts and the defendant's non-forum

---

[199] *See supra* Sec. III. A. Had a nonresident plaintiff bought or been prescribed Plavix in California and then been injured anywhere in the world, under the but-for causation test espoused in *Carnival Cruise*, the nonresident would be able to sue BMS in California. Indeed, the facts would be analogous to *Carnival Cruise* in which the plaintiff entered a contract in the forum and then became injured as a result of that contract. Shute v. Carnival Cruise Lines, 897 F.2d 377, 379 (9th Cir. 1990).

[200] *Bristol-Myers*, 137 S. Ct. at 1781 ("[T]he California Supreme Court's 'sliding scale approach' is difficult to square with our precedents. . . . Our cases provide no support for this approach, which resembles a loose and spurious form of general jurisdiction.").

[201] *Id.* (Stating that a connection between the defendant and a "third party . . . is an insufficient basis for jurisdiction. . . . [And] [t]his remains true even when third parties (here, the plaintiffs who reside in California) can bring claims *similar* to those brought by the nonresidents.") (emphasis added) (citation and internal quotations omitted).

[202] The next section discusses this possibility in depth.

[203] *Bristol-Myers*, 137 S. Ct. at 1781.

contacts that caused the plaintiff's claim to constitute an "adequate link," the Court did not necessarily rule out hybrid jurisdiction. Significantly, Professor Sandstrom Simard's formulation, while requiring similarity between the forum and non-forum contacts, requires an additional "connection between the forum and the specific claims at issue:"[204] *the injury must occur inside the forum*.[205]

The facts that implicate hybrid jurisdiction are different from the factual situation in *Bristol-Myers*. *Bristol-Myers* could have implicated hybrid jurisdiction had a nonresident who bought Plavix in a state other than California, subsequently traveled to California where her injury then occurred. Everything else remains the same in that (1) BMS's contacts with California did not cause the injury, (2) BMS has strong contacts with California, and (3) those contacts are similar or identical to the activities that caused the injury. The only key difference is that the injury occurs in California. By altering the facts in this way, *Bristol-Myers* would be directly analogous to the facts in *Renault* and *Lemke*, the two cases Professor Simard used to illustrate hybrid jurisdiction.[206]

While *Bristol-Myers* does not deal with this factual scenario, language in the opinion suggests that under this factual scenario specific jurisdiction would be valid despite a non-causal connection between the defendant's forum contacts and the plaintiff's claim. This language comes, once again, from the Court's insistence on an "adequate link."[207] While this Comment has already argued that a causal connection between the defendant's forum contacts and the plaintiff's claim constitutes an "adequate link," the opinion also left open the possibility that injury in the forum could create an "adequate link," even without a causal connection between the defendant's forum contacts and the plaintiff's claim.

First, in defining the nexus requirement, the Court stated that "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 . . . ."[208] An injury in the forum would likely constitute an activity or occurrence in the forum. Furthermore, the opinion noticeably deviated from the standard definition of the nexus requirement. While the Court in *Helicopteros* defined the nexus requirement as fulfilled "in a suit arising out of or related to the defendant's contacts with the forum,"[209] the *Bristol-Myers* Court stated that the connection must be between the plaintiff's

---

204 *Id.*

205 Sandstrom Simard, *supra* note 7, at 606.

206 *Infra* Sec. III. D.

207 *Bristol-Myers*, 137 S. Ct. at 1781.

208 *Id.* at 1780 (emphasis added).

209 Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 413 n.8 (1984).

claim and the forum.[210] This suggests that an injury in the forum, while not causally connected to the defendant's forum contacts, still fulfills the nexus requirement, as the plaintiff's claim is quite persuasively connected to the forum, when the injury occurred there.

