

## CLIENT ALERT

### The Supreme Court Rejects "Causation-Only" Test for Specific Jurisdiction

Mar.26.2021

In its seventh decision on personal jurisdiction over out-of-state defendants in the past decade, the United States Supreme Court yesterday ruled 8-0<sup>1</sup> that due process does not require a strict causal link between the defendant's in-forum conduct and the plaintiff's injury. *Ford Motor Co. v. Montana Eighth Judicial District Court et al.*, No. 19-368 (March 25, 2021). Writing for the Court, and joined by Chief Justice Roberts and Justices Breyer, Sotomayor, and Kavanaugh, Justice Kagan held: "When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit."<sup>2</sup> The suit need only "arise out of or relate to the defendant's contacts with the forum."<sup>3</sup> Reviewing the Court's personal jurisdiction decisions since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), Justice Kagan emphasized that the decision was consistent with precedent, including *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017), and announced no new test of specific jurisdiction.

The decision arose out of two consolidated cases from Montana and Minnesota involving crashes of Ford vehicles in those states.<sup>4</sup> The plaintiff in the Montana case was killed when a tire tread on her Ford Explorer separated and the vehicle rolled into a ditch. Her Explorer was manufactured in Kentucky, and first sold by a dealership in Washington State to a resident of Oregon. In the Minnesota case, the plaintiff suffered a severe brain injury when the Crown Victoria in which he was riding rear-ended a snow plow. He alleged that the passenger-side airbag failed to deploy. The vehicle was designed in Michigan and assembled in Canada; its fourth owner registered it in Minnesota 17 years later.

Although neither plaintiff's accident involved a vehicle designed, manufactured, or originally sold in the forum state, both the Montana and Minnesota courts affirmed findings of specific jurisdiction over Ford.

Affirming both states' supreme court decisions, Justice Kagan explained that the exercise of specific jurisdiction over Ford satisfied the twin values of fairness to defendants and federalism.<sup>5</sup> Ford agreed, she noted, that it had "purposely availed itself" of the privilege of doing business in each state. The Court then rejected Ford's argument that it could not be subject to specific jurisdiction in Montana and Minnesota because the particular vehicles in play were not first sold there, finding that "Ford's causation-only approach finds no support in th[e] Court's requirement of a 'connection' between a plaintiff's suit and a defendant's activities."<sup>6</sup> Rather, the first half of the "arise out of or relate to" "standard asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing."<sup>7</sup>

Relying on the Court's decision in *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), Justice Kagan wrote that "specific jurisdiction attaches in cases identical to the ones here—when a company like Ford serves a market for a product in the forum State and the product malfunctions there."<sup>8</sup> This establishes the "strong 'relationship among the defendant, the forum, and the litigation'" that is the cornerstone of specific personal jurisdiction. Finally, Justice Kagan noted that permitting personal jurisdiction only in the states of first sale—channeling the cases away from the states in which plaintiffs lived and were injured—would undermine principles of federalism.<sup>9</sup>

Justice Alito concurred. He viewed the Court’s opinion as creating a “new gloss” on the test for specific jurisdiction, recognizing jurisdiction in cases that “relate to” but do not “arise out of” the defendant’s conduct in the forum state.<sup>10x</sup> In his opinion, this “innovation” was both “unnecessary” and “unwise.”<sup>11xi</sup> That said, he found the same result easy to reach: “Can anyone seriously argue that requiring Ford to litigate these cases in Minnesota and Montana would be fundamentally unfair?”<sup>12xii</sup>

Justice Gorsuch, joined by Justice Thomas, separately concurred. He similarly noted that Justice Kagan’s opinion does not “tell us whether its new affiliation test supplants or merely supplements the old causation inquiry.”<sup>13xiii</sup> According to Justice Gorsuch, “[t]ypically, courts have read this second phrase [“or relate to”] as a unit requiring at least a but-for causal link between the defendants’ local activities and the plaintiff’s injuries.”<sup>14xiv</sup> He too, however, found jurisdiction over Ford indisputable: “None of this is to cast doubt on the outcome of these cases.”<sup>15xv</sup>

Left unanswered is whether the “relate to” language establishes a separate, more permissive standard for establishing specific jurisdiction than the “arise out of” test. Lower courts will be left to spar over that question. Still, *Ford Motor Co.* is best seen as merely reaffirming the Court’s precedent on personal jurisdiction.

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<sup>1</sup> Justice Barrett took no part in the decision.

<sup>2</sup> *Ford Motor Co. v. Montana Eighth Judicial District Court et al.*, No. 19-368 (March 25, 2021) (slip op. at 2).

<sup>3</sup> *Id.* at 8, quoting *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 582 U.S. --, -- (2017), (slip op. at 8) (emphasis added to quotation from *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)).

<sup>4</sup> *Ford Motor Co. v. Montana Eighth Judicial District Ct.*, 443 P.3d 407 (Mont. 2019); *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744 (Minn. 2019).

<sup>5</sup> Slip op. at 6.

<sup>6</sup> *Id.* at 8.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 8-9.

<sup>9</sup> *Id.* at 15.

<sup>10</sup> Alito, J., concurring (slip op. at 3).

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> Gorsuch, J., concurring (slip op. at 4).

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.* at 10.

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