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Ford v. Montana, et al.: Specific Jurisdiction's Next Mile Marker

Just three years after deciding *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*,^[1] the U.S. Supreme Court is set to hear oral arguments on what may become the next landmark case for specific jurisdiction.^[2] *Ford v. Montana, et al.*, Dkt. Nos. 19-368 & 19-369,^[3] concerns two consolidated cases arising from separate car accidents involving Ford vehicles.^[4] In both cases, the car accident occurred in a different state than where Ford originally assembled and sold the vehicle.^[5] In the first case, Ford assembled an Explorer SUV in Kentucky,^[6] and thereafter sold the Explorer to an independent Ford dealership in Washington.^[7] The Washington dealership then sold the Explorer to an Oregon consumer,^[8] and from there, the vehicle changed hands several more times^[9] until the Montana-based plaintiff's mother bought it.^[10] That plaintiff crashed the car in Montana.^[11] The story is the same in the second case: manufacture in one locale (Ontario),^[12] transfer to a dealership in another (North Dakota),^[13] then resale and crash in another (Minnesota).^[14]

The plaintiffs each sued Ford in the states where their respective accidents occurred – Montana and Minnesota.^[15] However, Ford contested jurisdiction in each action.^[16] Neither plaintiff argues that Ford was “at home” in the relevant forums;^[17] instead, the plaintiffs rely on specific or “case-based” jurisdiction.^[18]

The Supreme Court has articulated three elements necessary to exercise specific jurisdiction.^[19] First, the defendant must have “purposefully avail[ed] itself of the privilege of conducting activities within the forum State”^[20] or have “purposefully directed its conduct into the forum State.”^[21] Second, the plaintiff’s claim must “arise out of or relate to” the defendant’s forum conduct.^[22] Finally, the exercise of jurisdiction must be “reasonable” under the circumstances.^[23]

While *Ford v. Montana* tangentially concerns the first and third elements, both plaintiffs and Ford focus their attention on the second element: whether the plaintiffs’ claims “arise out of or relate

to” Ford’s contacts with Montana (and Minnesota).^[24] What are Ford’s supposed contacts? As the plaintiffs put it, Ford “systematically marketed, sold, and serviced” the same model as their respective vehicles in each of Montana and Minnesota.^[25] For instance, the plaintiffs highlight that Ford “sold more than two thousand 1994 Crown Victoria cars in Minnesota.”^[26] Likewise, Ford sold “both new and used Explorers at all of its thirty-six licensed Ford dealerships in Montana, which service these Explorers for Montana residents.”^[27]

The catch – and it is a big one – is that Ford did not sell the plaintiffs’ *particular* vehicles from within Minnesota or Montana.^[28] Rather, Ford initially manufactured and sold those vehicles in separate states,^[29] and they eventually made their way to the plaintiffs’ forums.^[30] This fact forms the upshot of Ford’s objection to specific jurisdiction: although Ford admittedly sold and marketed the exact same model vehicles as plaintiffs’ in each of their states, ^[31] plaintiffs’ claims do not “arise out of or relate to” these “forum contacts” because plaintiffs’ vehicles themselves came from a different vehicle pool.^[32]

To the plaintiffs, this detail presents no obstacle to specific jurisdiction over Ford. They argue that the Supreme Court “has repeatedly made clear that where (a) a company deliberately cultivates a market for a product in the forum state and (b) that product causes an injury in the forum state, the relationship between the injury and the defendant’s in-state activity is sufficient for specific jurisdiction.”^[33] This deliberate market cultivation, plaintiffs argue, provides a sufficient nexus between their legal claims and Ford to support specific jurisdiction in their chosen forums.^[34]

Ford balks at these arguments and states that the plaintiffs ignore that the Supreme Court has “always applied a **causal** standard when allowing specific jurisdiction.”^[35] (Emphasis added). Per Ford, specific jurisdiction requires a stricter analysis than whether “the plaintiff was injured in the forum and whether the defendant did something in the forum that **resembles** the subject matter of the plaintiff’s suit.”^[36] (Emphasis added). Rather, specific jurisdiction must be “grounded on the defendant’s suit-related

forum contacts – its own contacts that **caused** the plaintiff's claims[.]”[37] (Emphasis added).

