STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: January 29, 2019]

ALISON N. MARTINS, Individually and as Co-Executrix of the ESTATE OF JOHN MARTINS,	:	
Plaintiff,	:	
VS.	:	**C.A. No. PC-2017-2420**
BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC; PETERBILT OF CONNECTICUT, INC. d/b/a PETERBILT OF RHODE ISLAND, INC.; PATRIOT SALES AND SERVICE, INC.; PACCAR, INC.; MILLER INDUSTRIES INTERNATIONAL, INC.; and ABC CORPORATION,	:	
***Defendants*.**	:	

DECISION

STERN, J. Defendant PACCAR, Inc. (PACCAR) moves this Court for an order dismissing PACCAR from the above-captioned matter for lack of personal jurisdiction pursuant to Super. R. Civ. P. 12(b)(2). The Plaintiff, Allison N. Martins (Plaintiff), has objected.

I

Facts and Travel

This case arises out of a motor vehicle accident that resulted in John Martins' (Decedent) death. The truck he was operating at the time (hereinafter Rotator Truck)[1] suffered a belt and/or tread separation, causing the Rotator Truck to veer off the road, crash into a tree and catch fire. Second Am. Compl. 7. The Plaintiff is the Decedent's natural daughter who brought this

[1] The Rotator Truck was a Peterbilt Model 379 custom fitted with a Miller Industries Century 1060S 360 rotation system.

wrongful death action individually and in her capacity as the co-executrix of the Estate of the Decedent and as the Decedent's legal beneficiary. *Id.* ¶ 1.

PACCAR—a Delaware corporation with its principal place of business in the State of Washington—designs and manufactures vehicles such as the Rotator Truck. *Id* at 3, 42. Peterbilt Motors Co. (Peterbilt Motors) is an unincorporated division of PACCAR with its principal place of business in Texas. *Id.* at 3. For purposes of the present motion and ease of reference, this Court will refer to Peterbilt Motors and PACCAR collectively as "PACCAR."[2] PACCAR follows a corporate structure whereby it engages and contracts with local dealerships, which, in turn, sell and service PACCAR products. *See* Pl.'s Ex. 44 at PACCAR 000151.

One such local dealer, Peterbilt of Connecticut, Inc. (Peterbilt of Connecticut), through an addendum (Addendum) to its Dealer Sales and Services Agreement with PACCAR, agreed to establish and maintain facilities and operations at 11 Industrial Lane in Johnston, Rhode Island. Pl.'s Ex. 44 at PACCAR 000166. The Addendum contains certain performance goals specific to Peterbilt of Rhode Island and requires Peterbilt of Rhode Island to employ, at all times, two trained and qualified salespersons to sell PACCAR vehicles.[3] See Pl.'s Ex. 44 at PACCAR 000166, 000170. The Rhode Island facility is owned by Peterbilt of Connecticut and does business under the moniker "Peterbilt of Rhode Island." *See id.* at 000170-71. The parties agreed that PACCAR would "evaluate [Peterbilt of Rhode Island's] sales and service performance periodically" and that PACCAR would have the right to "take prompt action if necessary to improve [Peterbilt of Rhode Island's] sales and service performance." *See id.* at

[2] Ordinarily this Court would not interchange corporate entities without distinction; however, PACCAR itself did so in its supplemental briefing to this Court.

[3] Peterbilt of Rhode Island sells only an average of 1.2 vehicles per year out of its Rhode Island location (.007% of sales); Def.'s Suppl. Mem. 3. No PACCAR employees work in Rhode Island and PACCAR does not own or lease any Rhode Island real estate. *Id.* These facts are only relevant for purposes of general jurisdiction.

000170. PACCAR distinguishes between the Rhode Island and Connecticut locations in that they are assigned different dealer codes: P102 and P100, respectively. Pl.'s Ex. 46; Curbo Dep. Tr. (Tr.) 12-13, 24-25, 161-62, Aug. 9, 2018. PACCAR's logo is displayed at Peterbilt of Rhode Island; PACCAR has the right to approve signage; and PACCAR has been registered to conduct business in Rhode Island since the year 1990. Pl.'s Exs. 4, 11; Pl.'s Ex. 44 at PACCAR 000166, 000170-71; Tr. at 29, 30, 69.

