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3 on behalf of the Petitioner.

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5 on behalf of the Respondents.

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1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	SEAN MAROTTA, ESQ.	
4	On behalf of the Petitioner	4
5	ORAL ARGUMENT OF:	
6	DEEPAK GUPTA, ESQ.	
7	On behalf of the Respondents	35
8	REBUTTAL ARGUMENT OF:	
9	SEAN MAROTTA, ESQ.	
10	On behalf of the Petitioner	64
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
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11
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14
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18
19
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P R O C E E D I N G S

(11:41 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument next in Case 19-368, Ford Motor Company versus Montana Eighth Judicial District Court, and the consolidated case.

Mr. Marotta.

ORAL ARGUMENT OF SEAN MAROTTA

ON BEHALF OF THE PETITIONER

MR. MAROTTA: Thank you, Mr. Chief Justice, and may it please the Court:

Specific jurisdiction requires that the defendant have engaged in suit-related conduct in the forum state but that it has engaged in conduct relevant to the plaintiff's claims in the forum state. If those requirements mean anything, it is that the defendant's forum state conduct must be at least a but-for cause of the plaintiff's claim.

Conduct that does not cause a claim is, by definition, irrelevant to the plaintiff's claim. The claims would be the same with or without the conduct. And once the court accepts but-for causation as the minimum, proximate causation follows. A proximate cause standard

1 recognizes that there are some but-for causes
2 that are too attenuated to be a legal cause of
3 the plaintiff's claim and keeps those distant
4 causes from creating jurisdiction.

5 And a proximate cause standard lines
6 up with this Court's cases since International
7 Shoe and the principles of federalism, fairness,
8 predictability, and administrability that have
9 long governed this Court's analysis.

10 Respondents' primary arguments that
11 Ford is subject to jurisdiction in Minnesota and
12 Montana because it carried on similar unrelated
13 business there is the same argument this Court
14 rejected in Bristol-Myers Squibb. All that
15 Respondents add is that they are forum residents
16 injured in the forum state.

17 But the Court rejected that argument
18 in Walden, when it explained that an injury is
19 "jurisdictionally relevant only insofar as it
20 shows the defendant has formed a contact with
21 the forum state."

22 And no one claims that Respondents'
23 forum state injuries show that Ford has formed
24 contacts with Montana and Minnesota. The
25 vehicles were brought to the forums through the

1 unilateral actions of third parties, and
2 Respondents would have been injured wherever
3 they happened to be when the vehicles crashed.

4 In the end, Respondents press heavily
5 on the notion that Montana and Minnesota have an
6 interest in providing a forum to their injured
7 residents. But that runs afoul of this Court's
8 cardinal rule that the Due Process Clause
9 protects defendants, not plaintiffs and not
10 forum states.

11 The decisions below should be
12 reversed.

13 CHIEF JUSTICE ROBERTS: Mr. Marotta,
14 Ford advertises in all 50 states, right?

15 MR. MAROTTA: It does advertise and
16 market its vehicles to some extent in all 50
17 states, yes.

18 CHIEF JUSTICE ROBERTS: Right. So, if
19 somebody is in an accident and they think the
20 vehicle might have had something to do with it,
21 is it enough, under your theory, for them to
22 say, one reason I -- I bought a Ford was because
23 I saw one of their ads and I was persuaded that
24 they made good cars?

25 MR. MAROTTA: I think that would

1 satisfy but-for causation, Mr. Chief Justice,
2 because the purposeful availment through
3 marketing is in the but-for chain.

4 It may not satisfy proximate causation
5 depending on the nature of the claim. For a
6 routine design defect claim, the mere fact that
7 you saw a Ford ad and were persuaded to buy it
8 has nothing to do with the substance of the
9 claim.

10 By contrast, if your claim --

11 CHIEF JUSTICE ROBERTS: Why is that?

12 MR. MAROTTA: -- is that, you know --

13 CHIEF JUSTICE ROBERTS: I mean, you
14 wouldn't -- you wouldn't be in the car if you
15 didn't -- weren't persuaded to buy it. Why
16 doesn't that have a lot to do with the claim?

17 MR. MAROTTA: Well, as -- as Professor
18 Brilmayer says, if you're telling the story of
19 this car accident, the fact that they saw a Ford
20 ad has no substantive relevance to either the
21 story or to any of the legal elements of the
22 claim.

23 But, by contrast, if your claim is
24 that Ford made certain promises to me in that
25 ad, you know, they warranted that the air bags

1 would deploy, and I relied on that promise in
2 buying the Ford vehicle and they breached that
3 promise, that may satisfy proximate cause.

4 But what I think the question shows
5 is -- but, of course, here, you don't even have
6 the allegation that they were persuaded to buy
7 the vehicles by the advertisements in the forum
8 states.

9 CHIEF JUSTICE ROBERTS: No, but it's a
10 hypothetical question. And so, if -- if the
11 Ford ad said, you know, we make the safest cars
12 on the road, then any claim of a defect, you --
13 you would satisfy the jurisdictional
14 requirement?

15 MR. MAROTTA: You would satisfy
16 but-for cause; it may not satisfy proximate
17 cause depending on the substantive law that's at
18 issue. Merely saying we make safe cars might
19 not rise to the level of a warranty that would
20 be enforceable. But, again, plaintiffs don't
21 even satisfy the lower but-for standard in this
22 case.

23 CHIEF JUSTICE ROBERTS: But, if the --
24 if the -- if the issue that's going to be
25 litigated on liability is, say, for example, was

1 the accident caused by a car defect or was the
2 accident caused by the negligence of the driver,
3 you've suddenly made that a jurisdictional
4 question because, if the -- if the accident is
5 caused -- the proximate cause due to the car,
6 then you would say, well, there is jurisdiction,
7 but, if it's the driver's negligence, that
8 doesn't have anything to do with Ford's
9 presence.

10 So it seems to me that's a -- a
11 serious and unfortunate consequence of your
12 position.

13 MR. MAROTTA: I don't think it is,
14 Mr. Chief Justice, because we're not asking the
15 court of personal jurisdiction to decide the
16 merits of what the cause is. Rather, proximate
17 cause describes the directness of the connection
18 between the claims or the allegations that the
19 plaintiff has made and the defendant's contacts
20 with the forum state --

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 MR. MAROTTA: -- just as if you'll --

24 CHIEF JUSTICE ROBERTS: Justice
25 Thomas.

1 JUSTICE THOMAS: Yes. Thank you,
2 Mr. Chief Justice.

3 Counsel, I'm a little confused. The
4 -- how do we get from the Due Process Clause to
5 your proximate cause argument? That seems to be
6 a long journey.

7 I'd like you to at least trace back
8 for me, at least as far as International Shoe,
9 the lineage for this proximate cause
10 requirement.

11 MR. MAROTTA: Certainly, Justice
12 Thomas. So World-Wide Volkswagen itself says
13 that the International Shoe framework is
14 consistent with the original understanding of
15 the Constitution and of the Fourteenth
16 Amendment.

17 So then, when you look back to
18 International Shoe, is that the specific
19 jurisdiction is that you engage in certain
20 conduct in the forum, and then you create
21 obligations through that conduct, and then you
22 can be sued for claims that arise out of that
23 conduct.

24 So that's the base of but-for
25 causation. But, as the lower courts have

1 recognized, if your base is only but-for
2 causation, you could have, for instance, the
3 fact that the designer, you know, went to high
4 school in a certain state is in the but-for
5 chain of causation in some sense.

6 So all that proximate causation does
7 is it takes those attenuated but-for causes out
8 of the analysis to prevent that absurdity. And
9 that's how you trace it through.

10 JUSTICE THOMAS: Well, it's -- you
11 know, the -- that's still a bit confusing to me.
12 But let me ask you just a practical question.

13 Let's say that, first of all, Ford in
14 the United States is fairly ubiquitous. So the
15 -- if I'm in a city like Bristol, Tennessee, and
16 I notice on the Internet that there is a used
17 Ford Raptor available for sale at a great price
18 and great condition in Roanoke, Virginia, so I
19 drive to Roanoke, I buy it, I keep it a while,
20 but I -- it -- it -- somehow it fails, and we
21 can add the facts from -- from these two cases
22 to that. It fails.

23 Can the resident of Tennessee who
24 lives in Tennessee and wrecked the car or had
25 the accident in Tennessee sue in Tennessee --

1 Ford in Tennessee?

2 MR. MAROTTA: I think it would depend
3 how you came to your awareness that there's a
4 good value in Roanoke. If somehow Ford
5 connected you to that through the inventory of a
6 used car dealer, perhaps, but, if it's just that
7 you saw on the Internet through, you know, a
8 classified ad that there's a great value across
9 the state line, the answer is no, because that's
10 the action of third parties --

11 JUSTICE THOMAS: Okay. Let me --

12 MR. MAROTTA: -- that can't be imputed
13 back to Ford.

14 JUSTICE THOMAS: Oh, I understand.
15 I'm just trying to figure out the sense of this.

16 If I bought the Raptor in Bristol,
17 Tennessee, could I sue Ford in Bristol, under
18 the same circumstances, I saw the exact same ad,
19 but it was Bristol, Tennessee?

20 MR. MAROTTA: If you bought it from,
21 you know, just a private party, no. If you
22 purchased it new from your local Ford dealer,
23 yes.

24 JUSTICE THOMAS: Thank you.

25 CHIEF JUSTICE ROBERTS: Justice

1 Breyer.

2 JUSTICE BREYER: Why isn't there
3 general jurisdiction here? That's just a
4 preliminary.

5 MR. MAROTTA: There's -- there's no
6 general jurisdiction -- as has been conceded,
7 there's no general jurisdiction because Ford is
8 not at home in Minnesota or Montana. It's not
9 incorporated there and it's not headquartered
10 there.

11 JUSTICE BREYER: All right. So the
12 whole point of this whole doctrine, I take it,
13 is not to put a defendant to the trouble of
14 going to a different state, where it's really
15 unfair.

16 I mean, unfairness underlies all these
17 cases. And, here, they did send the car in.
18 Maybe they didn't know it would get there.
19 Maybe there is no causal connection. But they
20 do do a lot of business with the same cars
21 there. And so, since they do a lot of business
22 with the same kinds of cars there, they have to
23 be prepared to defend against this kind of suit.
24 So what's unfair about it?

25 MR. MAROTTA: What's unfair about it,

1 Justice Breyer, is Ford cannot expect to be sued
2 on this particular item. And the argument that
3 you laid out was the exact argument rejected in
4 Bristol Myers Squibb, which is that you sell
5 lots of Plavix, you have a formula, you have to
6 defend against these other suits, why not bother
7 with these tag-along suits as well. There's
8 nothing unfair about it.

9 But this Court 8-to-1 rejected that
10 argument in Bristol Myers Squibb --

11 JUSTICE BREYER: But wasn't that --

12 MR. MAROTTA: -- and that the key
13 point --

14 JUSTICE BREYER: -- the case where
15 they were in a different -- the plaintiff wasn't
16 part of California either, and all the injury
17 took place outside, and so what -- what was
18 that?

19 MR. MAROTTA: Well, it's true that the
20 plaintiff wasn't in California and the injury --

21 JUSTICE BREYER: Well, here, he's in
22 Montana. He's in Montana.

23 MR. MAROTTA: But -- but this Court
24 held in Walden unanimously that the location of
25 the plaintiff doesn't matter and that the place

1 of injury does not matter.

2 As I quoted in my opening statement,
3 this Court held that injuries are irrelevant
4 except for the fact that sometimes they shed
5 light on whether a defendant has contact with
6 the forum.

7 So trying to take Bristol Myers Squibb
8 and appending onto it a forum plaintiff and a
9 forum injury runs straight into Walden. I don't
10 think Respondents can get out of the combination
11 of Walden plus Bristol Myers Squibb.

12 JUSTICE BREYER: So I think the answer
13 to my question is some case law, which I bet --
14 which I will read, and -- but, if I came to the
15 conclusion the case law didn't govern, what --
16 what's unfair about it?

17 MR. MAROTTA: Well, I think what's
18 unfair about it is that Ford has to be subject
19 to the rulings of Montana and Minnesota judges,
20 be subject to the verdicts of Montana and
21 Minnesota juries, be subject to the Montana and
22 Minnesota Rules of Evidence and Procedure.

23 And even if you don't think that's a
24 significant burden on Ford because Ford's a big
25 company, the rule you'll announce in this case

1 applies to much smaller manufacturers. It
2 applies to regional manufacturers who are
3 perhaps thinking about expanding into a new
4 market. So, in crafting the rule today, you
5 shouldn't just look at the Fords of the world.
6 Consider the smaller manufacturers who don't
7 have --

8 JUSTICE BREYER: I'm sorry.

9 MR. MAROTTA: -- a national presence.

10 JUSTICE BREYER: On that, I thought
11 that -- I thought that the other side says, no,
12 no, we're talking about a case where the
13 defendant does a lot of business of the same
14 kind in the state. Just not this car, but a lot
15 of other similar cars.

16 MR. MAROTTA: But, if Bristol Myers
17 Squibb means anything, Justice Breyer, it's that
18 there's no sliding scale. You can't just say,
19 well, if there's a lot of business, there has to
20 be less relatedness, because that is the exact
21 holding of Bristol Myers Squibb.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Justice Alito.

25 JUSTICE ALITO: Let me pick up on a

1 hypothetical that you have in your reply brief.
2 I'll modify it slightly for purposes of -- of
3 simplicity.

4 So suppose a product is sold in a
5 particular state where the manufacturer
6 advertises this product as a very safe product,
7 a person purchases it and is injured by the
8 product.

9 Would there be personal jurisdiction
10 there, or would it be necessary for the injured
11 individual to prove that the advertising as to
12 the safety of this product was the proximate
13 cause of the purchase of the product?

14 MR. MAROTTA: In your hypothetical,
15 Justice Alito, where the purchase occurs in the
16 forum state, the advertising, I think, is just
17 icing on the cake. The sale is what provides
18 the proximate link in our view.

19 JUSTICE ALITO: All right. Suppose
20 that the -- the sale occurs in a different
21 state.

22 MR. MAROTTA: In -- in that particular
23 instance, I think what -- and I -- I don't want
24 the Court to get hung up on the phrase
25 "proximate cause" because it carries with it

1 certain weight from the merits inquiry.

2 All we're saying is that it has to be
3 a sufficiently direct cause of it. So, in that
4 case, it would depend on the particular claims
5 that you're bringing. The claims in this case,
6 I don't think merely saying, I saw an ad, I
7 bought the vehicle somewhere else, would be
8 sufficient. For other claims, it may very well
9 be.

10 JUSTICE ALITO: So, if the person --
11 the person purchases it in, I don't know, Idaho,
12 drives it to -- a person from Montana purchases
13 it in Idaho because of advertising in Montana
14 regarding the safety of this product and then is
15 injured in -- in Montana, what would -- would --
16 would there be personal jurisdiction there?

17 MR. MAROTTA: If the particular claims
18 were only the design and manufacturing claims
19 that we have here, no. If it were based upon
20 promises made in the advertising, perhaps yes.

21 But, again, in these cases, there's no
22 allegation that the advertising caused anyone to
23 do anything for these decades-old vehicles that
24 were not even, you know, particularly to the
25 Crown Victoria, were not even being advertised

1 or sold at the time they were purchased in this
2 case.

3 JUSTICE ALITO: Well, if we step back,
4 and this is a little bit like Justice Thomas's
5 question, we're talking about due process, which
6 the international court -- court felt --
7 International Shoe court felt free to say, well,
8 that just means fair play.

9 If -- if that's what we're talking
10 about, either fair play for Ford or what was at
11 issue in Bristol Myers Squibb, which is a
12 lawsuit in a suit that has -- in a state that
13 has little connection with anything involved in
14 the -- in the suit, what would be the
15 justification for a ruling in your favor here?

16 MR. MAROTTA: The justification for a
17 ruling in our favor is that the state -- the
18 forum states don't have a connection to what's
19 relevant, which is Ford conduct.

20 In Walden, the Court talked about the
21 challenged conduct has to occur in the forum,
22 that the relevant conduct has to occur in the
23 forum. The relevant conduct here from Ford's
24 perspective -- and, remember, due process is a
25 defendant-focused perspective -- is the building

1 of the car, the selling of the car, the
2 manufacturing of the car, the design of the car.
3 All of those things occurred outside of the
4 forums.