A key feature of Ford's causal test would be to “preserve the essential distinction between specific and general jurisdiction.”[38] General jurisdiction exists in a defendant's “home state.”[39] That a corporation conducts business in a particular state does not render it “essentially at home” there.[40] Rather, for corporations like Ford, the “home state” is generally the place of incorporation and/or the corporation's principal place of business.[41] Unlike specific jurisdiction, “general jurisdiction does not require a connection between a defendant's activities and the cause of action.”[42] This makes sense: if a Kentucky resident sues Ford in Michigan – the state where Ford maintains its principal place of business[43] – Ford cannot genuinely object that Michigan is an unfavorable or unfair forum to Ford, even if the accident itself occurred in Kentucky. On the other hand, because specific jurisdiction potentially forces a defendant to leave its “home” in order to defend a suit, specific jurisdiction only arises where defendants “have purposefully reached out beyond their state and into another[.]”[44] (internal quotations omitted).

Ford argues that plaintiffs' proposed test impermissibly conflates the two forms of jurisdiction by permitting a defendant's business activities in a particular state to comprise specific jurisdiction there – even though such activities would **not** satisfy general jurisdiction – so long as those activities “resemble” the plaintiff's claims.[45] Put another way, the plaintiffs' test would permit jurisdiction in a forum where the defendant's contacts came close on both general and specific jurisdiction, but ultimately satisfied neither. Ford finds support for its takedown of the plaintiffs' proposed test in *Bristol-Myers Squibb*, in which the Court rejected a “sliding scale approach” [46] to specific jurisdiction “which resemble[d] a loose and spurious form of general jurisdiction.”[47]

More than twenty Amici Curiae filed briefs in *Ford v. Montana*,[48] with most reinforcing and extrapolating the plaintiffs' and Ford's primary arguments. For example, the Alliance of Automobile Manufacturers[49] and the Pharmaceutical Research and Manufacturers of America[50] side with Ford and advocate for a

causal-nexus requirement to assert specific jurisdiction. Both argue that their respective industries would suffer “a particularly pernicious impact”^[51] absent a causal test, given that their products often move through multiple forums throughout their lifecycles.^[52]

On the other hand, the Main Street Alliance^[53] and the National Association of Home Builders^[54] aligned with the plaintiffs. Both argued that “intermediary”^[55] in-state defendants that form the link between claimants and foreign defendants would be left “holding the bag”^[56] without the ability to implead the foreign defendants via specific jurisdiction. Main Street pointed to the fact that “many states have enacted statutes immunizing non-manufacturing sellers from liability,”^[57] i.e., “middleman” or “innocent seller statutes.” However, as Main Street argues, such innocent seller statutes often predicate immunity on whether the original manufacturer is amenable to suit.^[58] Limiting specific jurisdiction to a cause-based analysis, Main Street contends, would effectively gut innocent seller statutes and negate their underlying policy to immunize “sellers who didn’t themselves do anything to render the products defective.”^[59]

The American Association for Justice and Public Justice develops the plaintiffs’ market cultivation argument even further.^[60] “Ford not only sells new and used cars in the forum States,”^[61] the Association argues, “but also maintains a continuing bond to the Ford owners living in those states, through warranties . . . scheduled maintenance[,] [and] vehicle service bulletins that instruct dealerships on repairs, provide the basis for recalls, and correct design flaws in future models.”^[62] Presumably, this “continuing bond” follows the vehicle owner into whatever state Ford continues to nurture it, via warranties, scheduled maintenance, and vehicle checkups.

Ultimately, *Ford’s* result may require the justices to parse out the meaning of “arises out of or relates to,” a phrase that has governed specific jurisdiction litigation for nearly the last forty years.^[63] In particular, do the two halves of that phrase – (1) “arise out of” and (2) “relates to” – refer to the same general concept, or do they represent two distinct avenues to specific jurisdiction? May a party

satisfy one half, but not the other?

It is a question that has long-intrigued jurisdiction scholars,[\[64\]](#) and *Ford* perfectly illustrates its tension. Assume that Ford is correct that “arises out of or relates to” is a singular term that encompasses a “causal” connection between the plaintiff’s claims and the defendant’s forum contacts. Arguably, this formulation presents a stiff battle for the *Ford* plaintiffs to fight, given that they did not purchase or receive their vehicles from Ford in Montana or Minnesota respectively.[\[65\]](#) However, if “arises out of” and “relates to” are separate paths to specific jurisdiction, plaintiffs’ odds are not quite as slim; while plaintiffs’ claims might not “arise out of” Ford’s activities in Montana and Minnesota – including selling and marketing the very vehicle models involved in plaintiffs’ claims[\[66\]](#) – this might be enough to “relate” plaintiffs’ claims to Ford’s forum contacts. The plaintiffs’ proposed “market cultivation” test packs a greater punch if they only need demonstrate that the cultivated market “relates” to their claims.