Peterbilt of Connecticut placed the initial order for the Rotator Truck. However, on September 19, 2005—before the truck was manufactured—Peterbilt of Connecticut requested and PACCAR agreed to "change order"[4] no. 009 to chassis no. 637511 (which would become the Rotator Truck) to reflect that Peterbilt of Rhode Island was, in fact, the requesting dealer. Pl.'s Ex. 28; Tr. at 116-17. All ensuing communications, including ten change orders, identified Peterbilt of Rhode Island as the dealer associated with the Rotator Truck. For example, on September 27, 2005, PACCAR received an email from Matt Berluti, a Peterbilt of Rhode Island employee (using email address mberluti@peterbiltofri.com), requesting a specific design for chassis no. 637511. Pl.'s Ex. 5, Tr. at 37. A later change order documented Mr. Berluti as the dealer contact and provided a phone number with a Rhode Island area code. Pl.'s Ex. 29, Tr. at 37. A vehicle quality booklet specific to chassis no. 637511 traveled with the Rotator Truck from PACCAR's facility and identified Peterbilt of Rhode Island as the dealer.[5] Pl.'s Ex. 42.

[4] A helpful working definition of the phrase "change order" is a "[w]ritten authorization provided to a contractor approving a change from the original plans, specifications, or other contract documents, as well as a change to the cost." *See Lantek Commc'ns, Inc. v. Peck*, No. 02-17-00252-CV, 2018 WL 5074766, at *3 (Tex. Ct. App. Oct. 18, 2018). Because a change order envisions both a request and an authorization, it naturally follows that an effective change order is assented to by all contracting parties.

[5] No document produced by PACCAR indicates it knew the Rotator Truck was ultimately bound for a destination other than Rhode Island or that PACCAR knew Sterry Street Towing (the end purchaser) was a Massachusetts company. Any documents listing Sterry Street as the customer

In addition to the aforementioned communications, several other documents manifested PACCAR's understanding that Peterbilt of Rhode Island—not Peterbilt of Connecticut—was the Rotator Truck's acting dealer. PACCAR issued a certificate of origin for the Rotator Truck identifying as the transferee Peterbilt of Rhode Island, with its Rhode Island address. Pl.'s Exs. 7, 8. PACCAR issued an invoice to Peterbilt of Rhode Island directed to its Rhode Island address requesting payment for the Rotator Truck. Pl.'s Ex. 15; Tr. at 94-96. Finally, PACCAR entered into a warranty agreement relating to the Rotator Truck that lists Peterbilt of Rhode Island as the "Selling Dealer." Pl.'s Ex. 9.[6]

In May of 2017, the Plaintiff filed her original complaint alleging counts for negligence, strict liability, breach of warranties, and punitive damages. The Plaintiff filed a second amended complaint on August 28, 2017, which names several corporate defendants connected with the Rotator Truck's manufacture and sale. Various defendants, including the Bridgestone Entities[7] and PACCAR, moved to dismiss for lack of personal jurisdiction. On March 8, 2018, this Court granted the Bridgestone Entities' motion and reserved judgment with respect to PACCAR'S motion pending jurisdictional discovery. Having completed jurisdictional discovery, the parties submitted supplemental briefing to this Court concerning PACCAR connections with Rhode Island. For the following reasons, this Court determines PACCAR is subject to jurisdiction in Rhode Island and therefore, denies PACCAR's motion to dismiss.

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do not denote an address. In fact, change order no. 004 changed the shipping destination from Peterbilt of Connecticut to Peterbilt of Rhode Island. Pl.'s Ex. 23; Tr. at 111. In a subsequent change order, Peterbilt of Rhode Island requested PACCAR change the shipping destination from P102 (Rhode Island location) to Tennessee where the Rotator Truck was assembled and picked up by a Sterry Street representative. Def.'s Suppl. Mem. 6.