5 The connection that the forums have
6 here is to the injury, which says nothing about
7 Ford.

8 JUSTICE ALITO: Okay. Thank you.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.

11 Justice Sotomayor.

12 JUSTICE SOTOMAYOR: Counsel, I -- I --
13 in essence, what you are saying is that Ford can
14 only be liable in its home state --

15 MR. MAROTTA: I would disagree.

16 JUSTICE SOTOMAYOR: -- because only
17 there, presumably, under general jurisdiction,
18 and maybe even not even there, because your
19 but-for requirement would say wherever it
20 manufactures, produces, if it didn't sell the
21 car to the customer, there's no proximate
22 causation. Correct?

23 MR. MAROTTA: Although there is
24 proximate causation where the vehicle is built,
25 because, I mean, let's be clear about what our

1 proximate cause standard is. It's at page 42 of
2 the brief, of the opening brief, and page 22-23
3 of the reply brief. It's that the operative
4 facts of the controversy arise from the
5 defendant's conducts -- contacts with the state
6 where the defendant's in-state conduct form an
7 important or at least material element of proof
8 in the plaintiff's case.

9 So the place where the vehicle is
10 designed is an element of proof in the case.
11 The place where the vehicle is built --

12 JUSTICE SOTOMAYOR: And where the
13 vehicle is so sold by a Ford dealer? Ford sold
14 it to the dealer. The dealer now sells it to a
15 customer. Does that also --

16 MR. MAROTTA: It's also an element of
17 -- it's also an element of proof of the
18 plaintiff's case because one of the elements of
19 a product defect claim is that the manufacturer
20 introduced the article into commerce and that
21 the vehicle has not changed conditions since
22 that first sale.

23 JUSTICE SOTOMAYOR: All right. So
24 let's assume that a Ford vehicle was designed in
25 Michigan, manufactured in Kentucky, sold to a

1 dealership in Kansas City, Missouri, but
2 purchased by a resident of Kansas City. They
3 saw a Ford advertisement in TV.

4 The plaintiff wants to assert various
5 claims for design defect, manufacturing defect,
6 false advertising, and negligence. Is there any
7 single state where the plaintiff could -- could
8 allege all those torts?

9 MR. MAROTTA: Certainly, Justice
10 Sotomayor. And I -- I want to, I think, note
11 something that I think is implicit in your
12 question, which is we're not saying that design
13 claims have to be brought somewhere,
14 manufacturing claims have to be brought
15 somewhere.

16 It's -- it's the suit as a whole, as
17 this Court talks about. So you can bring it
18 where the vehicle was designed, Michigan; where
19 the vehicle was assembled, Kentucky; I think
20 where the -- where the advertisements were sold,
21 which was in Missouri; and where the vehicle was
22 purchased, in Kansas.

23 JUSTICE SOTOMAYOR: So you would say
24 any one contact would be enough, but how about
25 if the airbag -- if the defect was in the

1 airbag? Would Missouri still have jurisdiction
2 over Ford -- or Kansas, you said Kansas would,
3 if the defective airbag were not the original
4 airbag but instead a new replacement airbag
5 installed by a Ford dealership?

6 And then take it a step further. Is
7 it the airbag or is it an old sensor in the car
8 that caused it? How do we determine
9 jurisdiction then?

10 MR. MAROTTA: You would determine
11 jurisdiction then because the repair that was
12 made at a Ford-authorized dealership which is in
13 contact with Ford, with the forum, and it arises
14 out of that --

15 JUSTICE SOTOMAYOR: No, that was in
16 Missouri. Remember the car was bought in
17 Missouri. The plaintiff was in Kansas. The
18 plaintiff drove in and lives in Kansas. He saw
19 the false advertisement in Kansas.

20 MR. MAROTTA: Sorry to the residents
21 of Kansas and Missouri that I'm -- I'm confusing
22 their two states, but --

23 JUSTICE SOTOMAYOR: Yeah. The problem
24 is there's two -- that I believe that there's
25 Kansas, Missouri, and Kansas, Kansas.

1 MR. MAROTTA: But what I would say in
2 your hypothetical, Justice Sotomayor, is that
3 where the vehicle was repaired would be proper
4 jurisdiction. Perhaps not the place they took
5 it back to.

6 And I understand that if you live on
7 the border of two states like that, you may
8 treat them as interchangeable. But, of course,
9 this Court has repeatedly said that in personal
10 jurisdiction, state lines matter, even though it
11 may not seem functionally to matter in the
12 markets where you exist.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 Justice Kagan.

16 JUSTICE KAGAN: Mr. Marotta, going
17 back to your colloquy with Justice Alito, a
18 simple hypothetical: I buy a Apple computer in
19 New York. I -- I -- I -- I move to California.
20 The computer catches on fire. I get injured.

21 You're saying I can sue in New York,
22 where I bought the -- the Apple computer, but I
23 can't sue in California, where I live and where
24 the injury took place. Is that right?

25 MR. MAROTTA: That's right. I mean,

1 of course, Apple has headquarters in California,
2 so there's general jurisdiction, but --

3 JUSTICE KAGAN: Yeah, you're right.
4 That was a bad example for that reason, right?
5 But, you know, I moved to Illinois. It doesn't
6 matter. But that's right?

7 MR. MAROTTA: Yeah, understood.

8 JUSTICE KAGAN: Yeah. So -- so,
9 essentially, you're substituting what I think
10 people have assumed in these product cases,
11 which is, if -- if you are in a place and the
12 injury takes place in a place because of a
13 manufacturing defect or a design defect, you get
14 to sue.

15 You're saying, no, it doesn't really
16 matter where the injury took -- took place; what
17 matters is where the first sale of the product
18 took place?

19 MR. MAROTTA: Ours is not a first sale
20 rule, Justice Kagan. Ours is --

21 JUSTICE KAGAN: But that would be the
22 effect of it. I mean, it might -- you might not
23 label it that, but that would be the effect of
24 it, wouldn't it?

25 MR. MAROTTA: No, it's that any place

1 that there is a proximate causal link -- that
2 could be the place of design --

3 JUSTICE KAGAN: I know, but the -- the
4 first sale, the place of a first sale, you're
5 saying there is a proximate causal link, and the
6 place where the injury took place, you're saying
7 there's not. Is that right?

8 MR. MAROTTA: That's right. But it
9 doesn't limit jurisdiction to only the place of
10 first sale.

11 JUSTICE KAGAN: Okay. But you can
12 also do it where it's manufactured, for example.

13 Okay. Then that's notwithstanding
14 that this company, and let's go just back to
15 Ford now, it advertises, it sells, it services
16 these automobiles in exactly the same way in
17 these two states.

18 MR. MAROTTA: And that was the same
19 argument that was made in Bristol Myers Squibb,
20 which held that Bristol Myers --

21 JUSTICE KAGAN: Well, I have to say
22 you keep saying Bristol Myers, but, you know,
23 Bristol Myers, there was absolutely no
24 connection. The plaintiffs weren't residents of
25 California. They didn't use the product there.

1 They hadn't been injured there.

2 Now that's three differences from this
3 case.

4 MR. MAROTTA: And I think even going
5 back further then to Walden and Keeton, Keeton
6 says the plaintiff's connections to the forum
7 don't -- doesn't matter. And the plaintiff in
8 Walden says that injury in the forum doesn't
9 matter. So --

10 JUSTICE KAGAN: Well, in Walden, the
11 defendant had absolutely no connection to the
12 forum state. But, here, as we've just
13 established, Ford sells cars, services cars,
14 resells cars, advertises cars in Montana.

15 MR. MAROTTA: But Bristol Myers Squibb
16 proceeded as a syllogism. It said that Walden
17 illustrates the "arise out of or relate to"
18 requirement, and it said that in Walden we held
19 that an injury in the forum is not sufficient.
20 And it said this case is even easier because the
21 plaintiffs did not even suffer injury in the
22 forum. But the major premise of Bristol Myers
23 Squibb is that an injury in the forum is not
24 sufficient.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 JUSTICE KAGAN: Thank you,
3 Mr. Marotta.

4 CHIEF JUSTICE ROBERTS: Justice
5 Gorsuch.

6 JUSTICE GORSUCH: Good morning,
7 Mr. Marotta. It seems to me this case really
8 puts into sharp relief the difficulties our
9 doctrinal tests have created.

10 We've made a firm distinction between
11 specific and general jurisdiction for many
12 years. We say specific jurisdiction has to
13 "arise out of." Everybody seems to know what
14 that means. Nobody knows what "relates to"
15 means, the other part of the test.

16 And so I -- I guess -- I guess I want
17 to take you back to first principles along the
18 lines of Justice Thomas. What does due process
19 require? I suppose one could say it's whatever
20 fair play -- whatever we think fair play means,
21 in which case you -- you might run into some of
22 the troubles we've -- we've been hearing some of
23 the questions about.

24 But it could mean -- due process could
25 mean a couple of other things. One, it could

1 mean the law of the land. Are you being haled
2 into court in accordance with the law of the
3 land? And, surely, that -- that's met here, the
4 state long-arm statute. No one contests that it
5 reaches you.

6 Or it might mean that, as originally
7 understood, the Due Process Clause and the ideas
8 behind the due process would not have allowed a
9 defendant to be haled into court in these kinds
10 of circumstances.

11 I didn't see a lot in the briefs
12 addressing that question, so it's really
13 something I -- I wanted to ask you and -- and --
14 and your colleagues today about.

15 Do you have anything you want to
16 comment there?

17 MR. MAROTTA: Sure, Your Honor.

18 There is certainly a wide originalist,
19 I think, new view on personal jurisdiction, so
20 Professor Sack that essentially says that
21 Pennoyer versus Neff was correctly decided. Of
22 course, Respondents are not urging a return to
23 Pennoyer versus Neff.

24 What this Court has said in the past
25 is that the International Shoe framework is

1 consistent with the original understanding of
2 the Fourteenth Amendment. And so, when you
3 apply the International Shoe framework, what the
4 first principle is, is what distinguishes
5 general from specific jurisdiction?

6 Specific jurisdiction is you go into a
7 state and you perform certain acts. You are
8 then liable for claims that arise out of those
9 acts. But, here, the forum states are seeking
10 to hold Ford liable for acts of manufacture, of
11 design, and of sale that occurred in other
12 states.

13 Remember, if Ford had done nothing in
14 Montana and Minnesota in these cases, the claims
15 are exactly the same as they are before you.

16 And that's the key difference.

17 JUSTICE GORSUCH: Thank you.

18 MR. MAROTTA: I think it all --

19 CHIEF JUSTICE ROBERTS: Justice
20 Kavanaugh.

21 JUSTICE KAVANAUGH: Thank you, Chief
22 Justice.

23 And good morning, Mr. Marotta. Ford
24 litigates lots of cases in Minnesota and
25 Montana. Why doesn't it want to litigate these

1 cases in Minnesota and Montana?

2 MR. MAROTTA: Well, I think, in part,
3 Ford wants cases to go back to where they should
4 be decided. And, of course, you know, Montana
5 and Minnesota have particular judges, have
6 particular juries, have particular evidentiary
7 rules. There may be some cases where Ford would
8 otherwise waive an available personal
9 jurisdiction defense, but that's an option
10 that's up to Ford and to the defendant.

11 And the fact that Ford may, you know,
12 litigate in these forums anyway, you know, think
13 of the smaller manufacturers who sell minimal
14 amounts of products in the forum who may have
15 never litigated a product case there before.

16 The rule you announce today is going
17 to apply to those manufacturers too and should,
18 I think, be equal, if not greater, in your
19 consideration.

20 JUSTICE KAVANAUGH: If we -- if we
21 look at -- there have been a lot of questions
22 about our precedent, but the -- the sentence
23 from World-Wide Volkswagen, and you're familiar
24 with the sentence on 297 and 298 of World-Wide
25 Volkswagen, I guess it ends at the bottom of

1 297, if we follow that sentence, you lose,
2 correct?

3 MR. MAROTTA: I don't think so,
4 Justice Kavanaugh, because that sentence was
5 about purposeful availment. You have to put
6 that sentence in context.

7 The sentence before it says, when a
8 corporation purposefully avails itself --

9 JUSTICE KAVANAUGH: No. Sorry to
10 interrupt. If we just follow what the sentence
11 says, though, "if the sale of a product of a
12 manufacturer/distributor rises from the efforts
13 of the manufacturer/distributor to serve
14 directly or indirectly the market for its
15 products in other states, it's not unreasonable
16 to subject it to suit in one of those states if
17 its allegedly defective merchandise has there
18 been the source of injury to its own or to
19 others," if we just follow that sentence, you
20 lose, correct?

21 MR. MAROTTA: I -- I don't think so,
22 Justice Kavanaugh, because it's unclear and I
23 think ambiguous from the sentence whether the
24 Court is referring to a sale of the product in
25 that forum or a sale of the product in another

1 forum.

2 But, of course, the issue that we're
3 talking about today wasn't before the Court in
4 World-Wide Volkswagen because Audi and
5 Volkswagen hadn't contested personal
6 jurisdiction in this Court.

7 JUSTICE KAVANAUGH: That sentence has
8 been quoted in other cases and has formed the
9 basis for -- well, it's been quoted in several
10 other cases, correct?

11 MR. MAROTTA: Aspects of that
12 paragraph have been. I mean, Burger King talks
13 about -- talks about the sentence after, which
14 is the personal jurisdiction over a corporation
15 that delivers the product, which I think, again,
16 creates that ambiguity.

17 And Keeton, again, talks about, I
18 think, that same sentence. So the sentence
19 about Audi and Volkswagen has really never else
20 popped up in this Court's cases, just the
21 sentences around it.

22 JUSTICE KAVANAUGH: Thank you.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Do you want a minute to wrap up?

1 MR. MAROTTA: Thank you, Mr. Chief
2 Justice.

3 Two points I want to make. The first
4 is that many of the questions I've gotten today
5 have talked about the alleged problems with the
6 proximate cause test.

7 But what, you know, the lower courts
8 have emphasized is that but-for causation is at
9 least the minimum. And all this Court has to
10 decide to resolve these cases, as happened in
11 the Tenth Circuit with then Judge Gorsuch, is
12 you have to hold -- it's just some causal
13 standard, and you can leave for another day
14 whether it's proximate cause or some other
15 degree of causation.

16 And the second is to take it back to
17 the first principle, is that Ford should only be
18 held to account for things it did in the forum
19 state that are challenged by the suit. And,
20 here, Ford did not do anything in these forum
21 states that is challenged by Respondents' suits.
22 If the conduct didn't happen, the claims are the
23 same.

24 And that's how you know it's
25 irrelevant forum conduct, which cannot be the

1 basis of specific jurisdiction. Thank you.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 Mr. Gupta. Mr. Gupta. We'll take a
5 brief moment to take a recess to address audio
6 issues at Mr. Gupta's end.

7 (A recess was taken at 12:12 p.m., after
8 which the hearing resumed at 12:14 p.m.)

9 CHIEF JUSTICE ROBERTS: Mr. Gupta, I assume
10 you didn't decide to rest on your briefs.

11 MR. GUPTA: No, Mr. Chief Justice.
12 I'm sorry, there was a technical problem.

13 ORAL ARGUMENT OF DEEPAK GUPTA ON
14 BEHALF OF THE RESPONDENTS

15 MR. GUPTA: Mr. Chief Justice, and may
16 it please the Court:

17 This Court has never read the Due
18 Process Clause to deprive the states of their
19 sovereign powers to try cases in their own
20 courts and protect people injured within their
21 own borders on anything like the facts presented
22 here.

23 That is, where the following two
24 things are true: The defendant's product
25 injured the plaintiff in the forum state, and

1 the defendant, through its in-state activity,
2 has deliberately cultivated the market for that
3 product in that state.

4 Over the objection of 40 state
5 attorneys general, Ford asks this Court to
6 extinguish the state's traditional authority
7 even in this paradigmatic scenario based on an
8 elusive proximate cause standard. And I think
9 we just heard how elusive it is.

10 Jurisdictional rules should be simple.
11 The Ford standard would introduce tremendous
12 uncertainty and generate needless litigation.
13 It would break up garden-variety accident cases.

14 It would leave innocent local
15 businesses holding the bag for foreign
16 companies, as the Home Builders and Main Street
17 business briefs explain. And it would send
18 injured plaintiffs on an irrelevant scavenger
19 hunt to trace the route of the particular pill
20 or toaster that caused injury, just to try to
21 figure out where to sue.

