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Ford v. Montana — A Monumental Change In Specific Jurisdiction Or Just More Of The Same: An Analysis And Thoughts For Practitioners

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Commentary

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Late last month the Supreme Court, in a 8-0 decision issued a decision in *Ford Motor Company v. Montana Eighth Judicial District Court*, Case Nos. 19-368, 19-369, 592 U.S. ____ (2021), 2021 U.S. LEXIS 1610 (Mar. 25, 2021), ruling that defendant Ford Motor Company ("Ford") was subject to personal jurisdiction in Montana and Minnesota in two separate cases involving alleged defects with Ford vehicles where the accidents were alleged to occur within the subject forum states but where the vehicles were shown to have been sold outside the state. Ford contended that because it did not sell the vehicles in question to Montana and Minnesota that pursuant to *International Shoe*, *World-Wide Volkswagen*, and its progeny, particularly 2017's *Bristol Myers Squibb* case, the accidents were not causally linked to Ford's activities in the subject states, and therefore specific personal jurisdiction could not attach.

Chances are if you are reading this article, you may have made similar arguments and might be concerned. This case will undoubtedly make waves in the personal jurisdiction world, especially in plaintiff

friendly jurisdictions where Plaintiffs and their attorneys are chomping at the bit to venue their cases.

The Facts and Decision

The decision involved two separate cases involving personal injury plaintiffs who brought products liability actions for defective vehicles against Ford in Montana and Minnesota. In both actions the plaintiffs were residents of the forum states, the accidents occurred within the forum states, and the vehicles at issue (a 1994 Ford Explorer and 1996 Ford Crown Victoria) were manufactured, designed, and sold outside the forum states. Ford argued that there could not be specific jurisdiction because the accidents did not arise out of any Ford activity or transaction taking place or directed towards the forum states.

Ford noted that it was incorporated in Delaware, designed the vehicles in Michigan, manufactured them in Kentucky and Canada, and originally sold them to Washington and North Dakota. Ford conceded that it actively seeks to market its vehicles in both Montana and Minnesota and agreed that it purposefully availed itself of the privilege of conducting business in both states. However, Ford contended that such activities were immaterial, as were the places of the accidents, because specific jurisdiction can only attach if the defendant's forum conduct gave rise to the plaintiff's claims. In Ford's view, *the cars at issue* did not involve forum conduct and therefore the fact that they eventually found their way to the forum states should not matter. Ford conceded that it purposely

availed itself of the privilege of conducting business in the forum states but argued that for the cases to arise out of Ford's activities within the forum states there must have been a causative link between Ford's activities there and the accidents and injuries occurring there.

The Court disagreed and rejected Ford's "causation-only" approach. The Court explained that specific jurisdiction demands that the suit "arise out of *or relate to* the defendant's contacts with the forum." The Court reasoned that while the first half of that standard ("arise out of") does ask about causation as Ford contends, but that the second half ("or relate to") contemplates that some relationships can support specific jurisdiction without a causal link. The Court cautioned that "relates to" still comes with limits and must adequately protect defendants in a foreign forum but shows that proof of a causative link is not always required.

The Court noted that its decision is in fact not the first time it has surmised that an out of state defendant could be subject to specific jurisdiction even if the causative link were missing, including in seminal cases discussing the very issue at hand – when does jurisdiction attach for out-of-state actors, and pointed to its reasoning in *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980). In *World-Wide Volkswagen* the plaintiffs sued for personal injuries arising out a car accident occurring in Oklahoma in an Audi sold by a single store retailer and through a regional distributor (World-Wide Volkswagen) located in upstate New York. While the Court ruled that there was not personal jurisdiction over petitioner World-Wide Volkswagen, it did state that it would not have been unreasonable to subject defendants Volkswagen and Audi to jurisdiction in Oklahoma because they had deliberately extended into Oklahoma and could be considered to have had notice of its exposure to lawsuits in that state arising from local accidents involving its cars. While acknowledging that because jurisdiction over Volkswagen and Audi was not an issue before the Court in that case, and thus such comment was technically only dicta, the Court nevertheless highlighted the fact that it had never actually solidified a causative link requirement and in fact had commented previously that the type of jurisdiction Ford claimed did not exist, could in fact exist.