[6] PACCAR reimbursed Peterbilt of Rhode Island for at least one warranty claim relating to the Rotator Truck. Pl.'s Ex. 12; Tr. at 76-77.

[7] The Bridgestone Entities include Bridgestone Americas Tire Operations, LLC, Bridgestone Americas, Inc., and Bridgestone Retail Operations, LLC.

II

Standard of Review

A

Personal Jurisdiction in Rhode Island

"It is well established that to withstand a defendant's Rule 12(b)(2) motion to dismiss a complaint for lack of *in personam jurisdiction*, a plaintiff must allege sufficient facts to make out a *prima facie* case of jurisdiction." *Cerberus Partners, L.P. v. Gadsby & Hannah, LLP*, 836 A.2d 1113, 1118 (R.I. 2003) (citing *Ben's Marine Sales v. Sleek Craft Boats*, 502 A.2d 808, 809 (R.I. 1985)). "A *prima facie* case of jurisdiction is established when the requirements of Rhode Island's long-arm statute are satisfied." *Id.* at 1118 (citation omitted). Section 9-5-33(a) of the Rhode Island General Laws provides the following:

> "Every foreign corporation, every individual not a resident of this state . . . and every partnership or association, composed of any person or persons not such residents, that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island . . . in every case not contrary to the provisions of the constitution or laws of the United States."

Our Supreme Court has interpreted G.L. 1956 § 9-5-33(a) as allowing Rhode Island courts to exercise jurisdiction "over nonresident defendants to the fullest extent allowed by the United States Constitution." *Rose v. Firstar Bank*, 819 A.2d 1247, 1250 (R.I. 2003) (citing *McKenney v. Kenyon Piece Dye Works, Inc.*, 582 A.2d 107, 108 (R.I. 1990)).

B

Constitutional Due Process Requirements

A Rhode Island court's exercise of personal jurisdiction comports with constitutional due process requirements when the plaintiff demonstrates the defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Rose*, 819 A.2d at 1250 (quoting *Int'l Shoe Co. v. State of Washington, Office of Unemployment Comp. and Placement*, 326 U.S. 310, 316 (1945)) (quotation marks omitted). "[T]here are no 'readily discernable guidelines for determining what [constitutes] 'minimum contacts' for the purposes of the long-arm statute.'" *Cassidy v. Lonquist Mgmt. Co., LLC.*, 920 A.2d 228, 232 (R.I. 2007). Analyzing personal jurisdiction is "more an art than a science." *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 206 (1st Cir. 1994) (citation omitted). A reviewing court must consider the particular facts in each case and analyze "'the quality and quantity of the potential defendant's contacts with the forum.'" *Rose*, 819 A.2d at 1250 (quoting *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 288 (1st Cir. 1999)).

A plaintiff establishes "minimum contacts" for purposes of the due process clause by "alleg[ing] and prov[ing] the existence of either general or specific personal jurisdiction." *Cassidy*, 920 A.2d at 232 (citing *Cerberus Partners, L.P.*, 836 A.2d at 1118). A state has general jurisdiction over a defendant if the defendant's forum contacts are "continuous, purposeful, and systematic." *Rose*, 819 A.2d at 1250 (quotation omitted). A court may assert jurisdiction over a defendant with respect to any claim, regardless of whether it arises from the defendant's forum contacts, if general jurisdiction is established. *Cerberus Partners, L.P.*, 836 A.2d at 1119.

Specific jurisdiction, on the other hand, exists if the plaintiff demonstrates "'the claim sufficiently relates to or arises from any of a defendant's purposeful contacts with the forum.'" *Cassidy*, 920 A.2d at 233 (quoting *Rose*, 819 A.2d at 1251). Thus, a plaintiff must make a two-part showing to establish specific jurisdiction: (1) the defendant deliberately or purposefully created contacts with the forum state; and (2) the plaintiff's claims relate to or arise from such in-state contacts. *See Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773, 1785-86 (2017); *Cerberus Partners, L.P.*, 836 A.2d at 1118.