Given the Court’s recent decisions in *Bristol-Myers*[\[67\]](#) (8-1, Sotomayor, J. dissenting) and *Walden*[\[68\]](#) (unanimous), however, another tightening of specific jurisdiction seems imminent. Justice Brett Kavanaugh had not yet ascended to the Supreme Court in those cases,[\[69\]](#) and his prior opinions shed little light on how he will view the case. In 2011, Justice Kavanaugh authored an opinion for the United States Court of Appeals for the District of Columbia [\[70\]](#) in which he found that the claimants did “not allege any over act within the District” that would justify personal jurisdiction over the defendant in a case.[\[71\]](#) However, that case concerned an alleged conspiracy under the Sherman Antitrust Act and the Racketeer Influenced and Corrupt Organizations Act, and did not directly address personal jurisdiction in the context of the Due Process Clause.[\[72\]](#)

President Donald Trump’s recent Supreme Court nominee, Judge Amy Coney Barrett of the Seventh Circuit,[\[73\]](#) authored two recent opinions that suggest she would likely find no specific jurisdiction over Ford. In *Lexington Insurance Company v. Hotai Insurance Company, Ltd.*, 938 F.3d 874, n. 7 (7th Cir. 2019) – a products liability case involving bicycle manufacturers – Judge Barrett

reasoned that a claimant's action "must *directly arise* out of the specific contacts between the defendant[s] and the forum state[,] and that "a defendant's contacts with the forum State [must] be directly related to the conduct pertaining to the claims asserted." (internal quotations omitted, emphasis in original). Similarly, in *J.S.T. Corporation v. Foxconn Interconnect Technology Ltd.*, 965 F.3d 571, 576 (7th Cir. 2020), Judge Barrett considered a trade secrets case and again concluded that the plaintiff failed to demonstrate specific jurisdiction, citing *Bristol-Myers Squibb* for the proposition that "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales." Judge Barrett also noted the importance of "the relationship among the defendant, the forum, and the litigation"^[74] for purposes of specific jurisdiction – a repeated point of emphasis in Ford's brief.^[75] (emphasis in original).

Given the Court's recent trend, a Ford win and another landmark narrowing of specific jurisdiction are the most likely outcomes.

^[1] 137 S.Ct. 1773 (2017).

^[2] Amy Howe, *Justices add three new hours of argument to calendar*, SCOTUSblog (Sept. 17, 2020, 12:15 PM), <https://www.scotusblog.com/2020/01/justices-add-three-new-hours-argument-calendar/>.

^[3] SCOTUSblog (Sept. 17, 2020, 12:15 PM), <https://www.scotusblog.com/case-files/cases/ford-motor-company-v-montana-eighth-judicial-district-court/>.

^[4] Petitioner Ford Motor Company's Brief, Filed February 28, 2020 ("Ford's Brief"), at p. 5-12, SCOTUSblog (Sept. 17, 2020, 12:15 PM), https://www.supremecourt.gov/DocketPDF/19/19-368/134462/20200228133545220_19-368%20and%2019-369%20Brief%20for%20Petitioner%202.28.2020.pdf.

^[5] See *id.*

^[6] See *id.* at p. 5.

^[7] See *id.*

^[8] See *id.*

[9] See *id.*

[10] Respondents Charles Lucero, personal representative of the Estate of Markkaya Jean Gullet, *et al.*'s Brief, Filed March 30, 2020 ("Plaintiffs' Brief"), at p. 8, SCOTUSblog (Sept. 17, 2020, 12:15 PM), https://www.supremecourt.gov/DocketPDF/19/19-368/139478/20200330165654464_19-368%2019-369%20Brief%20of%20Respondents.pdf.

[11] See *id.* at p. 11.

[12] See Ford's Brief, at p. 8.

[13] See *id.*

[14] See *id.* at p. 9.

[15] See Plaintiffs' Brief, at p. 5–8.

[16] See *id.* at p. 8–10.

[17] See Ford's Brief, at p. 6–8 (noting that the Montana Plaintiff "conceded that Ford was not subject to general jurisdiction in Montana," and the Minnesota Plaintiff "stipulated that Ford is not 'at home' in Minnesota.>").