22 The Constitution does not compel such
23 an arbitrary regime. Ford's standard would
24 create practical problems without any
25 countervailing benefits of fairness or

1 federalism demanded by the Due Process Clause.

2 The plaintiffs here aren't forum
3 shopping. They sued where everyone would expect
4 them to sue. And Ford can't even credibly claim
5 that it would be unfair or burdensome to face
6 suit there or identify any sovereign with any
7 greater interest.

8 Ultimately, Ford's position turns
9 personal jurisdiction into a game. The
10 defendant can cut off access to the court not
11 because the forum state overreached or because
12 fairness compels it but simply because it makes
13 it harder for people to get access to justice.

14 That is not due process.

15 CHIEF JUSTICE ROBERTS: Counsel, one
16 of your amici, the National Association of Home
17 Builders, has a test that relies on the
18 so-called stream of commerce theory. And I
19 understand your theory to be different.

20 Could you tell me what you understand
21 that theory to be and exactly why yours is
22 different?

23 MR. GUPTA: Yes. Mr. Chief Justice, I
24 think that the -- the stream of commerce test is
25 answering a different question from the one

1 that's presented here.

2 The stream of commerce test tells you
3 whether there is purposeful availment, whether
4 there are the requisite contacts. And -- and
5 that theory relies on the idea that even if the
6 defendant hasn't done what would subject it to
7 suit in the -- in the forum otherwise, that the
8 stream of commerce theory can supply the
9 requisite contacts because -- either because the
10 manufacturer has -- has put the -- the goods
11 into the stream and they end up there or,
12 depending on whether you accept Justice
13 O'Connor's view, there's something else that has
14 occurred.

15 But, here, purposeful availment is
16 conceded. And so the question is, once you have
17 the -- the requisite contacts, as Ford does with
18 the forum, is the suit related enough to the --
19 the forum and the contacts that the defendant
20 has in the forum that -- that this is specific
21 jurisdiction and not general jurisdiction.

22 CHIEF JUSTICE ROBERTS: Counsel, let's
23 say there's a -- a retired guy in a small town
24 up in Maine who carves decoys. And friends say:
25 These are great, you ought to sell them on the

1 Internet. And so he gets a site on the
2 Internet, and it has a little thing that links
3 to it that says, you know, buy my decoys.

4 Can he be sued in any state if some
5 harm arises from the decoy? Say it -- you know,
6 it has lead paint or something.

7 By putting something --

8 MR. GUPTA: Well --

9 CHIEF JUSTICE ROBERTS: -- an
10 advertisement on the Internet, is he exposing
11 himself to suit everywhere in the country?

12 MR. GUPTA: No, and I do think that's
13 a much harder problem. I think, first, we'd
14 have to ask, are they isolated sales, or is he
15 really doing something to inject himself into
16 the forum state?

17 If he doesn't have any advertising
18 that's targeted to a particular state, he -- it
19 may be that his sales are sufficiently isolated
20 that he's not even going to -- purposeful
21 availment won't even be satisfied.

22 But -- but assuming that it is,
23 assuming that there's a -- there are sales in
24 the forum, and he knows that and expects that
25 and encourages that, it's possible that -- that

1 that is going to give rise to specific
2 jurisdiction for that injury, but we would need
3 to know at the first step whether he's really
4 doing something to deliberately cultivate a
5 market in the forum state.

6 CHIEF JUSTICE ROBERTS: In the forum
7 state, will they --

8 MR. GUPTA: I think that's a big
9 question there.

10 CHIEF JUSTICE ROBERTS: They get the
11 Internet wherever in the country, and that's how
12 he's trying to cultivate a market. Is that
13 enough or not?

14 MR. GUPTA: Well --

15 CHIEF JUSTICE ROBERTS: I think --

16 MR. GUPTA: -- no. I mean, I think we
17 would need to know has he never sold -- let's
18 say the suit is this California. Has he never
19 sold something in California? Has he only sold
20 in New England, but, in theory, they could sell
21 to California and then there's one sale in
22 California? I'm not sure that's going to be
23 enough for purposeful availment.

24 But I really do think it is --

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 Justice -- Justice Thomas.

3 JUSTICE THOMAS: Thank you, Mr. Chief
4 Justice.

5 Mr. Gupta, I would like to pick up
6 there too. You used the term "related to" in
7 the discussion. What is enough -- and -- and
8 I'm not clear as to, even with the Chief
9 Justice's hypothetical, what -- how related it
10 must be.

11 Could you put some contours on that
12 for us?

13 MR. GUPTA: Sure, Justice Thomas. And
14 I think you can pick up where you left off in
15 BMS. And -- and BMS is, I think, the case that
16 -- that is most on point and about relatedness.

17 And what you said there, that a suit
18 relates to the defendant's contacts with the
19 forum where there's an affiliation between the
20 forum and the underlying controversy,
21 principally, an occurrence.

22 Well, we know that happened here.
23 There was an occurrence in the forum that was
24 subject to the state's regulation.

25 And we think relatedness under your

1 cases can basically be distilled down to two
2 inquiries, and it yields a simple test in
3 products cases. First, you have to ask, would
4 the defendant be submitting to the coercive
5 power of a state with little interest in the
6 controversy?

7 That was the problem in BMS, right?
8 The -- the -- the State of California had little
9 interest in that controversy because those
10 people were injured elsewhere and really had
11 nothing to do with California.

12 And then, second, I think relatedness
13 is asking about whether the reciprocal legal
14 obligations at issue were created by the
15 defendant's in-state contacts. And -- and does
16 the -- do the plaintiff's claims really come
17 within those contacts?

18 And -- and, Justice Thomas, my -- my
19 friend in -- in answer to your question about,
20 you know, what does this all have to do with due
21 process in International Shoe, invoked that
22 concept of reciprocal obligations. We think
23 that's critical here.

24 What you're really asking when you ask
25 about the defendant's contacts are, what kind of

1 legal obligations arose from that? And, here,
2 the legal obligation's pretty simple. It's the
3 legal obligation that you've got to compensate
4 people when you sell all these -- this exact
5 product in the forum and it hurts somebody.

6 JUSTICE THOMAS: Thank you.

7 MR. GUPTA: Thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Breyer.

10 JUSTICE BREYER: The other side, I
11 think, is saying jurisdictional rules must be
12 clear. A defendant does not do enough business
13 in a state, say Illinois, to make that defendant
14 at home in the state. But he does do some.

15 Now he sells a product from Maine,
16 let's say, take the hypothetical that the Chief
17 Justice gave. And the person who bought it has
18 never seen his advertising, though he advertises
19 a lot. The person who bought it didn't use his
20 dealer, though he even has some there.

21 And you think, under those
22 circumstances, he can bring his lawsuit. Is
23 that right?

24 MR. GUPTA: No, I'm not sure that he
25 could, Justice Breyer.

1 JUSTICE BREYER: What would make it --

2 MR. GUPTA: I would need to know more,
3 but I think it sounds like that's an isolated
4 sale in the forum --

5 JUSTICE BREYER: No, it's an isolated
6 sale --

7 MR. GUPTA: -- in Illinois.

8 JUSTICE BREYER: Wait, it's an
9 isolated sale in the sense that that particular
10 sale has no contact except the injured -- except
11 the injured person and the place of accident in
12 Illinois.

13 But the defendant does loads of
14 similar business in Illinois. Does that make a
15 difference?

16 MR. GUPTA: I see. Yes, Justice
17 Breyer, that does make a big difference.

18 JUSTICE BREYER: Exactly. That's what
19 I thought.

20 Now the problem, I think, that the
21 other side is saying is there is, how much
22 business does he have to do? I mean, if John
23 Deere has a defective lawn mower or John Deere
24 has a defective harvester in Illinois, what if
25 it sells 4 billion lawn mowers in Illinois but

1 no harvesters? I mean, what kind of business?
2 Say it's not enough to be at home there, but it
3 is some.

4 MR. GUPTA: Right.

5 JUSTICE BREYER: Well, how much? And
6 under what circumstances?

7 MR. GUPTA: So --

8 JUSTICE BREYER: You say that's
9 totally unclear. That's why they go to their
10 rule.

11 MR. GUPTA: Well, Justice Breyer, let
12 me try to give you some comfort on that because
13 I think, if this is -- if the fight here is over
14 whose rule is more predictable and certain, I
15 think we win hands down.

16 Our test is pretty simple. It's
17 always going to be possible to know whether the
18 person was injured in the forum state. And then
19 I think it's usually quite easy to figure out,
20 was that exact product sold in the state?

21 So, in your example, if John Deere
22 sells tractors, but it doesn't sell the
23 harvester in Illinois, then --

24 JUSTICE BREYER: Okay. But it's not
25 the same product.

1 MR. GUPTA: -- that is not going to
2 support --

3 JUSTICE BREYER: That's not the same
4 product. How many of the same product?

5 MR. GUPTA: So -- so that's a question
6 on purposeful availment, right? Is it -- is it
7 -- is it isolated? Is it enough? But, once
8 you've satisfied purposeful availment, which,
9 again, of course, is conceded here, then the
10 question is, are those sales that are not
11 isolated, that have targeted the market, are
12 they the same and are they of the same product?

13 And I think, if you have the same
14 make, model, and year, it's going to be the same
15 product. We're talking about mass-produced
16 goods. It's not a difficult inquiry. And I
17 think the inquiry is basically an objective one.

18 The -- the -- the defendant has the
19 choice to differentiate its products. If it
20 wants to sell cars in California, but it doesn't
21 want to sell trucks in California because it
22 doesn't like the way California regulates, it is
23 free to do that. And then it would not be
24 subject on our test to specific jurisdiction in
25 California.

1 JUSTICE BREYER: Thank you very much.
2 Thank you.

3 CHIEF JUSTICE ROBERTS: Justice Alito.

4 JUSTICE ALITO: What if the product
5 involved here was a custom-made product? Let's
6 say it's an antique car that's been rebuilt, and
7 it is advertised on the Internet and purchased
8 in one state, driven into another state. An
9 accident occurs in the other state. The claim
10 is that the -- the design of this car was
11 negligent. Would there be personal
12 jurisdiction?

13 MR. GUPTA: I don't think so, Justice
14 Alito. I think, you know, there's one case of
15 yours that talks about custom products. In --
16 in the Goodyear case, you said the problem there
17 was that the accident hadn't occurred in North
18 Carolina and also that the same type of tire
19 wasn't distributed in North Carolina, but there
20 were custom deliveries of tires for concrete
21 trucks and various other kinds of trucks there.
22 And the Court distinguished that.

23 So I think, when you have custom
24 products that are designed -- bespoke products
25 designed for particular people, that cannot

1 easily be assimilated into a test that it's
2 designed for mass-produced products.

3 JUSTICE ALITO: All right. Well,
4 suppose it's not a custom product. And now
5 we'll get to a hypothetical that's similar to --
6 to the Chief Justice's.

7 It is a -- a product that is produced
8 in somewhat limited quantities by a person in,
9 let's say, Maine, but advertised on the
10 Internet. That's the only way anybody learns
11 about it. And purchases are made over the
12 Internet. Someone purchases it in another state
13 and is injured in that state.

14 Would there be jurisdiction?

15 MR. GUPTA: Not unless the seller has
16 deliberately target -- targeted and cultivated a
17 market in that forum. And that's not a
18 relatedness question. That's a purposeful
19 availment question. But we --

20 JUSTICE ALITO: No, it's an antiquated
21 -- it's an antiquated question. It's the 1945
22 International Shoe traveling salesman question.

23 So we are in -- we could perhaps
24 decide this case within the contours of our
25 existing cases because there's nothing

1 particularly 21st century about what happened
2 here.

3 But we're in a strange situation where
4 we are not purporting to apply what due process
5 was understood to mean when the Fourteenth
6 Amendment was adopted. We are applying a 1945
7 standard adopted by the Court when it put on its
8 fair play hat and said this is fair play as we
9 understand the world in 1945.

10 But the world in 2020 is completely
11 different. So you may just say, well, decide
12 this on the basis of your -- your existing case
13 law and not propose anything grander, but, if
14 you have a solution to the bigger problems that
15 have been framed by some of the questions, it
16 would be interesting to hear it.

17 MR. GUPTA: It's a -- it's a very fair
18 point, Justice Alito. And I think it is true
19 that the evolution of the cases, particularly in
20 the early 20th century, reflected changing
21 market realities, that as we have more of a
22 national economy, a more integrated economy, the
23 jurisdictional standards began to reflect that.

24 And I think it is fair to say that
25 there's been some stasis since then. And you've

1 left open a lot of questions in cases like
2 Nicastro and Asahi about -- about where to draw
3 the lines. And those -- those can be very
4 difficult questions for the lower courts, and
5 they'd appreciate some clarity.

6 But I also think something that --
7 that the concurrence by Justice Breyer and --
8 and -- and you, Justice Alito, in Nicastro is
9 important. And, there, that concurrence
10 cautioned against trying to write rules with a
11 broad brush that will apply across different
12 market contexts with -- and have unanticipated
13 consequences.

14 And so that's why --

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Justice Sotomayor.

18 JUSTICE SOTOMAYOR: Counsel, I just
19 have one question about your same product rule.
20 How about if it's a claim about a defective
21 airbag, and it wasn't in -- in one car sold by
22 Ford, but it's in another car, millions of cars
23 that are sold in Minnesota. But this one car is
24 not sold in Minnesota. Would you still have
25 jurisdiction?

1 MR. GUPTA: So I think, if -- if Ford
2 says, look, we didn't sell that airbag in that
3 state and, you know, they might have done it on
4 purpose. They might -- for example, in
5 California, there are emissions standards that
6 are different.

7 I think the defendant has the ability
8 -- at least on our tests, the defendant has the
9 ability not to sell that product in that -- in
10 that forum. But it has to be objectively
11 discernible to everyone that it's a different
12 product.

13 And I think, in your hypothetical, it
14 would be. They would be saying we're not
15 marketing the same car. We're marketing a
16 different car.

17 But, you know, it has to be
18 objectively discernible because I don't think we
19 want a test that turns on, you know, what's in
20 the guts of the car. But, if they say: Look,
21 there's the model X and we sell it in Minnesota,
22 and then there's the model Y and we don't sell
23 that in Minnesota, then that would not satisfy
24 our test.

25 JUSTICE SOTOMAYOR: Thank you,

1 counsel.

2 CHIEF JUSTICE ROBERTS: Justice Kagan.

3 JUSTICE KAGAN: Mr. Gupta, on -- on
4 this same product rule again, I mean, first, let
5 me make sure I understand the rule.

6 So, if I'm Ford and I come up with a
7 special kind of pickup truck and I decide really
8 the market for this pickup truck is the
9 southeast part of America and I only advertise
10 it there and I only sell it there, then, if
11 somebody takes the pickup truck to Washington
12 State and something happens, then you're saying
13 I cannot sue you in Washington State. Is that
14 right?

15 MR. GUPTA: I'm saying that it fails
16 our test, Justice Kagan. I don't think that
17 that means that it forecloses some alternative
18 possibility of specific jurisdiction. And I
19 think this goes to Justice Alito's question and
20 some of the other questions about stream of
21 commerce.

22 If -- you know, when the Court -- if
23 the Court picks up the stream of commerce
24 question and decides what constitutes purposeful
25 availment when you don't have the kind of -- the

1 same kinds of sales in the forum as you do here,
2 then I think you could answer that question and
3 you could conclude there would be specific
4 jurisdiction, but it would be on an alternate
5 theory.

6 It wouldn't be on our test that --
7 that we think decides these cases and I think
8 decides a whole lot of products liability cases.

9 JUSTICE KAGAN: I see what you're
10 saying. And on your test, focusing on your
11 test, how about if Ford does something, you
12 know, a little bit different? It -- it -- it
13 says we have this pickup truck and mostly we're
14 going to market it in the southeast, but we
15 can't say we do nothing in the northwest, you
16 know, we do a little bit. There's one dealer
17 who's out there selling these pickup trucks.

18 What happens then?

19 MR. GUPTA: Well, if that one dealer
20 is really selling those pickup trucks in the
21 state, I think that that would satisfy our test
22 pretty easily. I mean, I think -- but I do
23 think the reason why I say that, you know, it
24 matters whether they're selling the same thing
25 in the state is because the defendant has the

1 ability to structure their primary conduct.