Additionally, in explaining why an "adequate link" was missing, the Court noted that "the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, *and were not injured by Plavix in California.*"[211] This language, at the very least, suggests that an *injury in the forum* is a relevant fact to consider. Furthermore, the first two missing connections, listed by the *Bristol-Myers* Court, between the nonresidents' claims and the forum clearly implicate a causal relationship between a plaintiffs' claim and the forum.[212] Thus, because the first two items on the list would likely constitute an "adequate link," one can infer that the second two items on the list would also independently constitute an "adequate link."[213] On the other hand, this list could have been a rhetorical flourish by the Court. This language could simply have been a list of all the ways by which the nonresidents' claims were completely unrelated to California as a means of bolstering the Court's ultimate holding.[214] Therefore, this language serves as a marker that the Court can later use in a case that potentially implicates hybrid jurisdiction if it chooses to adopt the theory. Otherwise, the Court can conceivably dismiss this language as dicta. As of now, however, this language keeps the possibility of hybrid jurisdiction viable.

The recent opinion of the Minnesota Supreme Court in *Bandemer v. Ford Motor Company* and the opinion of the Montana Supreme Court in *Ford Motor Company v. Montana Eighth Judicial District Court*, both of

---

210 *Bristol-Myers*, 137 S. Ct. at 1781.

211 *Id.* (emphasis added).

212 Both situations would clearly pass the but-for causation test.

213 The opinion, however, does not appear to leave room for Rhodes and Robertson's more expansive suggestion. Rhodes & Robertson, *supra* note 77, at 240. The opinion requires an "adequate link" or "connection between the forum and the *specific claims at issue*," not between the plaintiff and the forum. Thus, simply being a resident of California would likely not save jurisdiction had the individual bought, used, and became injured by Plavix in another state. *See Bristol-Myers*, 137 S. Ct. at 1781. Nonetheless, the spirit of Rhodes and Robertson's proposed test is generally supported by *Bristol-Myers*.

214 Some commenters potentially agree that the Court intended the opinion to strictly require causation. Bender, *supra* note 6.

> [*Bristol-Myers'*] insistence on the paramount importance of a clear connection between the defendant's in-forum activities and the plaintiff's particular claim suggests that the Court is likely to reject assertions of jurisdiction based only on contacts that are "related to" the cause of action but where the cause of action does not truly "arise out of" defendant's activities in the forum.

Id.

which the United States Supreme Court has granted certiorari, further support the viability of hybrid jurisdiction.[215]

In *Bandemer*, the plaintiff, Adam Bandemer, was a passenger in a 1994 Ford Crown Victoria that crashed into a ditch in Minnesota after the driver rear-ended a snowplow.[216] The plaintiff alleged that he suffered severe brain injuries because the vehicle's airbags failed to deploy.[217] The particular Ford vehicle involved in the crash "was designed in Michigan; assembled in 1993 in Ontario, Canada; and sold in Bismarck, North Dakota in 1994."[218] After going through the hands of four different owners, the vehicle was registered in Minnesota in 2011 and then re-registered by a fifth owner, the father of the driver in the January 2015 crash injuring Bandemer, in 2013.[219] At the time of the accident, Ford had sold more than 2,000 1994 Crown Victoria cars, and approximately 200,000 other vehicles in 2013, 2014, and 2015 to dealerships in Minnesota.[220] Ford also regularly advertised its vehicles in Minnesota.[221] These facts directly implicate hybrid jurisdiction, as Ford's Montana contacts, while related to Bandemer's injury in Montana, did not cause Bandemer's injury in Montana.