[18] See *generally id.*

[19] See *Bristol-Myers*, 137 S.Ct. at 1785–86.

[20] See *id.* (citing *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877 (2011) (plurality opinion)).

[21] See *Bristol-Myers*, 137 S.Ct. at 1785–86 (citing *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 877 (2011) (plurality opinion)).

[22] See *Bristol-Myers*, 137 S.Ct. at 1786 (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

[23] See *Bristol-Myers*, 137 S.Ct. at 1785–86 (citing *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 113–114 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477–478 (1985)).

[24] See *generally* Ford's Brief, at p. 6; Plaintiffs' Brief, at p. 14–17.

[\[25\]](#) See Plaintiffs' Brief, at p. 12.

[\[26\]](#) See *id.* at p. 5.

[\[27\]](#) See *id.* at p. 6.

[\[28\]](#) See Ford's Brief, at p. 2.

[\[29\]](#) See *generally id.* at p. 5–12.

[\[30\]](#) See *id.*

[\[31\]](#) See Ford's Brief, at p. 6–10 (acknowledging Montana Supreme Court's finding that Ford "sells vehicles – including Ford Explorers – to [independent Montana] dealerships," and similarly recognizing Minnesota Supreme Court's emphasis on Ford's "sale of other 1994 Crown Victorias . . . and advertising and marketing" in Minnesota.).

[\[32\]](#) See *id.* at 5–12.

[\[33\]](#) See Plaintiffs' Brief, at p. 10.

[\[34\]](#) See *id.* at p. 10–12.

[\[35\]](#) See Ford's Brief, at p. 11.

[\[36\]](#) See *id.* at p. 14.

[\[37\]](#) See *id.* at p. 23.

[\[38\]](#) See *id.* at p. 2.

[\[39\]](#) See Andrew D. Bradt & D. T. Rave, *Aggregation on Defendants' Terms: Bristol-Myers Squibb and the Federalization of Mass-Tort Litigation*, 59 B.C.L. Rev. 1251 (2018) ("Plaintiffs must either sue in a state that has some specific connection to their claim or else in the defendant's home state, where the defendant is subject to general jurisdiction.").

[\[40\]](#) See *Daimler AG v. Bauman*, 571 U.S. 117, n. 20 (2014) (noting that "a corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, 'at home' would be synonymous with 'doing business' tests framed before specific jurisdiction evolved in the United States.").

[\[41\]](#) See *BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1552 (2017) ("The 'paradigm' forums in which a corporate defendant is 'at home' are

the corporation's place of incorporation and its principal place of business[.]").

[42] *Snow v. DirecTV, Inc.*, 450 F.3d 1314, 1318 (11th Cir. 2006) (citing *Helicopteros* 466 U.S. at 414 n. 9).

[43] See Ford Motor Company Corporate Summary, Kentucky Secretary of State Corporations Division, (Sept. 17, 2020, 12:15 PM), [https://web.sos.ky.gov/ftshow/\(S\(ae4hm4h0kxylcheoqbtrsrtty\)\)/default.aspx?pa](https://web.sos.ky.gov/ftshow/(S(ae4hm4h0kxylcheoqbtrsrtty))/default.aspx?pa)

[44] See *Walden v. Fiore*, 571 U.S. 277, 286 (2014) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479–80 (1985)).

[45] See Ford's Brief, at p. 31.

[46] 137 S.Ct. at 1776.

[47] See *id.*

[48] See *Ford v. Montana, et al.*, Dkt. Nos. 19–368 & 19–369, SCOTUSblog (Sept. 17, 2020, 12:15 PM), <https://www.scotusblog.com/case-files/cases/ford-motor-company-v-montana-eighth-judicial-district-court/>.

[49] Brief amici curiae of The Alliance of Automobile Manufacturers, Filed October 21 2019 ("AAM's Brief"), SCOTUSblog (Sept. 17, 2020, 12:15 PM), [https://www.supremecourt.gov/DocketPDF/19/19-368/119713/20191021181455471_Auto%20Alliance%20Amicus%20Brief%20Ford%](https://www.supremecourt.gov/DocketPDF/19/19-368/119713/20191021181455471_Auto%20Alliance%20Amicus%20Brief%20Ford%20et%20al.pdf)

[50] Brief amici curiae of Pharmaceutical Research and Manufacturers of America, Filed March 6, 2020 ("PhRMA's Brief"), SCOTUSblog (Sept. 17, 2020, 12:15 PM), https://www.supremecourt.gov/DocketPDF/19/19-368/137310/2020030614215590_PhRMA%20amicus.pdf.