2 If they say, you know, we want to sell
3 some stuff somewhere, we don't want to sell some
4 -- and -- and to take the cold -- the southern
5 states example, maybe they sell a car that
6 doesn't work very well in cold climate and they
7 know that and they don't want to be sued in
8 Alaska for the car that they only sell in -- in
9 Florida and Arizona.

10 So they have the right to do that.
11 Your cases have always acknowledged that. You
12 can exit a market. You can exit a market
13 partially. But --

14 JUSTICE KAGAN: Okay. Sorry, if I
15 could just interrupt, Mr. Gupta.

16 Final question is we talked a lot
17 about fairness in this argument. My
18 understanding of our law is that federalism has
19 become an at least equivalent concern in the due
20 process cases as fairness. So how does that cut
21 with respect to your theory?

22 MR. GUPTA: Yes, I think you're
23 absolutely right, Justice O'Connor, and I think
24 federalism cuts very strongly in our favor. I
25 mean, it's why you have 40 states coming in and

1 urging you not to do what Ford urges. And
2 that's because the states have a manifest
3 interest in -- in trying cases within their
4 borders, applying procedures to their own law,
5 and protecting people within their own borders.

6 And -- and you dealt with this in BMS.
7 I think the -- the driving force of the opinion
8 in BMS was a concern for interstate federalism
9 and, in particular, a concern about one state
10 meddling in the affairs of another state, say
11 California saying we want to hear the claims of
12 Ohioans when Ohio has a right to apply its own
13 procedures to its own laws.

14 You don't have any kind of meddling
15 like that here.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 counsel.

18 Justice Gorsuch.

19 JUSTICE GORSUCH: Good morning, Mr.
20 Gupta. I think the Chief Justice and others
21 have pointed out the difficulty of our
22 purposeful availment test in an Internet age,
23 and some of it was cabined by a rise out of when
24 that had some causal link, but now we're blowing
25 past that and we're adorning "relate to" to mean

1 something more, which I -- I totally understand.

2 And I get your same product test is a
3 limiting way, though I think there -- there are
4 issues there. What if, for example, Ford didn't
5 sell Explorers in Montana, but the part that
6 allegedly failed in the Explorer by your client
7 in Montana is also sold by Ford in lots of other
8 models in Montana. Which is the relevant
9 product? Is it the Explorer or is it the part?
10 And -- and I -- I foresee a lot of difficulties
11 there, all of which, again, takes me back to, at
12 least -- at least me, to these first principle
13 questions.

14 We seem to be blurring the line
15 between specific and general jurisdiction. If
16 specific jurisdiction says fair play, I -- I get
17 that this seems like fair play, but then where
18 is the limiting factor there?

19 Do you have anything about the
20 original meaning of the Due Process Clause that
21 you want to argue here that might provide some
22 helpful guidance?

23 MR. GUPTA: Okay, Justice Gorsuch,
24 that was a lot. We've got the Internet, the
25 components, blurring the lines between specific

1 and general, and the original meaning. Let me
2 try to take them really quickly.

3 First, on the Internet, I --

4 JUSTICE GORSUCH: I threw it all out
5 there for you to have at it.

6 MR. GUPTA: Thank you. You know, on
7 the Internet, again, I just think that is
8 probably the most vexing issue in personal
9 jurisdiction. And I do think, if you had a case
10 that was about personal jurisdiction on the
11 Internet, you'd have a whole lot of amicus
12 briefs. You would -- you would -- you would get
13 some sense of the unanticipated consequences.

14 JUSTICE GORSUCH: All right. You can
15 pass that one. I don't want to waste my time on
16 that.

17 MR. GUPTA: Okay. Okay. Okay. The
18 component one is -- I want to make sure I answer
19 that. I do think that products liability turns
20 on the finished product that's sold, if you
21 think about your Air & Liquid case, which was
22 all about that. And I think, again, it has to
23 be objectively discernible.

24 So, if there's some component in
25 there, but we don't know that the -- that the

1 defendant has made a decision about how it's
2 going to submit itself to the market, I don't
3 think it's a good idea to have --

4 JUSTICE GORSUCH: Well, we know -- we
5 know Ford sells this defective component in
6 millions of cars in Montana. Let's say we know
7 that.

8 MR. GUPTA: Right.

9 JUSTICE GORSUCH: I would think the
10 next case, you -- you -- you -- you may not be
11 arguing it, but your -- a friend of yours will
12 be here right fast saying that that's the same
13 product.

14 MR. GUPTA: Right. Well, I think the
15 way our test works is the -- the -- the
16 defendant gets to choose how it assembles the
17 product and what it puts out into the world and
18 what it's -- how it's submitting to the states.
19 So I would say I would not want the test to turn
20 on -- on just the components.

21 I don't think what we're proposing
22 blurs the lines of specific and general at all.
23 I hope it promotes clarity and continues the
24 project that this Court has had of separating
25 these two different bases for jurisdiction,

1 because, you know, what could be more specific
2 than the place where the person had the injury
3 and the specific make, model, and year of
4 product.

5 And then -- and then, finally, on
6 original meaning, Justice Gorsuch, I think, you
7 know, the framers would have been pretty
8 surprised by a lot of the personal jurisdiction
9 jurisprudence.

10 I think my friend on the other side is
11 asking you to -- to announce a constitutional
12 rule that turns on the first sale of a widget,
13 five sales ago to somebody else in a state that
14 has --

15 JUSTICE GORSUCH: I -- I --

16 MR. GUPTA: -- no interest in the
17 controversy.

18 JUSTICE GORSUCH: I -- I guess I agree
19 with you. I was just curious what you would
20 have us say, but that's okay. I've run out of
21 time. I'm sorry.

22 MR. GUPTA: Thank you.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Justice Kavanaugh.

1 JUSTICE KAVANAUGH: Thank you, Chief
2 Justice.

3 And welcome back, Mr. Gupta. First of
4 all, can you explain under your test what you
5 think you have to show to satisfy purposeful
6 availment and then what else you need to show to
7 satisfy "relates to," just so I'm clear on
8 those?

9 MR. GUPTA: Sure. Yeah. And -- and
10 -- and this is a feature of the weird way this
11 case comes to you, where purposeful availment is
12 conceded. I think it was -- Ford was right to
13 concede it because, you know, this is an easy
14 case for purposeful availment. As some of the
15 questions have shown, it can be more difficult.

16 But I think you -- your cases talk a
17 lot more about what constitutes purposeful
18 availment. And I think what you've said is
19 you've got to target the market. You've got to
20 be, you know, deliberately cultivating the
21 market.

22 As I've said, there are difficult
23 questions about the stream of commerce, and can
24 we just bracket those for -- for the moment and
25 say as long as you have, you know, purposeful

1 availment that doesn't rely on a stream of
2 commerce test.

3 The distinct thing that relatedness
4 does that's different is that it says once
5 you've got those contacts, we're now going to
6 try to figure out are those contacts
7 sufficiently related to the claim here, the --
8 the person's injury, where it occurred --

9 JUSTICE KAVANAUGH: And --

10 MR. GUPTA: -- and the -- and the
11 obligation --

12 JUSTICE KAVANAUGH: I'm sorry to
13 interrupt. I think you're saying if purposeful
14 availment has been satisfied, then so long as
15 the injury was in the forum state, that's going
16 to be good enough.

17 MR. GUPTA: No, Justice Kavanaugh, not
18 quite. I mean, I think, yes, you have to have
19 the injury in the state, but then you've got to
20 figure out is the plaintiff's claim coming
21 within the scope of the legal obligations that
22 the defendant has subjected itself to in the
23 forum.

24 So like, for example, if -- if a
25 company sells, you know, computers in the state,

1 they may be purposefully availing themselves,
2 but if my claim is really about software, that
3 they haven't sold in the state, you're going to
4 have purposeful availment but you won't have
5 relatedness.

6 JUSTICE KAVANAUGH: Okay. You heard
7 the -- the response to World-Wide Volkswagen.
8 You had emphasized that case quite heavily in
9 your briefs, and you heard the response from the
10 other side.

11 Your response to that?

12 MR. GUPTA: Well, I -- I think what
13 that colloquy showed is, you know, it's -- it's
14 hard to answer the question on the other side.
15 I think World-Wide Volkswagen had precisely this
16 kind of situation in mind.

17 The reason they did is because
18 Volkswagen and Audi hadn't raised a
19 jurisdictional objection, but there were four
20 Audi dealerships in the state in Oklahoma in
21 1980 and they were selling these cars.

22 And my friend below -- in the courts
23 below referred to that passage as a description
24 of -- of -- of what would have happened if Audi
25 or Volkswagen had raised this jurisdictional

1 objection. Frankly, I think everyone has always
2 assumed that that's the easy case.

3 And that's why you've referred to it
4 over and over, that passage, as kind of the
5 paradigmatic example of -- of specific
6 jurisdiction. And you did so most recently in
7 your unanimous opinion in Goodyear.

8 So I -- I get that, you know, you can
9 say that it's a dicta, but it's very important
10 dicta that's been repeated over and over again,
11 relied on by the lower courts, and reflects kind
12 of a core scenario of specific jurisdiction that
13 I -- I think is satisfied here.

14 JUSTICE KAVANAUGH: Thank you.

15 CHIEF JUSTICE ROBERTS: A minute to
16 wrap up, Mr. Gupta.

17 MR. GUPTA: Thank you.

18 At the end of the day, I think any
19 sensible resolution of these cases is going to
20 have to be grounded in some combination of
21 interstate federalism, fairness to the
22 defendant, predictability, and -- and, frankly,
23 common sense. Those are the -- the things that
24 I think the Due Process Clause are -- is trying
25 to accomplish in this area.

1 And I think Ford's approach flunks all
2 three tests. When it comes to federalism, they
3 just can't get around the fact that their
4 approach extinguishes the sovereign power of the
5 states that have the greatest interest in -- in
6 cases like this and shuffles it arbitrarily to
7 states that may have no interest. All in the
8 service of a -- a extremely-difficult-to-apply
9 proximate has -- cause inquiry.

10 When it comes to fairness, Ford claims
11 no unfairness, if you really press them, and
12 tried -- if -- if you -- if you were to try to
13 explain to the public how this result is
14 grounded in fairness, I think it would be very
15 difficult to do.

16 And, finally, their approach would
17 inject tremendous uncertainty and
18 unpredictability into the American litigation
19 system. We urge you to affirm both judgments.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Three minutes, Mr. Marotta.

23 REBUTTAL ARGUMENT OF SEAN MAROTTA

24 ON BEHALF OF THE PETITIONER

25 MR. MAROTTA: Thank you, Your Honor.

1 Three points I'll make on rebuttal.
2 The first is to administrability. Their
3 relatedness test has no basis in the common law
4 or in the courts below. Consider the questions
5 we pose at page 19 and 20 of the reply brief,
6 and they've been the ones that were discussed
7 today, for product sale. So it has to be the
8 same type of product, the same make and model.
9 Is a similar product sufficient? Does it have
10 to be the same features that are alleged to be
11 defective in the case?

12 Or take advertising, which has been
13 posited as one of the contacts that can create
14 jurisdiction. Does it have to propose a sale of
15 the product directly, mere technical support or
16 warranty support? How about merely raising
17 brand recognition? And how long does this have
18 to take place, one year of sales, many years of
19 sales?

20 These are the questions that are going
21 to trouble the lower courts for years if you
22 adopt that test.

23 A causal test, by contrast, has a rich
24 history in the common law and it's, in fact, the
25 majority rule in the courts that have applied --

1 that have confronted this question. And they
2 carry out the application of a causal test
3 without any real trouble. And that's because,
4 as this Court noted in Lexmark, these are
5 principles that have -- are widely known to
6 judges and can be applied easily, even if there
7 are odd corner cases.

8 And, finally, our rule is
9 transsubstantive. You can apply our causal
10 tests in all kinds of cases, from contracts to
11 torts to otherwise; whereas Respondent's test
12 only at most solves a subset of product cases.

13 The courts have been crying out for a
14 clear rule on "arise out of or relate to," and a
15 causal test is the appropriate one.

16 Second, the discussion confirms that
17 Respondents' argument is essentially just
18 Bristol-Myers Squibb plus the occurrence of
19 injury in the forum. In other words, a sale of
20 a sufficient number of the same product plus the
21 occurrence of the injury.

22 But going back to first principles,
23 all the way back to Helicopteros, which
24 announced "arise out of relate to," the Court
25 made clear that even regular purchases of a

1 product in the forum are not sufficient to
2 create jurisdiction where the claims do not
3 relate to those purchases.

4 And it goes back to Hanson versus
5 Denckla, that the mere presence of the plaintiff
6 in the forum or even the center of gravity in
7 the forum is not sufficient to create personal
8 jurisdiction. Their limiting principle goes
9 contrary to every principle this Court has laid
10 out in its cases, which it allows the
11 plaintiff's claims to direct the analysis.

12 And, finally, the interest analysis
13 and the weighing analysis that Respondents
14 propose has been rejected by Hanson. It -- this
15 Court said in Hanson the forum does not acquire
16 jurisdiction by being the center of gravity of
17 controversy or the most convenient location for
18 litigation. The issue is personal jurisdiction,
19 not choice of law.

20 And as this Court said all the way
21 back in World-Wide Volkswagen, there can be
22 cases where it is not unfair to the defendant
23 from a practical standpoint, where perhaps the
24 state even has the greatest interest from a
25 choice-of-law standpoint, but yet still

1 federalism, acting as an instrument of
2 interstate -- of interstate federalism can still
3 deny personal jurisdiction to the forum state.
4 That is this kind of case because the forum
5 states are not regulating something that Ford
6 has done in the forum.

7 Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 The case is submitted.

11 (Whereupon, at 12:46 p.m., the case
12 was submitted.)

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Official - Subject to Final Review