"[O]nce a court determines that a nonresident purposefully established minimum contacts with the foreign forum, the court must consider whether the exercise of jurisdiction would offend fair play and substantial justice." *State of Maryland Cent. Collection Unit v. Bd. of Regents for Educ. of Univ. of Rhode Island*, 529 A.2d 144, 151 (R.I. 1987). This inquiry ensures the "reasonableness" of a state's exercising of jurisdiction over a nonresident defendant. *Adelson v. Hananel*, 510 F.3d 43, 49 (1st Cir. 2007) (citation omitted). Courts analyze reasonableness by reference to a host of considerations known as the "gestalt factors," which are only employed "when the question of personal jurisdiction is close, and then the balance may be tipped toward exercising personal jurisdiction if the balance of the factors shows that exercise to be reasonable." *Cerberus Partners, L.P.*, 836 A.2d at 1122 (citing *Sawtelle v. Farrell*, 70 F.3d 1381, 1391 (1st Cir. 1995)).

III

Analysis

The parties seemingly agree that this Court lacks general jurisdiction over PACCAR.[8] The Plaintiff argues, however, that PACCAR is subject to specific jurisdiction in Rhode Island in the instant case because PACCAR "voluntarily and knowingly engaged in the customized production and sale of the subject Rotator [Truck] to its exclusive dealer in Rhode Island." Pl.'s Suppl. Mem. 10 (capitalization omitted). The Plaintiff also contends that her claims relate to and/or arise out of PACCAR's contacts with Rhode Island relative to the Rotator Truck's manufacture and sale. PACCAR, on the other hand, asserts that (1) its contacts with Rhode Island were isolated and fortuitous; and (2) Peterbilt of Connecticut's "unilateral" decision to redirect the Rotator Truck to its Rhode Island location is not attributable to PACCAR. PACCAR further contends that there exists no "demonstrable nexus" between its Rhode Island-based activities and the Plaintiff's claims, and the exercise of personal jurisdiction here would not comport with notions of fair play and substantial justice.

A

Minimum Contacts

As a preliminary matter, the Plaintiff has satisfied § 9-5-33(a) by asserting that PACCAR is a foreign corporation that was both qualified to, and in fact was, doing business in Rhode Island. Second Am. Compl. ¶ 5. Thus, the success of the Plaintiff's *prima facie* case turns on whether the Plaintiff can demonstrate this Court's exercise of specific personal jurisdiction comports with constitutional due process. *See Cassidy*, 920 A.2d at 232.

[8] The Plaintiff makes no argument whatsoever with respect to general jurisdiction and therefore, waives any argument to that effect.

1

Purposefully Availment

To satisfy the "purposeful contact" aspect of the due process analysis, a defendant must have "performed 'some act [or acts] by which it purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" *Cassidy*, 920 A.2d at 233 (quoting *Rose*, 819 A.2d at 1251). "Voluntariness" and "foreseeability" are the "cornerstones" supporting the concept of purposeful availment. *Cerberus Partners, L.P.*, 836 A.2d at 1121. "Voluntariness" here looks to whether the defendant himself made contact with the forum state; a plaintiff cannot establish purposeful availment by pointing to "unilateral actions of another party or a third person." *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 716 (1st Cir. 1996) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). "[T]he foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

As stated, the relationship between the nonresident defendant and the forum state "must arise out of contacts that the 'defendant *himself'* creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quoting *Burger King Corp.*, 471 U.S. at 475). PACCAR engaged in correspondence with Peterbilt of Rhode Island relative to the Rotator Truck, which led to its ultimate sale and manufacture. Such correspondence included but was not limited to the following: (1) PACCAR agreed to a change order indicating that Peterbilt of Rhode Island, with its unique dealer code, would serve as the Rotator Truck's dealer of record; (2) PACCAR agreed to ten additional change orders *after* it became clear Peterbilt of Rhode Island was in fact the requesting dealer; (3) PACCAR exchanged in communications with Mr. Berluti, a Peterbilt of

Rhode Island employee; (4) PACCAR issued an invoice, a certificate of origin, and a chassis final bill to Peterbilt of Rhode Island; and (5) PACCAR entered into a warranty agreement with Peterbilt of Rhode Island listed as the "Selling Dealer." Therefore, PACCAR, through exchanging with Peterbilt of Rhode Island about the Rotator Truck, created contacts with Rhode Island.