Ford challenged personal jurisdiction, and both the district court and court of appeals held that the exercise of personal jurisdiction over Ford was proper.[222] The Minnesota Supreme Court affirmed, first finding that Ford made sufficient minimum contacts with the Minnesota through Ford's sales and advertising in the state.[223]

The Minnesota Supreme Court then moved to the question of whether there was a "connection [between] the cause of action [and] Ford's contacts with the state."[224] In ultimately finding that there was a connection, and thus the nexus requirement fulfilled, the court specifically rejected Ford's argument for the court to "adopt a causal standard for this prong, under which the defendant's contacts with Minnesota must have caused the plaintiff's claims for personal jurisdiction over the defendant to be

---

215 Bandemer v. Ford Motor Co., 931 N.W.2d 744 (Minn. 2019), *cert. granted*, 2020 WL 254152 (U.S. Jan. 17, 2020) (No. 19-369); Ford Motor Co., v. Mont. Eighth Jud. Dist. Ct., 443 P.3d 407 (Mont. 2019), *cert. granted*, 2020 WL 254155 (U.S. Jan. 17, 2020) (No. 19-368).

216 *Bandemer*, 931 N.W.2d at 748.

217 *Id.*

218 *Id.* at 757–58 (Anderson, J., dissenting).

219 *Id.* at 758 (Anderson, J., dissenting).

220 *Id.* at 748.

221 *Id.*

222 *Bandemer*, 931 N.W.2d at 748.

223 *Id.* at 750–51.

224 *Id.* at 751.

proper."[225] The court further rejected Ford's argument that *Bristol-Myers* compelled a causation approach.[226] Specifically, the court distinguished the case from *Bristol-Myers* noting that the Court in *Bristol-Myers* "specifically mentioned the lack of injury to [the] plaintiffs in California, and concluded that 'a connection between the forum and the specific claims at issue' was 'missing.'"[227] The Minnesota Supreme Court took this language from *Bristol-Myers* to mean that a "plaintiff's contacts are relevant to the analysis of the 'affiliation between the forum and the underlying controversyFalse'"[228] Thus, the court concluded that there was "a substantial connection between the defendant Ford, the forum Minnesota, and the claims brought by Bandemer," despite the existence of a non-causal relationship between Ford's contacts in Minnesota and Bandemer's claim.[229] The Bandemer opinion, tracked hybrid jurisdiction's requirements and ultimately applied a functional version of hybrid jurisdiction. Significantly, the opinion reconciled this approach with *Bristol-Myers*. As the next section articulates, it would be unfair for a court to be unable to assert personal jurisdiction over a defendant in a case like *Bandemer*. Thus, the United States Supreme Court should affirm the Minnesota Supreme Court by embracing hybrid jurisdiction when it decides *Bandemer*.

---

225 *Id.* at 751–52 (internal quotations and insertions omitted).

226 *Id.* at 752–54.

227 *Id.* at 754 (quoting Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1781 (2017)). The Montana Supreme Court, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, distinguished *Bristol-Myers* on the same basis. Ford Motor Co. v. Montana Eighth Jud. Dist. Ct., 443 P.3d 407, 417 (Mont. 2019). *Ford*, involved nearly identical material facts to *Bandemer*, as the case involved a 1996 Ford Explorer that crashed in Montana due to an alleged defect in the vehicle's tires. *Id.* at 411. The specific Ford Explorer involved in the crash was not designed, manufactured, nor sold by Ford in Montana. *Id.* Instead, Ford originally sold the vehicle in Washington State, and the vehicle was eventually resold in Montana. *Id.* Similar to *Bandemer*, at the time of the crash, Ford otherwise did business in Montana. *Id.* at 414. Specifically, the company sold Ford Explorers to dealerships in Montana. *Id.* In deciding that Montana could validly assert specific jurisdiction over Ford, the Montana Supreme distinguished *Bristol-Myers* noting that the plaintiffs in *Bristol-Myers* "were not injured by Plavix in California," while the plaintiff in *Ford*, "was injured while driving the Explorer in Montana." *Id.* at 417 (quoting *Bristol-Myers*, 137 S. Ct. at 1781). Thus, the Montana Supreme Court held that *Bristol-Myers* did "not impact [the court's] analysis regarding whether [the plaintiff's] claims relate to Ford's Montana contacts because [the plaintiff] was injured while driving the Explorer in Montana." *Id.* Therefore, the Montana Supreme Court functionally applied hybrid jurisdiction.