1	administrability [2] 5:8 65:2 adopt [1] 65:22 adopted [2] 49:6,7 adorning [1] 55:25 ads [1] 6:23 advertise [2] 6:15 52:9 advertised [3] 18:25 47:7 48:9 advertisement [3] 22:3 23:19 39:10 advertisements [2] 8:7 22:20 advertises [5] 6:14 17:6 26:15 27:14 43:18 advertising [9] 17:11,16 18:13,20,22 22:6 39:17 43:18 65:12 affairs [1] 55:10 affiliation [1] 41:19 affirm [1] 64:19 afoul [1] 6:7 age [1] 55:22 ago [1] 59:13 agree [1] 59:18 air [2] 7:25 57:21 airbag [8] 22:25 23:1,3,4,4,7 50:21 51:2 AL [1] 1:7 Alaska [1] 54:8 Alito [15] 16:24,25 17:15,19 18:10 19:3 20:8 24:17 47:3,4,14 48:3,20 49:18 50:8 Alito's [1] 52:19 allegation [2] 8:6 18:22 allegations [1] 9:18 allege [1] 22:8 alleged [2] 34:5 65:10 allegedly [2] 32:17 56:6 allowed [1] 29:8 allows [1] 67:10 alternate [1] 53:4 alternative [1] 52:17 Although [1] 20:23 ambiguity [1] 33:16 ambiguous [1] 32:23 Amendment [3] 10:16 30:2 49:6 America [1] 52:9 American [1] 64:18 amici [1] 37:16 amicus [1] 57:11 amounts [1] 31:14 analysis [5] 5:9 11:8 67:11,12,13 announce [3] 15:25 31:16 59:11 announced [1] 66:24 another [6] 32:25 34:13 47:8 48:12 50:22 55:10 answer [6] 12:9 15:12 42:19 53:2 57:18 62:14 answering [1] 37:25 antiquated [2] 48:20,21 antique [1] 47:6 anybody [1] 48:10 anyway [1] 31:12 APPEARANCES [1] 2:1 appending [1] 15:8 Apple [3] 24:18,22 25:1 application [1] 66:2	applied [2] 65:25 66:6 applies [2] 16:1,2 apply [6] 30:3 31:17 49:4 50:11 55:12 66:9 applying [2] 49:6 55:4 appreciate [1] 50:5 approach [3] 64:1,4,16 appropriate [1] 66:15 arbitrarily [1] 64:6 arbitrary [1] 36:23 area [1] 63:25 aren't [1] 37:2 argue [1] 56:21 arguing [1] 58:11 argument [17] 1:20 3:2,5,8 4:4,8 5:13,17 10:5 14:2,3,10 26:19 35:13 54:17 64:23 66:17 arguments [1] 5:10 arise [7] 10:22 21:4 27:17 28:13 30:8 66:14,24 arises [2] 23:13 39:5 Arizona [1] 54:9 arose [1] 43:1 around [2] 33:21 64:3 article [1] 21:20 Asahi [1] 50:2 asks [1] 36:5 Aspects [1] 33:11 assembled [1] 22:19 assembles [1] 58:16 assert [1] 22:4 assimilated [1] 48:1 Association [1] 37:16 assume [2] 21:24 35:9 assumed [2] 25:10 63:2 assuming [2] 39:22,23 attenuated [2] 5:2 11:7 attorneys [1] 36:5 Audi [5] 33:4,19 62:18,20,24 audio [1] 35:5 authority [1] 36:6 automobiles [1] 26:16 available [2] 11:17 31:8 availing [1] 62:1 availment [18] 7:2 32:5 38:3,15 39:21 40:23 46:6,8 48:19 52:25 55:22 60:6,11,14,18 61:1,14 62:4 avails [1] 32:8 awareness [1] 12:3	began [1] 49:23 behalf [8] 2:3,5 3:4,7,10 4:9 35:14 64:24 behind [1] 29:8 believe [1] 23:24 below [4] 6:11 62:22,23 65:4 benefits [1] 36:25 bespoke [1] 47:24 bet [1] 15:13 between [5] 9:18 28:10 41:19 56:15,25 big [3] 15:24 40:8 44:17 bigger [1] 49:14 billion [1] 44:25 bit [4] 11:11 19:4 53:12,16 blowing [1] 55:24 blurring [2] 56:14,25 blurs [1] 58:22 BMS [5] 41:15,15 42:7 55:6,8 border [1] 24:7 borders [3] 35:21 55:4,5 both [1] 64:19 bother [1] 14:6 bottom [1] 31:25 bought [8] 6:22 12:16,20 18:7 23:16 24:22 43:17,19 bracket [1] 60:24 brand [1] 65:17 breached [1] 8:2 break [1] 36:13 Breyer [26] 13:1,2,11 14:1,11,14,21 15:12 16:8,10,17 43:9,10,25 44:1,5,8,17,18 45:5,8,11,24 46:3 47:1 50:7 brief [6] 17:1 21:2,2,3 35:5 65:5 briefs [5] 29:11 35:10 36:17 57:12 62:9 Brilmayer [1] 7:18 bring [2] 22:17 43:22 bringing [1] 18:5 Bristol [17] 11:15 12:16,17,19 14:4,10 15:7,11 16:16,21 19:11 26:19,20,22,23 27:15,22 Bristol-Myers [2] 5:14 66:18 broad [1] 50:11 brought [3] 5:25 22:13,14 brush [1] 50:11 Builders [2] 36:16 37:17 building [1] 19:25 built [2] 20:24 21:11 burden [1] 15:24 burdensome [1] 37:5 Burger [1] 33:12 business [10] 5:13 13:20,21 16:13,19 36:17 43:12 44:14,22 45:1 businesses [1] 36:15 but-for [13] 4:19,24 5:1 7:1,3 8:16,21 10:24 11:1,4,7 20:19 34:8 buy [6] 7:7,15 8:6 11:19 24:18 39:3 buying [1] 8:2
2	20 [1] 65:5 2020 [2] 1:17 49:10 20th [1] 49:20 21st [1] 49:1 22-23 [1] 21:2 297 [2] 31:24 32:1 298 [1] 31:24	back [17] 10:7,17 12:13 19:3 24:5,17 26:14 27:5 28:17 31:3 34:16 56:11 60:3 66:22,23 67:4,21 bad [1] 25:4 bag [1] 36:15 bags [1] 7:25 BANDEMER [1] 1:13 base [2] 10:24 11:1 based [2] 18:19 36:7 bases [1] 58:25 basically [2] 42:1 46:17 basis [4] 33:9 35:1 49:12 65:3 become [1] 54:19	C
3	35 [1] 3:7	cabined [1] 55:23 cake [1] 17:17	
4	4 [2] 3:4 44:25 40 [2] 36:4 54:25 42 [1] 21:1		
5	50 [2] 6:14,16		
6	64 [1] 3:10		
7	7 [1] 1:17		
8	8-to-1 [1] 14:9		
A	a.m [2] 1:21 4:2 ability [3] 51:7,9 54:1 above-entitled [1] 1:19 absolutely [3] 26:23 27:11 54:23 absurdity [1] 11:8 accept [1] 38:12 accepts [1] 4:23 access [2] 37:10,13 accident [10] 6:19 7:19 9:1,2,4 11:25 36:13 44:11 47:9,17 accomplish [1] 63:25 accordance [1] 29:2 account [1] 34:18 acknowledged [1] 54:11 acquire [1] 67:15 across [2] 12:8 50:11 acting [1] 68:1 action [1] 12:10 actions [1] 6:1 activity [1] 36:1 acts [3] 30:7,9,10 ad [7] 7:7,20,25 8:11 12:8,18 18:6 ADAM [1] 1:13 add [2] 5:15 11:21 address [1] 35:5 addressing [1] 29:12		

Official - Subject to Final Review

<p>California ^[18] 14:16,20 24:19,23 25:1 26:25 40:18,19,21,22 42:8, 11 46:20,21,22,25 51:5 55:11</p> <p>came ^[3] 1:19 12:3 15:14</p> <p>cannot ^[4] 14:1 34:25 47:25 52:13</p> <p>car ^[25] 7:14,19 9:1,5 11:24 12:6 13:17 16:14 20:1,1,2,2,21 23:7,16 47:6,10 50:21,22,23 51:15,16,20 54:5,8</p> <p>cardinal ^[1] 6:8</p> <p>Carolina ^[2] 47:18,19</p> <p>carried ^[1] 5:12</p> <p>carries ^[1] 17:25</p> <p>carry ^[1] 66:2</p> <p>cars ^[14] 6:24 8:11,18 13:20,22 16:15 27:13,13,14,14 46:20 50:22 58:6 62:21</p> <p>carves ^[1] 38:24</p> <p>Case ^[35] 4:4,6 8:22 14:14 15:13, 15,25 16:12 18:4,5 19:2 21:8,10, 18 27:3,20 28:7,21 31:15 41:15 47:14,16 48:24 49:12 57:9,21 58:10 60:11,14 62:8 63:2 65:11 68:4, 10,11</p> <p>cases ^[34] 5:6 11:21 13:17 18:21 25:10 30:14,24 31:1,3,7 33:8,10, 20 34:10 35:19 36:13 42:1,3 48:25 49:19 50:1 53:7,8 54:11,20 55:3 60:16 63:19 64:6 66:7,10,12 67:10,22</p> <p>catches ^[1] 24:20</p> <p>causal ^[9] 13:19 26:1,5 34:12 55:24 65:23 66:2,9,15</p> <p>causation ^[12] 4:24,25 7:1,4 10:25 11:2,5,6 20:22,24 34:8,15</p> <p>cause ^[21] 4:19,20,25 5:2,5 8:3,16, 17 9:5,16,17 10:5,9 17:13,25 18:3 21:1 34:6,14 36:8 64:9</p> <p>caused ^[6] 9:1,2,5 18:22 23:8 36:20</p> <p>causes ^[3] 5:1,4 11:7</p> <p>cautioned ^[1] 50:10</p> <p>center ^[2] 67:6,16</p> <p>century ^[2] 49:1,20</p> <p>certain ^[6] 7:24 10:19 11:4 18:1 30:7 45:14</p> <p>Certainly ^[3] 10:11 22:9 29:18</p> <p>chain ^[2] 7:3 11:5</p> <p>changed ^[3] 19:21 34:19,21</p> <p>changed ^[1] 21:21</p> <p>changing ^[1] 49:20</p> <p>CHIEF ^[50] 4:3,10 6:13,18 7:1,11, 13 8:9,23 9:14,21,24 10:2 12:25 16:22 20:9 24:13 27:25 28:4 30:19,21 33:23 34:1 35:2,9,11,15 37:15,23 38:22 39:9 40:6,10,15,25 41:3,8 43:8,16 47:3 48:6 50:15 52:2 55:16,20 59:23 60:1 63:15 64:20 68:8</p> <p>choice ^[2] 46:19 67:19</p> <p>choice-of-law ^[1] 67:25</p> <p>choose ^[1] 58:16</p> <p>Circuit ^[1] 34:11</p> <p>circumstances ^[4] 12:18 29:10</p>	<p>43:22 45:6</p> <p>city ^[3] 11:15 22:1,2</p> <p>claim ^[19] 4:19,20,22 5:3 7:5,6,9, 10,16,22,23 8:12 21:19 37:4 47:9 50:20 61:7,20 62:2</p> <p>claims ^[21] 4:16,22 5:22 9:18 10:22 18:4,5,8,17,18 22:5,13,14 30:8, 14 34:22 42:16 55:11 64:10 67:2, 11</p> <p>clarity ^[2] 50:5 58:23</p> <p>classified ^[1] 12:8</p> <p>Clause ^[7] 6:8 10:4 29:7 35:18 37:1 56:20 63:24</p> <p>clear ^[6] 20:25 41:8 43:12 60:7 66:14,25</p> <p>client ^[1] 56:6</p> <p>climate ^[1] 54:6</p> <p>coercive ^[1] 42:4</p> <p>cold ^[2] 54:4,6</p> <p>colleagues ^[1] 29:14</p> <p>colloquy ^[2] 24:17 62:13</p> <p>combination ^[2] 15:10 63:20</p> <p>come ^[2] 42:16 52:6</p> <p>comes ^[3] 60:11 64:2,10</p> <p>comfort ^[1] 45:12</p> <p>coming ^[2] 54:25 61:20</p> <p>comment ^[1] 29:16</p> <p>commerce ^[9] 21:20 37:18,24 38:2,8 52:21,23 60:23 61:2</p> <p>common ^[3] 63:23 65:3,24</p> <p>companies ^[1] 36:16</p> <p>COMPANY ^[6] 1:3,10 4:4 15:25 26:14 61:25</p> <p>compel ^[1] 36:22</p> <p>compels ^[1] 37:12</p> <p>compensate ^[1] 43:3</p> <p>completely ^[1] 49:10</p> <p>component ^[3] 57:18,24 58:5</p> <p>components ^[2] 56:25 58:20</p> <p>computer ^[3] 24:18,20,22</p> <p>computers ^[1] 61:25</p> <p>concede ^[1] 60:13</p> <p>conceded ^[4] 13:6 38:16 46:9 60:12</p> <p>concept ^[1] 42:22</p> <p>concern ^[3] 54:19 55:8,9</p> <p>conclude ^[1] 53:3</p> <p>conclusion ^[1] 15:15</p> <p>concrete ^[1] 47:20</p> <p>concurrence ^[2] 50:7,9</p> <p>condition ^[1] 11:18</p> <p>conditions ^[1] 21:21</p> <p>conduct ^[16] 4:14,15,18,20,23 10:20,21,23 19:19,21,22,23 21:6 34:22,25 54:1</p> <p>conducts ^[1] 21:5</p> <p>confirms ^[1] 66:16</p> <p>confronted ^[1] 66:1</p> <p>confused ^[1] 10:3</p> <p>confusing ^[2] 11:11 23:21</p> <p>connected ^[1] 12:5</p> <p>connection ^[7] 9:17 13:19 19:13, 18 20:5 26:24 27:11</p> <p>connections ^[1] 27:6</p>	<p>consequence ^[1] 9:11</p> <p>consequences ^[2] 50:13 57:13</p> <p>Consider ^[2] 16:6 65:4</p> <p>consideration ^[1] 31:19</p> <p>consistent ^[2] 10:14 30:1</p> <p>consolidated ^[1] 4:6</p> <p>constitutes ^[2] 52:24 60:17</p> <p>Constitution ^[2] 10:15 36:22</p> <p>Constitutional ^[1] 59:11</p> <p>contact ^[5] 5:20 15:5 22:24 23:13 44:10</p> <p>contacts ^[14] 5:24 9:19 21:5 38:4, 9,17,19 41:18 42:15,17,25 61:5,6 65:13</p> <p>contested ^[1] 33:5</p> <p>contests ^[1] 29:4</p> <p>context ^[1] 32:6</p> <p>contexts ^[1] 50:12</p> <p>continues ^[1] 58:23</p> <p>contours ^[2] 41:11 48:24</p> <p>contracts ^[1] 66:10</p> <p>contrary ^[1] 67:9</p> <p>contrast ^[3] 7:10,23 65:23</p> <p>controversy ^[6] 21:4 41:20 42:6,9 59:17 67:17</p> <p>convenient ^[1] 67:17</p> <p>core ^[1] 63:12</p> <p>corner ^[1] 66:7</p> <p>corporation ^[2] 32:8 33:14</p> <p>Correct ^[4] 20:22 32:2,20 33:10</p> <p>correctly ^[1] 29:21</p> <p>counsel ^[19] 9:22 10:3 16:23 20:10,12 24:14 28:1 33:24 35:3 37:15 38:22 41:1 50:16,18 52:1 55:17 59:24 64:21 68:9</p> <p>countervailing ^[1] 36:25</p> <p>country ^[2] 39:11 40:11</p> <p>couple ^[1] 28:25</p> <p>course ^[7] 8:5 24:8 25:1 29:22 31:4 33:2 46:9</p> <p>COURT ^[40] 1:1,7,20 4:5,11,23 5:13,17 9:15 14:9,23 15:3 17:24 19:6,6,7,20 22:17 24:9 29:2,9,24 32:24 33:3,6 34:9 35:16,17 36:5 37:10 47:22 49:7 52:22,23 58:24 66:4,24 67:9,15,20</p> <p>Court's ^[4] 5:6,9 6:7 33:20</p> <p>courts ^[10] 10:25 34:7 35:20 50:4 62:22 63:11 65:4,21,25 66:13</p> <p>crafting ^[1] 16:4</p> <p>crashed ^[1] 6:3</p> <p>create ^[5] 10:20 36:24 65:13 67:2, 7</p> <p>created ^[2] 28:9 42:14</p> <p>creates ^[1] 33:16</p> <p>creating ^[1] 5:4</p> <p>credibly ^[1] 37:4</p> <p>critical ^[1] 42:23</p> <p>Crown ^[1] 18:25</p> <p>crying ^[1] 66:13</p> <p>cultivate ^[2] 40:4,12</p> <p>cultivated ^[2] 36:2 48:16</p> <p>cultivating ^[1] 60:20</p> <p>curious ^[1] 59:19</p>	<p>custom ^[4] 47:15,20,23 48:4</p> <p>custom-made ^[1] 47:5</p> <p>customer ^[2] 20:21 21:15</p> <p>cut ^[2] 37:10 54:20</p> <p>cuts ^[1] 54:24</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C ^[3] 1:16 2:2,4</p> <p>day ^[2] 34:13 63:18</p> <p>dealer ^[8] 12:6,22 21:13,14,14 43:20 53:16,19</p> <p>dealership ^[3] 22:1 23:5,12</p> <p>dealerships ^[1] 62:20</p> <p>dealt ^[1] 55:6</p> <p>decades-old ^[1] 18:23</p> <p>decide ^[6] 9:15 34:10 35:10 48:24 49:11 52:7</p> <p>decided ^[2] 29:21 31:4</p> <p>decides ^[3] 52:24 53:7,8</p> <p>decision ^[1] 58:1</p> <p>decisions ^[1] 6:11</p> <p>decoy ^[1] 39:5</p> <p>decoys ^[2] 38:24 39:3</p> <p>DEEPAK ^[3] 2:4 3:6 35:13</p> <p>Deere ^[3] 44:23,23 45:21</p> <p>defect ^[9] 7:6 8:12 9:1 21:19 22:5, 5,25 25:13,13</p> <p>defective ^[7] 23:3 32:17 44:23,24 50:20 58:5 65:11</p> <p>defend ^[2] 13:23 14:6</p> <p>defendant ^[25] 4:13 5:20 13:13 15:5 16:13 27:11 29:9 31:10 36:1 37:10 38:6,19 42:4 43:12,13 44:13 46:18 51:7,8 53:25 58:1,16 61:22 63:22 67:22</p> <p>defendant's ^[8] 4:18 9:19 21:5,6 35:24 41:18 42:15,25</p> <p>defendant-focused ^[1] 19:25</p> <p>defendants ^[1] 6:9</p> <p>defense ^[1] 31:9</p> <p>definition ^[1] 4:21</p> <p>degree ^[1] 34:15</p> <p>deliberately ^[4] 36:2 40:4 48:16 60:20</p> <p>deliveries ^[1] 47:20</p> <p>delivers ^[1] 33:15</p> <p>demand ^[1] 37:1</p> <p>Denckla ^[1] 67:5</p> <p>deny ^[1] 68:3</p> <p>depend ^[2] 12:2 18:4</p> <p>depending ^[3] 7:5 8:17 38:12</p> <p>deploy ^[1] 8:1</p> <p>deprive ^[1] 35:18</p> <p>describes ^[1] 9:17</p> <p>description ^[1] 62:23</p> <p>design ^[9] 7:6 18:18 20:2 22:5,12 25:13 26:2 30:11 47:10</p> <p>designed ^[6] 21:10,24 22:18 47:24,25 48:2</p> <p>designer ^[1] 11:3</p> <p>determine ^[2] 23:8,10</p> <p>dicta ^[2] 63:9,10</p> <p>difference ^[3] 30:16 44:15,17</p> <p>differences ^[1] 27:2</p>
--	---	--	--