That PACCAR did not "physically enter" Rhode Island is not controlling. PACCAR argues that this case is distinguishable from one in which a consumer physically walks into Peterbilt of Rhode Island to purchase a vehicle; however, that reasoning ignores the fact that physical presence is not a requirement to the assertion of jurisdiction where, as here, PACCAR directed its correspondence toward Peterbilt of Rhode Island based in Johnston, Rhode Island. The Supreme Court has held:

> "[a]lthough territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted." *See Burger King Corp.*, 471 U.S. at 476; *see also Villa Marina Yacht Sales, Inc. v. Hatteras Yachts*, 915 F.2d 7 n.6 (1st Cir. 1990) (rejecting argument that plaintiff failed to adequately allege personal jurisdiction because certain false statement were made outside the jurisdiction, and reasoning that "the issue is not where a statement is made but whether it was directed toward, and had an effect within, the relevant location").

Nor is this Court persuaded that PACCAR's Rhode Island correspondence was somehow involuntarily induced or unilateral in nature. In the leading case discussing unilateral activity, the Supreme Court held a corporation's acceptance of checks drawn on a Texas bank did not demonstrate the corporation voluntarily contacted Texas because there was no indication the corporation requested the checks be drawn from the Texas bank ***or*** that there were any

negotiations with respect to the bank's location or identity. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 416-17 (1984); *see also World-Wide Volkswagen Corp.*, 444 U.S. at 298 (rejecting argument that Oklahoma court could exercise personal jurisdiction over an automobile distributor that supplies New York, New Jersey, and Connecticut based solely on the automobile purchaser's decision to drive into Oklahoma). Even accepting that PACCAR itself did not initiate contact with Peterbilt of Rhode Island regarding the Rotator Truck, PACCAR's continued correspondence with Peterbilt of Rhode Island negates any argument that Peterbilt of Connecticut, alone, is responsible for PACCAR's Rhode Island contacts or that PACCAR's contacts were involuntary. *See Nowak*, 94 F. 3d at 717 (explaining that continued correspondence after an initial communication instigated by an in-state entity negates an argument that the contact with the forum was involuntary). PACCAR benefited financially from, and clearly acquiesced in, any and all change orders Peterbilt of Rhode Island requested.

Finally, one cannot categorize PACCAR's Rhode Island contacts as "'random,' 'fortuitous,' or 'attenuated'" such that PACCAR could not "reasonably anticipate being haled" into this Court. *See Burger King Corp.*, 471 U.S. at 474-75. "[I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States . . . ." *See World-Wide Volkswagen Corp.*, 444 U.S. at 297; *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011) (explaining the "[f]low of a manufacturer's products into the forum may bolster an affiliation germane to *specific* jurisdiction*"); Asahi Metal Industry Co., Ltd. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 112 (1987) ("Additional conduct of the

defendant may indicate an intent or purpose to serve the market in the forum State, for example . . . [by] marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.").

This Court recognizes that PACCAR entered into the Addendum with Peterbilt of Connecticut by which it agreed to create a separate location to serve as a Rhode Island dealer of PACCAR products and employ, at all times, two qualified salespersons to sell PACCAR vehicles. *Cf. J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 886 (2011) (reversing finding that New Jersey court had jurisdiction over foreign manufacturer and referencing that although distributor agreed to sell manufacturer's product in the United States market, the facts did not reveal the manufacturer availed itself in any way to the New Jersey market). The sale of the Rotator Truck arises from PACCAR's efforts to serve, either directly or indirectly, the Rhode Island market. *See World-Wide Volkswagen Corp.*, 444 U.S. at 297. Thus, the record and the parties' relationship do not evidence that PACCAR's contact with Peterbilt of Rhode Island is an "isolated" occurrence. *Cf. Burger King Corp.*, 471 U.S. at 475 (holding that where a defendant has created "'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there . . .").