Comparing Ford to the auto manufacturers in *World-Wide*, the Court noted that Ford advertised extensively in Montana and Minnesota and urged residents of those states to purchase, drive, and maintain Ford vehicles. The Court noted that Ford cars, including the two models at issue, are available for sale, new or used, through 36 dealerships in Montana and 84 dealerships in Minnesota. Noting Ford's argument that it would have been in the same position had it never engaged in any activity of any kind in Montana or Minnesota, the Court pointed out that such was specifically not that case and that its activities to everything it could to turn Montanans and Minnesotans into Ford owners, underscore the fairness of having Ford reasonably expect to be sued in Montana and Minnesota for defects in its vehicles. And in fact, as the Court noted, precedent explains that by regularly conducting business within the forum states, Ford enjoyed the benefits and protections of those states' laws, thus creating a reciprocal obligation on Ford to make the cars which it so extensively markets to Montana and Minnesota citizens be safe for those citizens to use within those states.

The Court distinguished the facts of this case from those in *Bristol-Myers Squibb Company v. Superior Court of Cal., San Francisco Cty.*, 137 S.Ct. 1773 (2017). In *Bristol-Myers* non-resident plaintiffs brought claims in California against and out-of-state defendant for injuries arising out-of-state, relating to the drug Plavix. The Court noted that the reason they found jurisdiction improper there was because the forum state, and the defendant's activities there, lacked any connection to the plaintiff's claims. The plaintiffs were not California residents, had not purchased, been prescribed, ingested, or sustained injuries from Plavix in California. Yes, Bristol-Myers marketed and sold Plavix in California, but unlike the *Ford* cases, the plaintiffs had no connection to California. Here, the plaintiffs were residents of the forum states and their injuries occurred in those states.

Lastly, the Court noted that principles of interstate federalism support jurisdiction over Ford in Montana and Minnesota. Those states have a significant interest in these cases, mainly the ability to provide their citizens with a forum for redress to injury occurring within the state caused by out-of-state actors. To wit, as noted by Justice Alito in his concurrence, the incidents involved Montana's and Minnesota's

citizens, who had purchased cars in their borders, and who were injured on their roads. The Court makes a comparison to the interests of Washington and North Dakota, the two most likely forums had Ford prevailed, where, other than being the location of the original sale, years ago, by parties uninvolved in the case, had no other interest in the suits.

The Court concluded that the relationship among the defendant, the forum, and the litigation is close enough to support specific jurisdiction.

Analysis and Impact

This decision will undoubtedly loosen some personal jurisdiction restrictions that many Plaintiffs may have encountered in the past. An easy example is the almost certainty that similarly situated auto manufacturers will now be subject to jurisdiction much in the same way that Ford is here. The question is, especially for defendant product manufacturers: “Now that a causative link is not always required, when can I kick a case for lack of personal jurisdiction?” The answer to that question may be somewhat uncertain in the near future as local jurisdictions, both plaintiff friendly and defense friendly, grapple with how to interpret and apply this case. Note Justice Alito’s concern that the Court is potentially recognizing a new category of specific jurisdiction, where claims do not “arise out of” the defendant’s contacts, but nevertheless sufficiently “relate to” those contacts in some undefined way. The key will be to consider the factors that the Court relied on in attaching jurisdiction to Ford and determining whether those factors can act dispositively on their own, and additionally whether the facts of future cases can be sufficiently distinguished from those in this case.

First and foremost, the decision appears *not* to stand for the concept that simply because a product is used or causes injury within a proposed forum state that jurisdiction is proper. For defendants, this is obviously good news. Interestingly, in explaining its decision, the Court did not mention *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), a decision where the Court held that there was not jurisdiction in New Jersey over a British manufacturer whose product caused injury to a user within the state but had not advertised or made serious efforts to sell its products to New Jersey. Perhaps as an indication

that the Court had no intention, present or future, to stray from this idea, is the fact that Justices Roberts and Alito sided with the majority in both *Nicastro* and the instant case. Hawkins Parnell & Young has successfully relied upon the *Nicastro* case to have cases dismissed where there were allegations of in-state use of products not sold or intended to be sold to various forum states. This decision should not disturb the use of the *Nicastro* precedent.