Official - Subject to Final Review

<p>different ^[14] 13:14 14:15 17:20 37:19,22,25 49:11 50:11 51:6,11, 16 53:12 58:25 61:4</p> <p>differentiate ^[1] 46:19</p> <p>difficult ^[5] 46:16 50:4 60:15,22 64:15</p> <p>difficulties ^[2] 28:8 56:10</p> <p>difficulty ^[1] 55:21</p> <p>direct ^[2] 18:3 67:11</p> <p>directly ^[2] 32:14 65:15</p> <p>directness ^[1] 9:17</p> <p>disagree ^[1] 20:15</p> <p>discernible ^[3] 51:11,18 57:23</p> <p>discussed ^[1] 65:6</p> <p>discussion ^[2] 41:7 66:16</p> <p>distant ^[1] 5:3</p> <p>distilled ^[1] 42:1</p> <p>distinct ^[1] 61:3</p> <p>distinction ^[1] 28:10</p> <p>distinguished ^[1] 47:22</p> <p>distinguishes ^[1] 30:4</p> <p>distributed ^[1] 47:19</p> <p>DISTRICT ^[2] 1:6 4:5</p> <p>doctrinal ^[1] 28:9</p> <p>doctrine ^[1] 13:12</p> <p>doing ^[2] 39:15 40:4</p> <p>done ^[4] 30:13 38:6 51:3 68:6</p> <p>down ^[2] 42:1 45:15</p> <p>draw ^[1] 50:2</p> <p>drive ^[1] 11:19</p> <p>driven ^[1] 47:8</p> <p>driver ^[1] 9:2</p> <p>driver's ^[1] 9:7</p> <p>drives ^[1] 18:12</p> <p>driving ^[1] 55:7</p> <p>drove ^[1] 23:18</p> <p>Due ^[17] 6:8 9:5 10:4 19:5,24 28: 18,24 29:7,8 35:17 37:1,14 42:20 49:4 54:19 56:20 63:24</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>early ^[1] 49:20</p> <p>easier ^[1] 27:20</p> <p>easily ^[3] 48:1 53:22 66:6</p> <p>easy ^[3] 45:19 60:13 63:2</p> <p>economy ^[2] 49:22,22</p> <p>effect ^[2] 25:22,23</p> <p>efforts ^[1] 32:12</p> <p>EIGHTH ^[2] 1:6 4:5</p> <p>either ^[4] 7:20 14:16 19:10 38:9</p> <p>element ^[4] 21:7,10,16,17</p> <p>elements ^[2] 7:21 21:18</p> <p>elsewhere ^[1] 42:10</p> <p>elusive ^[2] 36:8,9</p> <p>emissions ^[1] 51:5</p> <p>emphasized ^[2] 34:8 62:8</p> <p>encourages ^[1] 39:25</p> <p>end ^[4] 6:4 35:6 38:11 63:18</p> <p>ends ^[1] 31:25</p> <p>enforceable ^[1] 8:20</p> <p>engage ^[1] 10:19</p> <p>engaged ^[2] 4:13,15</p> <p>England ^[1] 40:20</p> <p>enough ^[10] 6:21 22:24 38:18 40:</p>	<p>13,23 41:7 43:12 45:2 46:7 61:16</p> <p>equal ^[1] 31:18</p> <p>equivalent ^[1] 54:19</p> <p>ESQ ^[3] 3:3,6,9</p> <p>ESQUIRE ^[2] 2:2,4</p> <p>essence ^[1] 20:13</p> <p>essentially ^[3] 25:9 29:20 66:17</p> <p>established ^[1] 27:13</p> <p>ET ^[1] 1:7</p> <p>even ^[22] 8:5,21 15:23 18:24,25 20: 18,18 24:10 27:4,20,21 36:7 37:4 38:5 39:20,21 41:8 43:20 66:6,25 67:6,24</p> <p>Everybody ^[1] 28:13</p> <p>everyone ^[3] 37:3 51:11 63:1</p> <p>everywhere ^[1] 39:11</p> <p>Evidence ^[1] 15:22</p> <p>evidentiary ^[1] 31:6</p> <p>evolution ^[1] 49:19</p> <p>exact ^[5] 12:18 14:3 16:20 43:4 45: 20</p> <p>exactly ^[4] 26:16 30:15 37:21 44: 18</p> <p>example ^[9] 8:25 25:4 26:12 45:21 51:4 54:5 56:4 61:24 63:5</p> <p>except ^[3] 15:4 44:10,10</p> <p>exist ^[1] 24:12</p> <p>existing ^[2] 48:25 49:12</p> <p>exit ^[2] 54:12,12</p> <p>expanding ^[1] 16:3</p> <p>expect ^[2] 14:1 37:3</p> <p>expects ^[1] 39:24</p> <p>explain ^[3] 36:17 60:4 64:13</p> <p>explained ^[1] 5:18</p> <p>Explorer ^[2] 56:6,9</p> <p>Explorers ^[1] 56:5</p> <p>exposing ^[1] 39:10</p> <p>extent ^[1] 6:16</p> <p>extinguish ^[1] 36:6</p> <p>extinguishes ^[1] 64:4</p> <p>extremely-difficult-to-apply ^[1] 64:8</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face ^[1] 37:5</p> <p>fact ^[7] 7:6,19 11:3 15:4 31:11 64: 3 65:24</p> <p>factor ^[1] 56:18</p> <p>facts ^[3] 11:21 21:4 35:21</p> <p>failed ^[1] 56:6</p> <p>fails ^[3] 11:20,22 52:15</p> <p>fair ^[10] 19:8,10 28:20,20 49:8,8,17, 24 56:16,17</p> <p>fairly ^[1] 11:14</p> <p>fairness ^[8] 5:7 36:25 37:12 54:17, 20 63:21 64:10,14</p> <p>false ^[2] 22:6 23:19</p> <p>familiar ^[1] 31:23</p> <p>far ^[1] 10:8</p> <p>fast ^[1] 58:12</p> <p>favor ^[3] 19:15,17 54:24</p> <p>feature ^[1] 60:10</p> <p>features ^[1] 65:10</p> <p>federalism ^[9] 5:7 37:1 54:18,24</p>	<p>55:8 63:21 64:2 68:1,2</p> <p>felt ^[2] 19:6,7</p> <p>fight ^[1] 45:13</p> <p>figure ^[5] 12:15 36:21 45:19 61:6, 20</p> <p>Final ^[1] 54:16</p> <p>finally ^[4] 59:5 64:16 66:8 67:12</p> <p>finished ^[1] 57:20</p> <p>fire ^[1] 24:20</p> <p>firm ^[1] 28:10</p> <p>first ^[21] 11:13 21:22 25:17,19 26:4, 4,10 28:17 30:4 34:3,17 39:13 40: 3 42:3 52:4 56:12 57:3 59:12 60:3 65:2 66:22</p> <p>five ^[1] 59:13</p> <p>Florida ^[1] 54:9</p> <p>flunks ^[1] 64:1</p> <p>focusing ^[1] 53:10</p> <p>follow ^[3] 32:1,10,19</p> <p>following ^[1] 35:23</p> <p>follows ^[1] 4:25</p> <p>force ^[1] 55:7</p> <p>FORD ^[60] 1:3,10 4:4 5:11,23 6:14, 22 7:7,19,24 8:2,11 11:13,17 12:1, 4,13,17,22 13:7 14:1 15:18,24 19: 10,19 20:7,13 21:13,13,24 22:3 23:2,5,13 26:15 27:13 30:10,13, 23 31:3,7,10,11 34:17,20 36:5,11 37:4 38:17 50:22 51:1 52:6 53:11 55:1 56:4,7 58:5 60:12 64:10 68:5</p> <p>Ford's ^[6] 9:8 15:24 19:23 36:23 37:8 64:1</p> <p>Ford-authorized ^[1] 23:12</p> <p>Fords ^[1] 16:5</p> <p>forecloses ^[1] 52:17</p> <p>foreign ^[1] 36:15</p> <p>foresee ^[1] 56:10</p> <p>form ^[1] 21:6</p> <p>formed ^[3] 5:20,23 33:8</p> <p>formula ^[1] 14:5</p> <p>forum ^[63] 4:14,16,18 5:15,16,21, 23 6:6,10 8:7 9:20 10:20 15:6,8,9 17:16 19:18,21,23 23:13 27:6,8, 12,19,22,23 30:9 31:14 32:25 33: 1 34:18,20,25 35:25 37:2,11 38:7, 18,19,20 39:16,24 40:5,6 41:19,20, 23 43:5 44:4 45:18 48:17 51:10 53:1 61:15,23 66:19 67:1,6,7,15 68:3,4,6</p> <p>forums ^[4] 5:25 20:4,5 31:12</p> <p>four ^[1] 62:19</p> <p>Fourteenth ^[3] 10:15 30:2 49:5</p> <p>framed ^[1] 49:15</p> <p>framers ^[1] 59:7</p> <p>framework ^[3] 10:13 29:25 30:3</p> <p>Frankly ^[2] 63:1,22</p> <p>free ^[2] 19:7 46:23</p> <p>friend ^[4] 42:19 58:11 59:10 62:22</p> <p>friends ^[1] 38:24</p> <p>functionally ^[1] 24:11</p> <p>further ^[2] 23:6 27:5</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>game ^[1] 37:9</p>	<p>garden-variety ^[1] 36:13</p> <p>gave ^[1] 43:17</p> <p>general ^[12] 13:3,6,7 20:17 25:2 28:11 30:5 36:5 38:21 56:15 57:1 58:22</p> <p>generate ^[1] 36:12</p> <p>gets ^[2] 39:1 58:16</p> <p>give ^[2] 40:1 45:12</p> <p>goods ^[2] 38:10 46:16</p> <p>Goodyear ^[2] 47:16 63:7</p> <p>Gorsuch ^[14] 28:5,6 30:17 34:11 55:18,19 56:23 57:4,14 58:4,9 59: 6,15,18</p> <p>got ^[6] 43:3 56:24 60:19,19 61:5, 19</p> <p>gotten ^[1] 34:4</p> <p>govern ^[1] 15:15</p> <p>governed ^[1] 5:9</p> <p>grander ^[1] 49:13</p> <p>gravity ^[2] 67:6,16</p> <p>great ^[4] 11:17,18 12:8 38:25</p> <p>greater ^[2] 31:18 37:7</p> <p>greatest ^[2] 64:5 67:24</p> <p>grounded ^[2] 63:20 64:14</p> <p>guess ^[4] 28:16,16 31:25 59:18</p> <p>guidance ^[1] 56:22</p> <p>GUPTA ^[50] 2:4 3:6 35:4,4,9,11,13, 15 37:23 39:8,12 40:8,14,16 41:5, 13 43:7,24 44:2,7,16 45:4,7,11 46: 1,5 47:13 48:15 49:17 51:1 52:3, 15 53:19 54:15,22 55:20 56:23 57: 6,17 58:8,14 59:16,22 60:3,9 61: 10,17 62:12 63:16,17</p> <p>Gupta's ^[1] 35:6</p> <p>guts ^[1] 51:20</p> <p>guy ^[1] 38:23</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>haled ^[2] 29:1,9</p> <p>hands ^[1] 45:15</p> <p>Hanson ^[3] 67:4,14,15</p> <p>happen ^[1] 34:22</p> <p>happened ^[5] 6:3 34:10 41:22 49: 1 62:24</p> <p>happens ^[2] 52:12 53:18</p> <p>hard ^[1] 62:14</p> <p>harder ^[2] 37:13 39:13</p> <p>harm ^[1] 39:5</p> <p>harvester ^[2] 44:24 45:23</p> <p>harvesters ^[1] 45:1</p> <p>hat ^[1] 49:8</p> <p>headquartered ^[1] 13:9</p> <p>headquarters ^[1] 25:1</p> <p>hear ^[3] 4:3 49:16 55:11</p> <p>heard ^[3] 36:9 62:6,9</p> <p>hearing ^[2] 28:22 35:8</p> <p>heavily ^[2] 6:4 62:8</p> <p>held ^[5] 14:24 15:3 26:20 27:18 34: 18</p> <p>Helicopteros ^[1] 66:23</p> <p>helpful ^[1] 56:22</p> <p>high ^[1] 11:3</p> <p>himself ^[2] 39:11,15</p> <p>history ^[1] 65:24</p>
---	--	--	--