Moreover, this is not a case where a defendant's relationship with a third party, standing alone, constitutes the sole basis for the Plaintiff's assertion that jurisdiction is proper in Rhode Island. *See Walden*, 571 U.S. at 285-86. Just recently, in *Bristol-Myers Squibb Co.*, the Supreme Court indicated that engaging in relevant acts, together with a distributor with forum contacts, provides a sufficient basis for personal jurisdiction. 137 S. Ct. at 1783. There, the Supreme Court held in relevant part that a California court lacked jurisdiction to hear a class action against a pharmaceutical manufacturer because even though the manufacturer had a

contract with a California-based distributor, McKesson, the class did not allege that McKesson distributed the drugs that caused the class members' injuries. *See id.* Unlike in that case, here, it is undisputed that PACCAR engaged in the distribution of the Rotator Truck together with Peterbilt of Rhode Island, a distributor with forum contacts. *See id.*

Thus, this Court finds that PACCAR reached out to Rhode Island and created a continuing relationship with and obligations to Peterbilt of Rhode Island; in connection with that relationship, PACCAR agreed to sell the Rotator Truck. In doing so, PACCAR deliberately contacted Rhode Island such that it purposefully availed itself of the privilege of conducting business here and should have reasonably anticipated being haled into this Court.

2

Relatedness

Having established PACCAR made purposeful contact with Rhode Island, the next question is whether there exists a sufficient nexus between the Plaintiff's claims and PACCAR's Rhode Island contacts. The "relatedness" prong requires that the plaintiff's cause of action "directly arise[s] out of [or relates to] the specific contacts between the defendant and the forum state." *Sawtelle*, 70 F.3d at 1389. The relatedness requirement serves both as the "divining rod that separates specific jurisdiction cases from general jurisdiction cases" and "ensures that the element of causation remains in the forefront of the due process investigation." *Ticketmaster-New York, Inc.*, 26 F.3d at 207. A plaintiff must "hone in 'on the relationship between the defendant and the forum'"; however, the relatedness prong has been described as a "relaxed standard." *See A Corp. v. All Am. Plumbing, Inc.*, 812 F.3d 54, 59 (1st Cir. 2016) (citation omitted); *see also Cerberus Partners, L.P.*, 836 A.2d at 1119 (explaining a reviewing court should look toward "the relationship among the defendant, the forum, and the litigation").

Here, the Plaintiff asserts that her claims against PACCAR stem from its Rhode Island contacts pertaining to the manufacture and sale of the Rotator Truck. PACCAR, on the other hand, (1) urges this Court to apply a "proximate cause" standard; and, (2) under such a test, posits that the Plaintiff's claims—which primarily concern the manufacture of the Rotator Truck outside Rhode Island—do not "relate to" or "arise out of" PACCAR's in-state contacts.

Turning first to PACCAR's legal formulation, this Court does not find that the Plaintiff must establish a "proximate cause" relationship between the Plaintiff's claims and PACCAR's forum contacts. Rather, the relatedness prong requires something more than a "but-for" relationship, but something less than "proximate cause": "strict adherence to a proximate cause standard in all circumstances is unnecessarily restrictive" and for purposes of analyzing minimum contacts the necessary nexus is "relatively speaking . . . a 'flexible, relaxed standard.'" *See Nowak*, 94 F.3d at 715 (quoting *Sawtelle*, 70 F.3d at 1389) (opining that "[w]hen a foreign corporation directly targets residents in an ongoing effort to further a business relationship, and achieves its purpose, it may not necessarily be unreasonable to subject that corporation to forum jurisdiction when the efforts lead to a tortious result"); *see also Rodriguez v. Dixie S. Indus., Inc.*, 113 F. Supp. 2d 242, 251 (D.P.R. 2000) ("When an out-of-state party engages in conduct targeted at an in-state resident to promote a business relationship between the two sides, specific jurisdiction may be proper if the out-of-state party's conduct leads to a tortious result.").