228 *Bandemer*, 931 N.W.2d at 754 (quoting *Bristol-Myers*, 137 S. Ct. at 1781).

229 *Id.* at 755.

VI. THE COURT SHOULD EMBRACE HYBRID JURISDICTION

Having established that the possibility of hybrid jurisdiction remains viable, indeed the only viable means of asserting non-causal specific jurisdiction, this Comment now argues that embracing the approach would be a prudent decision. Without, this non-causal reading of "relate to," patently unfair results could follow. This unfairness can be demonstrated by the result that would follow if a causation only approach is applied to the classic case *World-Wide Volkswagen v. Woodson.*[230]

In *World-Wide*, plaintiffs Harry and Kay Robinson bought an Audi vehicle from a car dealer in Massena, New York in 1976.[231] The next year, the Robinsons left New York to live in Arizona.[232] While the Robinsons were driving through Oklahoma on their way to Arizona, another car crashed into the Robinsons' Audi vehicle.[233] The crash caused a fire, which severely burned Kay Robinson and her two children.[234]

The question before the Court was whether Oklahoma could assert personal jurisdiction over the local car dealership in Massena and the regional car distributor.[235] The Supreme Court ultimately said no, because the car only reached Oklahoma through the unilateral activity of the plaintiffs, and thus those defendants had no qualifying minimum contacts with Oklahoma.[236] The Robinsons, however, also sued Audi, a German corporation, in Oklahoma, and Audi, did not contest jurisdiction.[237] Had Audi challenged personal jurisdiction, under the post-*Goodyear* and *Bristol-Myers* landscape the only viable way to assert jurisdiction over Audi would be if courts embrace hybrid jurisdiction. Furthermore, it would be fundamentally unfair to shield Audi from suit in Oklahoma under such facts.

Under modern personal jurisdiction jurisprudence, had Audi challenged personal jurisdiction, the only means of establishing personal jurisdiction over Audi under these facts would be through hybrid jurisdiction. *Goodyear* and *Daimler* heavily suggest that general jurisdiction over Audi would not be viable because Audi was not incorporated in Oklahoma, did not have its principal place of business in Oklahoma, and, similar to Daimler, Audi's sale of cars in Oklahoma would

230 World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).
231 *Id.* at 288.
232 *Id.*
233 *Id.*
234 *Id.*
235 *Id.* at 295–96.
236 *World-Wide*, 444 U.S. at 295–96.
237 *See id.* at 288 n.3.

not render the corporation "essentially at home" in Oklahoma.[238] Hence, the only way to assert jurisdiction over Audi would be through specific jurisdiction. If this specific jurisdiction were subsequently limited to requiring causation between the defendant's forum contacts and the plaintiff's claim, jurisdiction would be lacking. There was no causal connection between Audi's sales in Oklahoma and Robinson's car accident. Because the Robinsons bought the car in New York, not Oklahoma, this would not even pass a but-for causation test. Thus, a non-causal test would be needed, and here the facts fit the requirements of the hybrid jurisdiction model on all fours. Indeed, Professor Sandstrom Simard used the facts of *World-Wide* in support of the assertion of hybrid jurisdiction.[239]

The facts of *World Wide* present the most compelling reason for adopting hybrid jurisdiction as an approach to the nexus requirement. Without it, unjust results would follow. It would be unfair to not hold Audi liable in Oklahoma where it regularly sells cars, benefits from the laws of the state, and can readily foresee lawsuits in the forum. Furthermore, to not do so would effectively protect companies like Audi from suit altogether. If, for instance, the Oklahoma court could not assert jurisdiction over Audi, the Robinsons would only be able to bring their claim in New York or Audi's principal place of business, Germany. This would make it nearly impossible for the Robinsons to bring suit, when all of the accident and medical witnesses were in Oklahoma. The added expense of bringing these witnesses to New York could very well render a proceeding prohibitively expensive for many litigants.