Official - Subject to Final Review

<p>hold [2] 30:10 34:12 holding [2] 16:21 36:15 home [6] 13:8 20:14 36:16 37:16 43:14 45:2 Honor [2] 29:17 64:25 hope [1] 58:23 hung [1] 17:24 hunt [1] 36:19 hurts [1] 43:5 hypothetical [9] 8:10 17:1,14 24:2,18 41:9 43:16 48:5 51:13</p>	<p>isn't [1] 13:2 isolated [7] 39:14,19 44:3,5,9 46:7,11 issue [7] 8:18,24 19:11 33:2 42:14 57:8 67:18 issues [2] 35:6 56:4 item [1] 14:2 itself [4] 10:12 32:8 58:2 61:22</p>	<p>key [2] 14:12 30:16 kind [11] 13:23 16:14 42:25 45:1 52:7,25 55:14 62:16 63:4,11 68:4 kinds [5] 13:22 29:9 47:21 53:1 66:10 King [1] 33:12 known [1] 66:5 knows [2] 28:14 39:24</p>	<p style="text-align: center;">M</p> <p>made [11] 6:24 7:24 9:3,19 18:20 23:12 26:19 28:10 48:11 58:1 66:25 Main [1] 36:16 Maine [3] 38:24 43:15 48:9 major [1] 27:22 majority [1] 65:25 manifest [1] 55:2 manufacture [1] 30:10 manufactured [2] 21:25 26:12 manufacturer [3] 17:5 21:19 38:10 manufacturer/distributor [2] 32:12,13 manufacturers [5] 16:1,2,6 31:13,17 manufactures [1] 20:20 manufacturing [5] 18:18 20:2 22:5,14 25:13 many [4] 28:11 34:4 46:4 65:18 market [17] 6:16 16:4 32:14 36:2 40:5,12 46:11 48:17 49:21 50:12 52:8 53:14 54:12,12 58:2 60:19,21 marketing [3] 7:3 51:15,15 markets [1] 24:12 MAROTTA [59] 2:2 3:3,9 4:7,8,10 6:13,15,25 7:12,17 8:15 9:13,23 10:11 12:2,12,20 13:5,25 14:12, 19,23 15:17 16:9,16 17:14,22 18: 17 19:16 20:15,23 21:16 22:9 23: 10,20 24:1,16,25 25:7,19,25 26:8, 18 27:4,15 28:3,7 29:17 30:18,23 31:2 32:3,21 33:11 34:1 64:22,23, 25 mass-produced [2] 46:15 48:2 material [1] 21:7 matter [9] 1:19 14:25 15:1 24:10, 11 25:6,16 27:7,9 matters [2] 25:17 53:24 mean [20] 4:17 7:13 13:16 20:25 24:25 25:22 28:24,25 29:1,6 33: 12 40:16 44:22 45:1 49:5 52:4 53: 22 54:25 55:25 61:18 meaning [3] 56:20 57:1 59:6 means [6] 16:17 19:8 28:14,15,20 52:17 meddling [2] 55:10,14 merchandise [1] 32:17 mere [3] 7:6 65:15 67:5 Merely [3] 8:18 18:6 65:16 merits [2] 9:16 18:1 met [1] 29:3 Michigan [2] 21:25 22:18 might [9] 6:20 8:18 25:22,22 28:21 29:6 51:3,4 56:21 millions [2] 50:22 58:6 mind [1] 62:16 minimal [1] 31:13 minimum [2] 4:24 34:9 Minnesota [15] 5:11,24 6:5 13:8 15:19,21,22 30:14,24 31:1,5 50:</p>
<p style="text-align: center;">I</p> <p>icing [1] 17:17 Idaho [2] 18:11,13 idea [2] 38:5 58:3 ideas [1] 29:7 identify [1] 37:6 Illinois [8] 25:5 43:13 44:7,12,14, 24,25 45:23 illustrates [1] 27:17 implicit [1] 22:11 important [3] 21:7 50:9 63:9 imputed [1] 12:12 in-state [3] 21:6 36:1 42:15 incorporated [1] 13:9 indirectly [1] 32:14 individual [1] 17:11 inject [2] 39:15 64:17 injured [16] 5:16 6:2,6 17:7,10 18: 15 24:20 27:1 35:20,25 36:18 42: 10 44:10,11 45:18 48:13 injuries [2] 5:23 15:3 injury [23] 5:18 14:16,20 15:1,9 20: 6 24:24 25:12,16 26:6 27:8,19,21, 23 32:18 36:20 40:2 59:2 61:8,15, 19 66:19,21 innocent [1] 36:14 inquiries [1] 42:2 inquiry [4] 18:1 46:16,17 64:9 insofar [1] 5:19 installed [1] 23:5 instance [2] 11:2 17:23 instead [1] 23:4 instrument [1] 68:1 integrated [1] 49:22 interchangeable [1] 24:8 interest [10] 6:6 37:7 42:5,9 55:3 59:16 64:5,7 67:12,24 interesting [1] 49:16 International [10] 5:6 10:8,13,18 19:6,7 29:25 30:3 42:21 48:22 Internet [14] 11:16 12:7 39:1,2,10 40:11 47:7 48:10,12 55:22 56:24 57:3,7,11 interrupt [3] 32:10 54:15 61:13 interstate [4] 55:8 63:21 68:2,2 introduce [1] 36:11 introduced [1] 21:20 inventory [1] 12:5 invoked [1] 42:21 involved [2] 19:13 47:5 irrelevant [4] 4:21 15:3 34:25 36: 18</p>	<p style="text-align: center;">J</p> <p>John [3] 44:22,23 45:21 journey [1] 10:6 Judge [1] 34:11 judges [3] 15:19 31:5 66:6 judgments [1] 64:19 JUDICIAL [2] 1:6 4:5 juries [2] 15:21 31:6 jurisdiction [52] 4:12 5:4,11 9:6, 15 10:19 13:3,6,7 17:9 18:16 20: 17 23:1,9,11 24:4,10 25:2 26:9 28: 11,12 29:19 30:5,6 31:9 33:6,14 35:1 37:9 38:21,21 40:2 46:24 47: 12 48:14 50:25 52:18 53:4 56:15, 16 57:9,10 58:25 59:8 63:6,12 65: 14 67:2,8,16,18 68:3 jurisdictional [7] 8:13 9:3 36:10 43:11 49:23 62:19,25 jurisdictionally [1] 5:19 jurisprudence [1] 59:9 JUSTICE [165] 4:3,11 6:13,18 7:1, 11,13 8:9,23 9:14,21,24,24 10:1,2, 11 11:10 12:11,14,24,25,25 13:2, 11 14:1,11,14,21 15:12 16:8,10,17, 22,24,25 17:15,19 18:10 19:3,4 20:8,9,11,12,16 21:12,23 22:9,23 23:15,23 24:2,13,15,16,17 25:3,8, 20,21 26:3,11,21 27:10,25 28:2,4, 4,6,18 30:17,19,19,21,22 31:20 32: 4,9,22 33:7,22,23 34:2 35:2,9,11, 15 37:13,15,23 38:12,22 39:9 40: 6,10,15,25 41:2,2,3,4,13 42:18 43: 6,8,8,10,17,25 44:1,5,8,16,18 45:5, 8,11,24 46:3 47:1,3,3,4,13 48:3,20 49:18 50:7,8,15,17,18 51:25 52:2, 2,3,16,19 53:9 54:14,23 55:16,18, 19,20 56:23 57:4,14 58:4,9 59:6, 15,18,23,25 60:1,2 61:9,12,17 62: 6 63:14,15 64:20 68:8 Justice's [2] 41:9 48:6 justification [2] 19:15,16</p>	<p style="text-align: center;">L</p> <p>label [1] 25:23 laid [2] 14:3 67:9 land [2] 29:1,3 law [11] 8:17 15:13,15 29:1,2 49:13 54:18 55:4 65:3,24 67:19 lawn [2] 44:23,25 laws [1] 55:13 lawsuit [2] 19:12 43:22 lead [1] 39:6 learns [1] 48:10 least [9] 4:18 10:7,8 21:7 34:9 51: 8 54:19 56:12,12 leave [2] 34:13 36:14 left [2] 41:14 50:1 legal [7] 5:2 7:21 42:13 43:1,2,3 61:21 less [1] 16:20 level [1] 8:19 Lexmark [1] 66:4 liability [3] 8:25 53:8 57:19 liable [3] 20:14 30:8,10 light [1] 15:5 limit [1] 26:9 limited [1] 48:8 limiting [3] 56:3,18 67:8 line [2] 12:9 56:14 lineage [1] 10:9 lines [6] 5:5 24:10 28:18 50:3 56: 25 58:22 link [4] 17:18 26:1,5 55:24 links [1] 39:2 Liquid [1] 57:21 litigate [2] 30:25 31:12 litigated [2] 8:25 31:15 litigates [1] 30:24 litigation [3] 36:12 64:18 67:18 little [8] 10:3 19:4,13 39:2 42:5,8 53:12,16 live [2] 24:6,23 lives [2] 11:24 23:18 loads [1] 44:13 local [2] 12:22 36:14 location [2] 14:24 67:17 long [5] 5:9 10:6 60:25 61:14 65: 17 long-arm [1] 29:4 look [5] 10:17 16:5 31:21 51:2,20 lose [2] 32:1,20 lot [17] 7:16 13:20,21 16:13,14,19 29:11 31:21 43:19 50:1 53:8 54: 16 56:10,24 57:11 59:8 60:17 lots [3] 14:5 30:24 56:7 lower [8] 8:21 10:25 34:7 50:4 63: 11 65:21</p>	

Official - Subject to Final Review

<p>23,24 51:21,23 minute [2] 33:25 63:15 minutes [1] 64:22 Missouri [7] 22:1,21 23:1,16,17,21,25 model [5] 46:14 51:21,22 59:3 65:8 models [1] 56:8 modify [1] 17:2 moment [2] 35:5 60:24 MONTANA [23] 1:6 4:5 5:12,24 6:5 13:8 14:22,22 15:19,20,21 18:12,13,15 27:14 30:14,25 31:1,4 56:5,7,8 58:6 morning [3] 28:6 30:23 55:19 most [5] 41:16 57:8 63:6 66:12 67:17 mostly [1] 53:13 MOTOR [3] 1:3,10 4:4 move [1] 24:19 moved [1] 25:5 mower [1] 44:23 mowers [1] 44:25 much [5] 16:1 39:13 44:21 45:5 47:1 must [3] 4:18 41:10 43:11 Myers [13] 14:4,10 15:7,11 16:16,21 19:11 26:19,20,22,23 27:15,22</p> <hr/> <p style="text-align: center;">N</p> <p>national [3] 16:9 37:16 49:22 nature [1] 7:5 necessary [1] 17:10 need [4] 40:2,17 44:2 60:6 needless [1] 36:12 Neff [2] 29:21,23 negligence [3] 9:2,7 22:6 negligent [1] 47:11 never [6] 31:15 33:19 35:17 40:17,18 43:18 new [7] 12:22 16:3 23:4 24:19,21 29:19 40:20 next [2] 4:4 58:10 Nicastro [2] 50:2,8 Nobody [1] 28:14 North [2] 47:17,19 northwest [1] 53:15 note [1] 22:10 noted [1] 66:4 nothing [7] 7:8 14:8 20:6 30:13 42:11 48:25 53:15 notice [1] 11:16 notion [1] 6:5 notwithstanding [1] 26:13 number [1] 66:20</p> <hr/> <p style="text-align: center;">O</p> <p>O'Connor [1] 54:23 O'Connor's [1] 38:13 objection [3] 36:4 62:19 63:1 objective [1] 46:17 objectively [3] 51:10,18 57:23 obligation [2] 43:3 61:11 obligation's [1] 43:2</p>	<p>obligations [5] 10:21 42:14,22 43:1 61:21 occur [2] 19:21,22 occurred [5] 20:3 30:11 38:14 47:17 61:8 occurrence [4] 41:21,23 66:18,21 occurs [3] 17:15,20 47:9 October [1] 1:17 odd [1] 66:7 Ohio [1] 55:12 Ohioans [1] 55:12 Okay [12] 12:11 20:8 26:11,13 45:24 54:14 56:23 57:17,17,17 59:20 62:6 Oklahoma [1] 62:20 old [1] 23:7 once [4] 4:23 38:16 46:7 61:4 one [26] 5:22 6:22,23 21:18 22:24 28:19,25 29:4 32:16 37:15,25 40:21 46:17 47:8,14 50:19,21,23 53:16,19 55:9 57:15,18 65:13,18 66:15 ones [1] 65:6 only [13] 5:19 11:1 18:18 20:14,16 26:9 34:17 40:19 48:10 52:9,10 54:8 66:12 open [1] 50:1 opening [2] 15:2 21:2 operative [1] 21:3 opinion [2] 55:7 63:7 option [1] 31:9 oral [5] 1:20 3:2,5 4:8 35:13 original [6] 10:14 23:3 30:1 56:20 57:1 59:6 originalist [1] 29:18 originally [1] 29:6 other [21] 14:6 16:11,15 18:8 28:15,25 30:11 32:15 33:8,10 34:14 43:10 44:21 47:9,21 52:20 56:7 59:10 62:10,14 66:19 others [2] 32:19 55:20 otherwise [3] 31:8 38:7 66:11 ought [1] 38:25 out [24] 10:22 11:7 12:15 14:3 15:10 23:14 27:17 28:13 30:8 36:21 45:19 53:17 55:21,23 57:4 58:17 59:20 61:6,20 66:2,13,14,24 67:10 outside [2] 14:17 20:3 over [9] 23:2 33:14 36:4 45:13 48:11 63:4,4,10,10 overreached [1] 37:11 own [7] 32:18 35:19,21 55:4,5,12,13</p> <hr/> <p style="text-align: center;">P</p> <p>p.m [3] 35:7,8 68:11 PAGE [4] 3:2 21:1,2 65:5 paint [1] 39:6 paradigmatic [2] 36:7 63:5 paragraph [1] 33:12 part [6] 14:16 28:15 31:2 52:9 56:5,9 partially [1] 54:13</p>	<p>particular [13] 14:2 17:5,22 18:4,17 31:5,6,6 36:19 39:18 44:9 47:25 55:9 particularly [3] 18:24 49:1,19 parties [2] 6:1 12:10 party [1] 12:21 pass [1] 57:15 passage [2] 62:23 63:4 past [2] 29:24 55:25 Pennoyer [2] 29:21,23 people [7] 25:10 35:20 37:13 42:10 43:4 47:25 55:5 perform [1] 30:7 perhaps [6] 12:6 16:3 18:20 24:4 48:23 67:23 person [10] 17:7 18:10,11,12 43:17,19 44:11 45:18 48:8 59:2 person's [1] 61:8 personal [16] 9:15 17:9 18:16 24:9 29:19 31:8 33:5,14 37:9 47:11 57:8,10 59:8 67:7,18 68:3 perspective [2] 19:24,25 persuaded [4] 6:23 7:7,15 8:6 Petitioner [7] 1:4,11 2:3 3:4,10 4:9 64:24 phrase [1] 17:24 pick [3] 16:25 41:5,14 picks [1] 52:23 pickup [6] 52:7,8,11 53:13,17,20 pill [1] 36:19 place [20] 14:17,25 21:9,11 24:4,24 25:11,12,12,16,18,25 26:2,4,6,6,9 44:11 59:2 65:18 plaintiff [12] 9:19 14:15,20,25 15:8 22:4,7 23:17,18 27:7 35:25 67:5 plaintiff's [10] 4:15,19,21 5:3 21:8,18 27:6 42:16 61:20 67:11 plaintiffs [6] 6:9 8:20 26:24 27:21 36:18 37:2 Plavix [1] 14:5 play [8] 19:8,10 28:20,20 49:8,8 56:16,17 please [2] 4:11 35:16 plus [3] 15:11 66:18,20 point [4] 13:12 14:13 41:16 49:18 pointed [1] 55:21 points [2] 34:3 65:1 popped [1] 33:20 pose [1] 65:5 posited [1] 65:13 position [2] 9:12 37:8 possibility [1] 52:18 possible [2] 39:25 45:17 power [2] 42:5 64:4 powers [1] 35:19 practical [3] 11:12 36:24 67:23 precedent [1] 31:22 precisely [1] 62:15 predictability [2] 5:8 63:22 predictable [1] 45:14 preliminary [1] 13:4 premise [1] 27:22 prepared [1] 13:23 presence [3] 9:9 16:9 67:5</p>	<p>presented [2] 35:21 38:1 press [2] 6:4 64:11 presumably [1] 20:17 pretty [4] 43:2 45:16 53:22 59:7 prevent [1] 11:8 price [1] 11:17 primary [2] 5:10 54:1 principally [1] 41:21 principle [5] 30:4 34:17 56:12 67:8,9 principles [4] 5:7 28:17 66:5,22 private [1] 12:21 probably [1] 57:8 problem [6] 23:23 35:12 39:13 42:7 44:20 47:16 problems [3] 34:5 36:24 49:14 Procedure [1] 15:22 procedures [2] 55:4,13 proceeded [1] 27:16 Process [16] 6:8 10:4 19:5,24 28:18,24 29:7,8 35:18 37:1,14 42:21 49:4 54:20 56:20 63:24 produced [1] 48:7 produces [1] 20:20 product [47] 17:4,6,6,8,12,13 18:14 21:19 25:10,17 26:25 31:15 32:11,24,25 33:15 35:24 36:3 43:5,15 45:20,25 46:4,4,12,15 47:4,5 48:4,7 50:19 51:9,12 52:4 56:2,9 57:20 58:13,17 59:4 65:7,8,9,15 66:12,20 67:1 produces [10] 31:14 32:15 42:3 46:19 47:15,24,24 48:2 53:8 57:19 Professor [2] 7:17 29:20 project [1] 58:24 promise [2] 8:1,3 promises [2] 7:24 18:20 promotes [1] 58:23 proof [3] 21:7,10,17 proper [1] 24:3 propose [3] 49:13 65:14 67:14 proposing [1] 58:21 protect [1] 35:20 protecting [1] 55:5 protects [1] 6:9 prove [1] 17:11 provide [1] 56:21 provides [1] 17:17 providing [1] 6:6 proximate [23] 4:24,25 5:5 7:4 8:3,16 9:5,16 10:5,9 11:6 17:12,18,25 20:21,24 21:1 26:1,5 34:6,14 36:8 64:9 public [1] 64:13 purchase [2] 17:13,15 purchased [5] 12:22 19:1 22:2,22 47:7 purchases [7] 17:7 18:11,12 48:11,12 66:25 67:3 purporting [1] 49:4 purpose [1] 51:4 purposeful [18] 7:2 32:5 38:3,15 39:20 40:23 46:6,8 48:18 52:24 55:22 60:5,11,14,17,25 61:13 62:</p>
---	--	--	---