Moreover, this Court agrees with the Plaintiff that there exists a connection between PACCAR's Rhode Island contacts and the Plaintiff's claims, which amply satisfies the relatedness requirement. As a preliminary matter, courts have held that "[l]ogically, there is no reason why a tort cannot grow out of a contractual contact." *See Lawson v. Affirmative Equities Co., L.P.*, 341 F. Supp. 2d 51, 61 (D. Mass. 2004); *see also Pike v. Clinton Fishpacking, Inc.*,

143 F. Supp. 2d 162, 167 (D. Mass. 2001) (citing *Tatro v. Manor Care, Inc.*, 625 N.E.2d 549, 553 (Mass. 1994) (explaining that the Supreme Judicial Court has expressly rejected the proposition that a tort claim cannot arise from a contractual transaction)).

Further, this Court finds instructive the First Circuit's holding in *Nowak*, a case involving analogous facts. *See* 94 F.3d at 711. There, the plaintiff's spouse died as a result of injuries she suffered at a hotel operator's hotel (defendant) in Hong Kong. Prior to the incident, the hotel negotiated reduced hotel rates with the plaintiff's Massachusetts employer; this was the hotel's only contact with Massachusetts. The First Circuit adopted the district court's reasoning in finding a sufficient nexus between the hotel's contacts with Massachusetts and the plaintiff's wrongful death action for the spouse's injuries: the hotel's solicitation of the employer's business and the extensive back-and-forth regarding the particular reservation of a set of rooms for the plaintiff and his spouse "set in motion a chain of reasonably foreseeable events" resulting in the spouse's death. *Id.* at 716. The First Circuit continued that the "nexus" between the hotel's correspondence with the employer and the spouse's death, while admittedly not a proximate cause relationship, "represent[ed] a meaningful link" between the harm the spouse suffered and the hotel's contacts. *Id.*

The facts here dictate even more strongly in favor of a finding of relatedness. Prior to the accident resulting in the Decedent's death, PACCAR corresponded extensively with Peterbilt of Rhode Island about the Rotator Truck and its construction. This was not a singular agreement: PACCAR and Peterbilt of Rhode Island had a pre-existing relationship arising out of the Addendum. PACCAR directly targeted Peterbilt of Rhode Island in connection with the contract for the Rotator Truck in its ongoing effort to further a business relationship with its Rhode Island outlet. PACCAR's efforts "set in motion a chain of reasonably foreseeable events" that led to

the Decedent's injuries. *See id.* at 716. PACCAR's Rhode Island contacts formed the contractual basis for the ultimate, and, as alleged by the Plaintiff, tortious manufacture of the Rotator Truck. While is it undisputed that the Decedent's death and the manufacture of the Rotator Truck took place outside Rhode Island, those valid considerations are not controlling. *See id.* at 711 (injuries took place in Hong Kong). Therefore, there exists a sufficient connection between PACCAR's Rhode Island contacts and the Plaintiff's claims to satisfy the relatedness requirement.

3

Reasonableness Factors

Having established the requisite "minimum contacts," this Court must determine whether it is reasonable to exercise personal jurisdiction over PACCAR.[9] *See Sawtelle*, 70 F.3d at 1394; *Henry v. Sheffield*, 749 F. Supp. 2d 3, 15 (D.R.I. 2010). In doing so, this Court must apply the "gestalt factors." *See Cerberus Partners, L.P.*, 836 A.2d at 1122. "A court's jurisdictional inquiry is not merely a mechanical exercise, and concepts of reasonableness must illuminate the minimum contacts analysis." *See Sawtelle*, 70 F.3d at 1394 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 292) (internal citation, quotation marks omitted). The reasonableness analysis requires a court to consider the following factors: "(1) the defendant's burden of appearing; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most effective resolution of the controversy; and (5) the common interests of all sovereigns in promoting substantive social policies." *Id.* at 1394 (citing *Burger King Corp.*, 471 U.S. at 477). The parameters of the reasonableness analysis, though "not well defined," "serve[] the purpose of

[9] PACCAR's arguments with respect to reasonableness are somewhat repetitive; therefore, this Court will address each only once under the most appropriate gestalt factor.

