



ALERTS

SCOTUS Invites Further Litigation To Test Bounds Of Personal Jurisdiction Over Corporate Defendants

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Highlights

The U.S. Supreme Court recently decided that Ford can be sued in the two states where the plaintiffs reside and were injured, regardless of where Ford designed, built or sold the vehicles in question

More litigation is expected to test the rules for personal jurisdiction over out-of-state corporate defendants

The Court was unanimous in the outcome but not in its reasoning

On March 25, 2021, the U.S. Supreme Court issued an essentially unanimous decision that may expose companies to more frequent litigation outside of their home states. In *Ford Motor Co. v. Montana Eighth Judicial District Court, et al.*, the Supreme Court held by an 8-0 vote (with Justice Amy Coney Barrett not participating) that Ford is subject to personal jurisdiction in the state where a plaintiff resides and was injured, even though the Ford vehicle was originally sold in a different state.

This precedent may have a significant impact on companies doing business across the country.

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In *Ford*, the Court ruled on two similar cases, one from Montana and another from Minnesota, in which the key issue was personal jurisdiction – the doctrine that determines where a defendant may be sued. In each case, the plaintiff was a resident of and had been injured while driving a Ford vehicle in the forum state, but the cars had been designed, manufactured, and originally sold in different states, arriving in Montana and Minnesota years later as used vehicles.

The Court long ago had established two different types of personal jurisdiction, general jurisdiction and specific jurisdiction:

General jurisdiction exists wherever a defendant is at “home,” which for a corporation is typically its state of incorporation and its headquarters. No other facts about the case are necessary to subject a defendant to general jurisdiction. This case did not involve general jurisdiction, as it was undisputed that Ford is only at “home” in Delaware, where it is incorporated, and in Michigan, where it is headquartered.

Instead, this case was about specific jurisdiction, which is based directly on the facts of the case. Ford argued that specific jurisdiction must be based on a causal link, which means that jurisdiction attaches only if the defendant’s conduct in the forum gave rise to the plaintiff’s claims. Because Ford did not design, manufacture, or sell the specific vehicles in the states of Montana and Minnesota, Ford contended it could not be sued in either state.

In the majority opinion by Justice Elena Kagan, who was joined by Chief Justice John Roberts and Justices Stephen Breyer, Sonia Sotomayor, and Brett Kavanaugh, the Court rejected Ford’s argument and re-emphasized language from prior cases stating that specific jurisdiction exists when the plaintiff’s claims “arise out of or relate to the defendant’s contacts” with the forum state. While the phrase “arise out of” may imply a causal connection, the phrase “relate to” does not.

The Court concluded that these cases “relate to” Ford’s extensive activities in Montana and Minnesota, including advertising, selling new and used cars through Ford dealerships, providing maintenance and repair services through those dealers, and distributing replacement parts to dealers and independent auto shops. In other words, the Court said, “Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States. So there is a strong ‘relationship among the defendant, the forum, and the litigation’—the ‘essential foundation’ of specific jurisdiction.”

Two Justices Seek More Cases to Aid Definitions

There were two concurring opinions:

- Justice Samuel Alito found that there actually was a causal link between Ford’s conduct and the plaintiffs’ claims because the whole point of Ford’s activities in Montana and Minnesota was to put more Ford vehicles on the roads of those states. Justice Alito therefore worried that the majority’s emphasis on the phrase “relate to” may expand personal jurisdiction beyond circumstances where the plaintiff’s injury is allegedly related to the defendant’s in-state conduct.

- Justice Neil Gorsuch, in an opinion joined by Justice Clarence Thomas, also questioned the breadth of “relate to” and predicted further litigation because the majority had provided no meaningful guidance on what in-state conduct by a defendant will subject it to specific jurisdiction. Going further, Justice Gorsuch expressed concern that corporations continue to enjoy special jurisdictional protection, whereas individual defendants can be sued anywhere they can be found. Noting that “global conglomerates boast of their many ‘headquarters,’” he expressly asked that future litigants and lower courts present more cases to allow the Court to re-evaluate personal jurisdiction for “our changing economy in light of the Constitution’s text and the lessons of history.”

Up until now, most of the Supreme Court’s recent jurisprudence had tended to favor corporate defendants and limit the places in which they can be sued. For example, in *Daimler AG v. Bauman*, the Court rejected the notion that general jurisdiction can be based on the same types of activities by an auto manufacturer as in *Ford* – advertising, selling, and servicing cars other than the specific vehicles involved in the case. In *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, the Court found that California did not have specific jurisdiction over Bristol-Myers as to the claims of non-California residents who sought to join with California residents in suing Bristol-Myers in California over an allegedly defective drug.

Ford appears to signal that the Supreme Court will continue to examine personal jurisdiction in future cases. The plaintiffs’ bar will surely take the cue and aggressively test theories for hauling corporate defendants into courts perceived to favor plaintiffs. Many defendants likely will argue that *Ford* did not expand personal jurisdiction. After all, the facts of this case are common for carmakers, but perhaps not for many other defendants. A corporate defendant may still be able to avoid jurisdiction in a given state if the company’s contacts with the forum state are so disconnected to the plaintiff’s alleged injury that the claim does not “arise out of or relate to the defendant’s contacts” with the forum state.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Kenneth Gorenberg at 312-214-5609 or kenneth.gorenberg@btlaw.com.

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