The most plausible counter-argument for rejecting the hybrid jurisdiction model is that, like all tests not based on causation, it presents risks of unfairness to the defendant and forum shopping.[240] Any fear of forum shopping, however, can be dismissed in such a situation, because the injury itself happened in the forum. In other words, the "adequate link" of the injury occurring in the forum prevents an arbitrary choice of forum.

---

[238] Daimler AG v. Bauman, 571 U.S. 117, 138–39 (2014) (stating that the test for general jurisdiction "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so "continuous and systematic" as to render [it] essentially at home in the forum State.'"(quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).

[239] Sandstrom Simard, *supra* note 7, at 600. This hypothetical has been the impetus for other commenters to suggest tests similar to hybrid jurisdiction. Indeed, Rhodes and Robertson relied on the facts of *World-Wide* to support their nexus requirement approach. Rhodes & Robertson, *supra* note 77, at 240–41.

[240] Brilmayer, *supra* note 77, at 84 ("the similarity test would apparently have to allow jurisdiction in any State in the country where the defendant has engaged in similar activities . . . [this is] extremely elastic and lead[s] to dubious results.").

VII. STILL A QUESTION OF SIMILARITY WITHIN THE HYBRID JURISDICTION FRAMEWORK

Providing courts do adopt the hybrid approach as a narrow reading of "relate to," a difficult question will still remain. Like all "relate to" interpretations, there is still a similarity component within the hybrid approach. As Professor Sandstrom Simard noted the continuous contacts must be those that "could result in factual circumstances similar to those that gave rise to the plaintiff's claim."[241] The *Bristol-Myers* opinion does not hinge on similarity, and even if the injury occurred in the forum and a court found an "adequate link," similarity would not be an issue because the conduct was identical to the conduct that gave rise to the claim. But what if BMS did not sell Plavix in California but sold other similar drugs? The hybrid approach would necessarily need clarifying as to what degree of similarity is required.[242]

A difficult factual scenario would not be hard to imagine either. Indeed, the facts of *Goodyear* could implicate the problem.[243] Altering the facts of *Goodyear*, imagine the bus accident occurred in North Carolina, instead of France. Next, assume that Goodyear USA produced the defective tires in the accident, rather than the three foreign subsidiaries. Furthermore, assume that Goodyear USA had continuous contacts with North Carolina, but was not essentially at home there. Providing Goodyear sells the exact type of tire in North Carolina, the case would implicate a paradigmatic example of when hybrid jurisdiction would be useful. But what if Goodyear did not sell the same type of tire in North Carolina?[244] Here, the defendant's contacts with the forum would be similar but not identical to the activities that caused the injury. Deciding the degree of similarity required will necessarily be a question in need of clarification if courts come to fully embrace the hybrid approach.

VIII. CONCLUSION

Bristol-Myers has absolutely marked a change in personal jurisdiction jurisprudence. *Bristol-Myers* has clearly limited the breadth of the nexus requirement to largely requiring causation between the forum and the plaintiff's claim. The opinion, however, still leaves room for Professor Simard's concept of hybrid jurisdiction, which does not require causation

241 Sandstrom Simard, *supra* note 7, at 589.

242 Rhodes and Robertson similarly point out this issue in their proposal. Rhodes & Robertson, *supra* note 77, at 242.

243 *Goodyear*, 564 U.S. at 920–23.

244 This was the actual scenario in *Goodyear*. *Id.* at 921 ("[T]he type of tire involved in the accident, a Goodyear Regional RHS tire manufactured by Goodyear Turkey, was never distributed in North Carolina.").

between the defendant's contacts and the plaintiff's claim under narrow circumstances. In order to ensure fairness in the rapidly diminishing realm of personal jurisdiction, courts ought to embrace this limited non-causal approach in *Bandemer v. Ford Motor Co.* and *Ford Motor Co. v. Montana Eighth Judicial District Court*.