assisting courts to achieve substantial justice. *Id.; see also Pritzker v. Yari*, 42 F.3d 53, 63-64 (1st Cir. 1994); *Ticketmaster-New York, Inc.*, 26 F.3d at 209.

a

Burden of Appearance and Judicial System's Interest in Effective Resolution

PACCAR advances two parallel arguments to support factors (1) and (4) listed above. First, PACCAR argues that because the Rotator Truck's manufacture took place in Tennessee, much of the evidence and most of the eyewitnesses will be located there. However, in *Nowak*, where an injury supporting a wrongful death action occurred in Hong Kong, the First Circuit held the Hong Kong-based defendant was not unduly burdened by having to litigate the case in Massachusetts. *See* 94 F.3d at 718. To establish an undue burden, First Circuit precedent dictates that a defendant must demonstrate the "exercise of jurisdiction in the present circumstances is onerous in a special, unusual, or other constitutionally significant way." *Pritzker*, 42 F.3d at 64. Certainly if having to defend in a foreign country does not present an undue burden, having to litigate in Rhode Island, as opposed to neighboring Connecticut, does not create an undue burden.

Secondly, PACCAR fears that the Bridgestone Entities' dismissal from this case will undermine PACCAR's right to a fair trial and promote piecemeal litigation. Courts have held that the prevention of piecemeal litigation is a factor that might weigh in favor of litigation in one jurisdiction over another. *See id.*; *Nowak*, 94 F.3d at 718. However, it was recognized in *Burger King* that considerations of piecemeal and duplicative litigation "may be accommodated through means short of finding jurisdiction unconstitutional" such as by applying choice-of-law rules, granting a defendant's motion for a change in venue, or otherwise ordering a transfer based on the doctrine of *forum non conveniens*. 471 U.S. at 477; *see also Daimler AG v. Bauman*, 571

U.S. 117 (2014) (J. Sotomayor, concurring) (explaining "a defendant can assert the doctrine of *forum non conveniens* if a given State is a highly inconvenient place to litigate a dispute").

b

Remaining Factors

Factors 2, 3, and 5 listed above do not clearly swing in either party's favor; therefore, the application of such factors does not "tip" the scales of justice toward declining jurisdiction. *See Cerberus Partners, L.P.*, 836 A.2d at 1121. In terms of Rhode Island's interest in adjudicating the matter, "our task is not to compare the interest of two sovereigns—the place of the injury and forum state—but to determine whether the forum state *has* an interest." *Nowak*, 94 F.3d at 718. Because the Decedent was a Rhode Island resident, Rhode Island has an interest in the litigation. Furthermore, concerning the Plaintiff's convenience, this Court must accord some level of deference to the Plaintiff's choice of a Rhode Island forum. *See, e.g., Foster-Miller, Inc. v. Babcock & Wilcox Can.*, 46 F.3d 138, 145-47 (1st Cir. 1995). Finally, pertinent policy factors do not militate in favor of declining jurisdiction. PACCAR argues that the Plaintiff's request for a Rhode Island forum "would potentially subject manufacturers to nationwide jurisdiction." Def.'s Suppl. Mem. 22. However, because the Plaintiff has satisfied its *prima facie* burden demonstrating PACCAR's minimum contacts with Rhode Island, PACCAR's policy argument fails.

IV

Conclusion

For the foregoing, this Court denies PACCAR's motion to dismiss for lack of personal jurisdiction. The Plaintiff has satisfied applicable due process standards governing minimum contacts and reasonableness. Counsel shall prepare and submit the appropriate Order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Alison N. Martins, Individually and as Co-Executrix of the Estate of John Martins v. PACCAR, Inc., et al.
CASE NO:	PC-2017-2420
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 29, 2019
JUSTICE/MAGISTRATE:	Stern, J.
ATTORNEYS:	
For Plaintiff:	Mark Decof, Esq.
For Defendant:	Brian J. Lamoureux, Esq.; William E. O'Gara, Esq.; Amanda Prosek, Esq.; Kathleen M. Guilfoyle, Esq.; Mark P. Dolan, Esq.; John M. Boland, Esq.