[51] See AAM's Brief at p. 11.

[52] See PhRMA's Brief at p. 11–12 (arguing that a non-causal test for specific jurisdiction could create jurisdiction for pharmaceutical products in states that hosted clinical trial sites, and that "recognizing specific personal jurisdiction wherever a clinical trial site was located [would] fail[] to put any meaningful limits on the reach of state courts . . . Clinical trials by nature must be spread across many states, and it is not unusual for dozens of states to host clinical trial sites for a single pharmaceutical product. By

design, clinical trials often involve hundreds or even thousands of patients spread out across the country, and many FDA approvals involve multiple rounds of clinical testing.”).

[53] See Brief amicus curiae of Main Street Alliance, Filed April 6, 2020 (“Main Street Brief”), SCOTUSblog (Sept. 17, 2020, 12:15 PM), https://www.supremecourt.gov/DocketPDF/19/19-368/140970/20200406173052427_19368%2019369%20Obsac%20Main%20Stre

[54] See Brief amicus curiae of National Association of Home Builders, April 6, 2020 (“Home Builders’ Brief”), SCOTUSblog (Sept. 17, 2020, 12:15 PM), https://www.supremecourt.gov/DocketPDF/19/19-368/140932/20200406133435769_19-368%20Obsac%20NAHB.pdf.

[55] See *id.* at p. 5.

[56] See *id.* at p. 2.

[57] See Main Street Brief’s Brief, at p. 8.

[58] See *id.* at p. 4 (“because the immunity statutes do not apply where the manufacturer cannot be sued, sellers would lose their immunity and be subject to strict liability. These consequences will be particularly harmful to America’s small businesses.”).

[59] See *id.* at p. 8.

[60] See Brief amici curiae of American Association for Justice and Public Justice, P.C., Filed April 6, 2020 (“AAJ’s Brief”), SCOTUSblog (Sept. 17, 2020, 12:15 PM), https://www.supremecourt.gov/DocketPDF/19/19-368/140961/20200406162356948_19-368%2019-369%20Obsac%20AAJ%20Amicus%20Ford%20Brief.pdf.

[61] See *id.* at p. 3.

[62] See *id.*

[63] See *Helicopteros* 466 U.S. at 409.

[64] John V. Felliccia, *BristolMyers Squibb Co. v. Superior Court: Reproaching the Sliding Scale Approach for the Fixable Fault of Sliding Too Far*, 77 Md. L. Rev. 862, 899 (2018); Victor N. Metallo, “Arise Out Of” or “Related To”: Textualism and Understanding

Precedent Through Interpretatio Objectificata, "Objectified Interpretation" – A Four Step Process to Resolve Jurisdiction Questions Utilizing the Third Circuit Test in O'Connor as a Uniform Standard, 17 Wash & Lee J. Civil Rts. & Soc. Just. 415 (2011).

[65] See Ford's Brief, at p. 5–12.

[66] See Ford's Brief, at p. 6–10 (acknowledging Montana Supreme Court's finding that Ford "sells vehicles – including Ford Explorers – to [independent Montana] dealerships," and similarly recognizing Minnesota Supreme Court's emphasis on Ford's "sale of other 1994 Crown Victorias . . . and advertising and marketing" in Minnesota.).

[67] 137 S.Ct. at 1773.

[68] 571 U.S. at 277.

[69] See Brett M. Kavanaugh, Oyez (Sept. 17, 2020, 12:15 PM), https://www.oyez.org/justices/brett_m_kavanaugh.

[70] See *Companhia Brasileira Carbureto de Calicio v. Applied Indus. Materials Corp.*, 640 F.3d 369 (D.C. Cir. 2011).

[71] See *id.* at 372.

[72] See generally *id.*

[73] *President Donald J. Trump Announces Intent to Nominate Judge Amy Coney Barrett to the Supreme Court of the United States*, WhiteHouse.gov (Sept. 30, 2020, 1:01 PM), <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-judge-amy-coney-barrett-supreme-court-united-states/>.

[74] 965 F.3d at 576.

[75] See Ford's Brief, at p. 1 ("*Specific* personal jurisdiction requires an additional connection, one between the defendant, *the plaintiff's claims*, and the forum. That is what makes specific jurisdiction 'case-linked.' And that link is missing here.") (internal citations omitted, emphasis in original).

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