Official - Subject to Final Review

<p>4 purposefully [2] 32:8 62:1 purposes [1] 17:2 put [5] 13:13 32:5 38:10 41:11 49:7 puts [2] 28:8 58:17 putting [1] 39:7</p> <hr/> <p style="text-align: center;">Q</p> <p>quantities [1] 48:8 question [25] 8:4,10 9:4 11:12 15:13 19:5 22:12 29:12 37:25 38:16 40:9 42:19 46:5,10 48:18,19,21,22 50:19 52:19,24 53:2 54:16 62:14 66:1 questions [12] 28:23 31:21 34:4 49:15 50:1,4 52:20 56:13 60:15,23 65:4,20 quickly [1] 57:2 quite [3] 45:19 61:18 62:8 quoted [3] 15:2 33:8,9</p>	<p>56:8 relied [2] 8:1 63:11 relief [1] 28:8 relies [2] 37:17 38:5 rely [1] 61:1 remember [3] 19:24 23:16 30:13 repair [1] 23:11 repaired [1] 24:3 repeated [1] 63:10 repeatedly [1] 24:9 replacement [1] 23:4 reply [3] 17:1 21:3 65:5 require [1] 28:19 requirement [4] 8:14 10:10 20:19 27:18 requirements [1] 4:17 requires [1] 4:12 requisite [3] 38:4,9,17 resells [1] 27:14 resident [2] 11:23 22:2 residents [4] 5:15 6:7 23:20 26:24 resolution [1] 63:19 resolve [1] 34:10 respect [1] 54:21 Respondent [1] 1:14 Respondent's [1] 66:11 Respondents [10] 1:8 2:5 3:7 5:15 6:2,4 15:10 29:22 35:14 67:13 Respondents' [4] 5:10,22 34:21 66:17 response [3] 62:7,9,11 rest [1] 35:10 result [1] 64:13 resumed [1] 35:8 retired [1] 38:23 return [1] 29:22 reversed [1] 6:12 rich [1] 65:23 rise [3] 8:19 40:1 55:23 rises [1] 32:12 road [1] 8:12 Roanoke [3] 11:18,19 12:4 ROBERTS [35] 4:3 6:13,18 7:11,13 8:9,23 9:21,24 12:25 16:22 20:9 24:13 27:25 28:4 30:19 33:23 35:2,9 37:15 38:22 39:9 40:6,10,15,25 43:8 47:3 50:15 52:2 55:16 59:23 63:15 64:20 68:8 route [1] 36:19 routine [1] 7:6 rule [14] 6:8 15:25 16:4 25:20 31:16 45:10,14 50:19 52:4,5 59:12 65:25 66:8,14 Rules [5] 15:22 31:7 36:10 43:11 50:10 ruling [2] 19:15,17 rulings [1] 15:19 run [2] 28:21 59:20 runs [2] 6:7 15:9</p>	<p>safety [2] 17:12 18:14 sale [22] 11:17 17:17,20 21:22 25:17,19 26:4,4,10 30:11 32:11,24,25 40:21 44:4,6,9,10 59:12 65:7,14 66:19 sales [8] 39:14,19,23 46:10 53:1 59:13 65:18,19 salesman [1] 48:22 same [31] 4:22 5:13 12:18,18 13:20,22 16:13 26:16,18 30:15 33:18 34:23 45:25 46:3,4,12,12,13,14 47:18 50:19 51:15 52:4 53:1,24 56:2 58:12 65:8,8,10 66:20 satisfied [4] 39:21 46:8 61:14 63:13 satisfy [11] 7:1,4 8:3,13,15,16,21 51:23 53:21 60:5,7 saw [8] 6:23 7:7,19 12:7,18 18:6 22:3 23:18 saying [19] 8:18 18:2,6 20:13 22:12 24:21 25:15 26:5,6,22 43:11 44:21 51:14 52:12,15 53:10 55:11 58:12 61:13 says [14] 7:18 10:12 16:11 20:6 27:6,8 29:20 32:7,11 39:3 51:2 53:13 56:16 61:4 scale [1] 16:18 scavenger [1] 36:18 scenario [2] 36:7 63:12 school [1] 11:4 scope [1] 61:21 SEAN [5] 2:2 3:3,9 4:8 64:23 second [3] 34:16 42:12 66:16 see [3] 29:11 44:16 53:9 seeking [1] 30:9 seem [2] 24:11 56:14 seems [5] 9:10 10:5 28:7,13 56:17 seen [1] 43:18 sell [19] 14:4 20:20 31:13 38:25 40:20 43:4 45:22 46:20,21 51:2,9,21,22 52:10 54:2,3,5,8 56:5 seller [1] 48:15 selling [5] 20:1 53:17,20,24 62:21 sells [8] 21:14 26:15 27:13 43:15 44:25 45:22 58:5 61:25 send [2] 13:17 36:17 sense [5] 11:5 12:15 44:9 57:13 63:23 sensible [1] 63:19 sensor [1] 23:7 sentence [13] 31:22,24 32:1,4,6,7,10,19,23 33:7,13,18,18 sentences [1] 33:21 separating [1] 58:24 serious [1] 9:11 serve [1] 32:13 service [1] 64:8 services [2] 26:15 27:13 several [1] 33:9 sharp [1] 28:8 shed [1] 15:4 Shoe [9] 5:7 10:8,13,18 19:7 29:25 30:3 42:21 48:22 shopping [1] 37:3</p>	<p>shouldn't [1] 16:5 show [3] 5:23 60:5,6 showed [1] 62:13 shown [1] 60:15 shows [2] 5:20 8:4 shuffles [1] 64:6 side [6] 16:11 43:10 44:21 59:10 62:10,14 significant [1] 15:24 similar [5] 5:12 16:15 44:14 48:5 65:9 simple [5] 24:18 36:10 42:2 43:2 45:16 simplicity [1] 17:3 simply [1] 37:12 since [4] 5:6 13:21 21:21 49:25 single [1] 22:7 site [1] 39:1 situation [2] 49:3 62:16 sliding [1] 16:18 slightly [1] 17:2 small [1] 38:23 smaller [3] 16:1,6 31:13 so-called [1] 37:18 software [1] 62:2 sold [16] 17:4 19:1 21:13,13,25 22:20 40:17,19,19 45:20 50:21,23,24 56:7 57:20 62:3 solution [1] 49:14 solves [1] 66:12 somebody [4] 6:19 43:5 52:11 59:13 somehow [2] 11:20 12:4 Someone [1] 48:12 sometimes [1] 15:4 somewhat [1] 48:8 somewhere [4] 18:7 22:13,15 54:3 sorry [7] 16:8 23:20 32:9 35:12 54:14 59:21 61:12 Sotomayor [13] 20:11,12,16 21:12,23 22:10,23 23:15,23 24:2 50:17,18 51:25 sounds [1] 44:3 source [1] 32:18 southeast [2] 52:9 53:14 southern [1] 54:4 sovereign [3] 35:19 37:6 64:4 special [1] 52:7 Specific [20] 4:12 10:18 28:11,12 30:5,6 35:1 38:20 40:1 46:24 52:18 53:3 56:15,16,25 58:22 59:1,3 63:5,12 Squibb [12] 5:14 14:4,10 15:7,11 16:17,21 19:11 26:19 27:15,23 66:18 standard [9] 4:25 5:5 8:21 21:1 34:13 36:8,11,23 49:7 standards [2] 49:23 51:5 standpoint [2] 67:23,25 stasis [1] 49:25 state [59] 4:14,16,18 5:16,21,23 9:20 11:4 12:9 13:14 16:14 17:5,16,21 19:12,17 20:14 21:5 22:7 24:</p>
<p style="text-align: center;">R</p> <p>raised [2] 62:18,25 raising [1] 65:16 Raptor [2] 11:17 12:16 Rather [1] 9:16 reaches [1] 29:5 read [2] 15:14 35:17 real [1] 66:3 realities [1] 49:21 really [16] 13:14 25:15 28:7 29:12 33:19 39:15 40:3,24 42:10,16,24 52:7 53:20 57:2 62:2 64:11 reason [4] 6:22 25:4 53:23 62:17 rebuilt [1] 47:6 REBUTTAL [3] 3:8 64:23 65:1 recently [1] 63:6 recess [2] 35:5,7 reciprocal [2] 42:13,22 recognition [1] 65:17 recognized [1] 11:1 recognizes [1] 5:1 referred [2] 62:23 63:3 referring [1] 32:24 reflect [1] 49:23 reflected [1] 49:20 reflects [1] 63:11 regarding [1] 18:14 regime [1] 36:23 regional [1] 16:2 regular [1] 66:25 regulates [1] 46:22 regulating [1] 68:5 regulation [1] 41:24 rejected [5] 5:14,17 14:3,9 67:14 relate [5] 27:17 55:25 66:14,24 67:3 related [4] 38:18 41:6,9 61:7 relatedness [8] 16:20 41:16,25 42:12 48:18 61:3 62:5 65:3 relates [3] 28:14 41:18 60:7 relevance [1] 7:20 relevant [6] 4:15 5:19 19:19,22,23</p>	<p style="text-align: center;">S</p> <p>Sack [1] 29:20 safe [2] 8:18 17:6 safest [1] 8:11</p>		

Official - Subject to Final Review

<p>10 27:12 29:4 30:7 34:19 35:25 36:3,4 37:11 39:4,16,18 40:5,7 42: 5,8 43:13,14 45:18,20 47:8,8,9 48: 12,13 51:3 52:12,13 53:21,25 55: 9,10 59:13 61:15,19,25 62:3,20 67:24 68:3 state's [2] 36:6 41:24 statement [1] 15:2 STATES [24] 1:1,21 6:10,14,17 8:8 11:14 19:18 23:22 24:7 26:17 30: 9,12 32:15,16 34:21 35:18 54:5, 25 55:2 58:18 64:5,7 68:5 statute [1] 29:4 step [3] 19:3 23:6 40:3 still [5] 11:11 23:1 50:24 67:25 68: 2 story [2] 7:18,21 straight [1] 15:9 strange [1] 49:3 stream [9] 37:18,24 38:2,8,11 52: 20,23 60:23 61:1 Street [1] 36:16 strongly [1] 54:24 structure [1] 54:1 stuff [1] 54:3 subject [8] 5:11 15:18,20,21 32:16 38:6 41:24 46:24 subjected [1] 61:22 submit [1] 58:2 submitted [2] 68:10,12 submitting [2] 42:4 58:18 subset [1] 66:12 substance [1] 7:8 substantive [2] 7:20 8:17 substituting [1] 25:9 suddenly [1] 9:3 sue [8] 11:25 12:17 24:21,23 25:14 36:21 37:4 52:13 sued [5] 10:22 14:1 37:3 39:4 54:7 suffer [1] 27:21 sufficient [1] 18:8 27:19,24 65:9 66:20 67:1,7 sufficiently [3] 18:3 39:19 61:7 suit [12] 13:23 19:12,14 22:16 32: 16 34:19 37:6 38:7,18 39:11 40: 18 41:17 suit-related [1] 4:13 suits [3] 14:6,7 34:21 supply [1] 38:8 support [3] 46:2 65:15,16 suppose [4] 17:4,19 28:19 48:4 SUPREME [2] 1:1,20 surely [1] 29:3 surprised [1] 59:8 syllogism [1] 27:16 system [1] 64:19</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tag-along [1] 14:7 talked [3] 19:20 34:5 54:16 talks [5] 22:17 33:12,13,17 47:15 target [2] 48:16 60:19 targeted [3] 39:18 46:11 48:16 technical [2] 35:12 65:15</p>	<p>tells [1] 38:2 Tennessee [8] 11:15,23,24,25,25 12:1,17,19 Tenth [1] 34:11 term [1] 41:6 test [28] 28:15 34:6 37:17,24 38:2 42:2 45:16 46:24 48:1 51:19,24 52:16 53:6,10,11,21 55:22 56:2 58:15,19 60:4 61:2 65:3,22,23 66: 2,11,15 tests [4] 28:9 51:8 64:2 66:10 themselves [1] 62:1 theory [9] 6:21 37:18,19,21 38:5,8 40:20 53:5 54:21 there's [26] 12:3,8 13:5,5,7 14:7 16:18,19 18:21 20:21 23:24,24 25: 2 26:7 38:13,23 39:23 40:21 41: 19 47:14 48:25 49:25 51:21,22 53: 16 57:24 they've [1] 65:6 thinking [1] 16:3 third [2] 6:1 12:10 Thomas [13] 9:25 10:1,12 11:10 12:11,14,24 28:18 41:2,3,13 42: 18 43:6 Thomas's [1] 19:4 though [5] 24:10 32:11 43:18,20 56:3 three [4] 27:2 64:2,22 65:1 threw [1] 57:4 tire [1] 47:18 tires [1] 47:20 toaster [1] 36:20 today [6] 16:4 29:14 31:16 33:3 34: 4 65:7 took [7] 14:17 24:4,24 25:16,16,18 26:6 torts [2] 22:8 66:11 totally [2] 45:9 56:1 town [1] 38:23 trace [3] 10:7 11:9 36:19 tractors [1] 45:22 traditional [1] 36:6 transsubstantive [1] 66:9 traveling [1] 48:22 treat [1] 24:8 tremendous [2] 36:11 64:17 tried [1] 64:12 trouble [3] 13:13 65:21 66:3 troubles [1] 28:22 truck [4] 52:7,8,11 53:13 trucks [5] 46:21 47:21,21 53:17,20 true [3] 14:19 35:24 49:18 try [6] 35:19 36:20 45:12 57:2 61:6 64:12 trying [6] 12:15 15:7 40:12 50:10 55:3 63:24 turn [1] 58:19 turns [4] 37:8 51:19 57:19 59:12 TV [1] 22:3 two [9] 11:21 23:22,24 24:7 26:17 34:3 35:23 42:1 58:25 type [2] 47:18 65:8</p>	<p style="text-align: center;">U</p> <hr/> <p>ubiquitous [1] 11:14 Ultimately [1] 37:8 unanimous [1] 63:7 unanimously [1] 14:24 unanticipated [2] 50:12 57:13 uncertainty [2] 36:12 64:17 unclear [2] 32:22 45:9 under [7] 6:21 12:17 20:17 41:25 43:21 45:6 60:4 underlies [1] 13:16 underlying [1] 41:20 understand [7] 12:14 24:6 37:19, 20 49:9 52:5 56:1 understanding [3] 10:14 30:1 54: 18 understood [3] 25:7 29:7 49:5 unfair [8] 13:15,24,25 14:8 15:16, 18 37:5 67:22 unfairness [2] 13:16 64:11 unfortunate [1] 9:11 unilateral [1] 6:1 UNITED [3] 1:1,21 11:14 unless [1] 48:15 unpredictability [1] 64:18 unreasonable [1] 32:15 unrelated [1] 5:12 up [14] 5:6 16:25 17:24 31:10 33: 20,25 36:13 38:11,24 41:5,14 52: 6,23 63:16 urge [1] 64:19 urges [1] 55:1 urging [2] 29:22 55:1</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>value [2] 12:4,8 various [2] 22:4 47:21 vehicle [13] 6:20 8:2 18:7 20:24 21:9,11,13,21,24 22:18,19,21 24:3 vehicles [5] 5:25 6:3,16 8:7 18:23 verdicts [1] 15:20 versus [4] 4:5 29:21,23 67:4 vexing [1] 57:8 Victoria [1] 18:25 view [3] 17:18 29:19 38:13 Virginia [1] 11:18 Volkswagen [11] 10:12 31:23,25 33:4,5,19 62:7,15,18,25 67:21</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Wait [1] 44:8 waive [1] 31:8 Walden [10] 5:18 14:24 15:9,11 19: 20 27:5,8,10,16,18 wanted [1] 29:13 wants [3] 22:4 31:3 46:20 warranted [1] 7:25 warranty [2] 8:19 65:16 Washington [5] 1:16 2:2,4 52:11, 13 waste [1] 57:15 way [8] 26:16 46:22 48:10 56:3 58: 15 60:10 66:23 67:20 Wednesday [1] 1:17</p>	<p>weighing [1] 67:13 weight [1] 18:1 weird [1] 60:10 welcome [1] 60:3 whatever [2] 28:19,20 whereas [1] 66:11 Whereupon [1] 68:11 wherever [3] 6:2 20:19 40:11 whether [10] 15:5 32:23 34:14 38: 3,3,12 40:3 42:13 45:17 53:24 who's [1] 53:17 whole [5] 13:12,12 22:16 53:8 57: 11 wide [1] 29:18 widely [1] 66:5 widget [1] 59:12 will [4] 15:14 40:7 50:11 58:11 win [1] 45:15 within [6] 35:20 42:17 48:24 55:3, 5 61:21 without [3] 4:23 36:24 66:3 words [1] 66:19 work [1] 54:6 works [1] 58:15 world [4] 16:5 49:9,10 58:17 World-Wide [7] 10:12 31:23,24 33: 4 62:7,15 67:21 wrap [2] 33:25 63:16 wrecked [1] 11:24 write [1] 50:10</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year [3] 46:14 59:3 65:18 years [3] 28:12 65:18,21 yields [1] 42:2 York [2] 24:19,21</p>
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