Secondly, in highlighting the distinctions between *Ford* and *Bristol-Myers* the Court seemingly relied heavily upon the fact that in both cases, the injured parties were residents of the forum states (Montana and Minnesota) and were injured there. Often, especially in cases involving multiple defendants (e.g., asbestos, and other toxic tort matters), plaintiffs will name all the defendants collectively in one lawsuit in one forum although use of a particular defendant’s product occurred outside the forum. For example, consider a case venued in New York where plaintiffs allege asbestos exposure from various defendant manufacturer’s products within the state of New York, but also against some named defendant’s whose products were used in a different state. So far, absent evidence that the plaintiff’s injury arose out of some defendants conduct within the forum state, defendants have been successful in dismissing these cases on jurisdictional grounds. In rendering its decision, the Court specifically noted that it was *not* changing anything about *Bristol-Myers* and as such, where there is *no* evidence of in-state product use or related defendant conduct, things should continue as normal.

Things get trickier when a defendant product manufacturer does in fact sell its products to the forum state at issue, and this is where local jurisdictions will have to determine how to deal with distinguishable fact patterns brought up in each individual case. Does the *Ford* decision mean that there will now always be jurisdiction?

One of the key factors the Court appears to rely on is the ubiquity of Ford and its marketing and advertising. As the Court noted and Ford concedes, Ford advertises and markets intensely in both states and desires to profit from the sale of its vehicles to Montana and Minnesota residents. Ford did so at the time of the accident and still does today. But what

about someone who is far less ubiquitous or does not advertise at all. Although the Court claimed to have dismissed a causative link as a dispositive factor, it did intimate that Ford, through its advertising and marketing, may have *caused* the plaintiffs to buy Ford vehicles, including ostensibly the Ford vehicles in question. This is exactly what Justice Alito discussed in his concurrence.

Keep in mind, it is the plaintiff's burden to prove jurisdiction, not the defendants. Proving that Ford has a presence and does business in Montana and Minnesota is easy. As the Court noted, all you have to do is turn on the TV. Will plaintiffs only have to simply show that a defendant's products are sold in the forum state, or will they have to show the kind of entrenched presence that Ford obviously had in the two states at issue. Consider that Ford vehicles are sold out of brick-and-mortar dealerships located in the states. What about an online distributor or mail-order business? Another potential issue could be product type and model. The *Ford* court noted that the specific vehicle types at issue (Explorer and Crown Victoria) were sold in Montana and Minnesota. Consider a conglomerate or holding company that sells an array of product lines. If BigCorp., Inc. sells household durables only on the West Coast, and one of those products finds its way to North Carolina where BigCorp. sells heavy equipment but not household durables, could there be personal jurisdiction under *Ford* for a defective household durable product? The list of potential factual distinctions is infinite. It remains to be seen how the individual local courts, particularly plaintiff friendly places like New York and California, interpret this decision in applying their own jurisdictional jurisprudence. We know for sure that this decision will expand jurisdiction, the question is, how much?

Endnotes

1. Kagan, J., delivered the opinion of the Court, in which Roberts, C.J., and Breyer, Sotomayor,

and Kavanaugh, JJ., joined. Alito, J. filed an opinion concurring in the judgment. Gorsuch, J., filed an opinion concurring in the judgment, in which Thomas, J., joined. Barrett, J., took no part in the consideration or decision of the cases.

2. Specifically, the *World-Wide* Court commented that “[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen 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 [several or all] other States, it is not unreasonable to subject it to suite in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.” *World-Wide*, 444 U.S. at 297. Neither Audi nor Volkswagen contested jurisdiction and therefore there was not an official ruling on whether there was jurisdiction over them.
3. Justice Alito points out that “what the majority describes as a ‘strict causal relationship,’ is not to say that no causal link of any kind is needed,” and notes that there was in fact a sufficient causal link. “It is reasonable to infer that the vehicles in question here would never have been on the roads in Minnesota and Montana if they were some totally unknown brand that had never been advertised in those States, was not sold in those States, would not be familiar to mechanics in those States, and could not have been easily repaired with parts available in those States.”
4. Justices Sotomayor and Kagan, who were part of the 8-0 decision in the *Ford* case dissented in *Nicastro*, indicating they believe in a wider application of personal jurisdiction than their colleagues. ■

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