

## SUPREME COURT OF THE UNITED STATES FURTHER CLARIFIES SPECIFIC PERSONAL JURISDICTION

MAY 2021

Last month in *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, 592 U.S. --- (2021), the Supreme Court of the United States issued its latest personal jurisdiction decision rejecting Ford's proposed strict-causation approach, and clarifying that a court may exercise "specific" personal jurisdiction over a corporation whenever cases "arise from or relate to the defendant's contacts with the forum." The decision was 8-0 with Justice Barrett not participating. Justice Kagan authored the opinion and Justices Alito and Gorsuch (Justice Thomas joining) authored concurring opinions. Below is a full analysis of the Court's holding as well as a forward look into how the *Ford* decision will impact future cases.

*Ford* dealt with two consolidated personal injury claims arising from alleged product defects in a 1996 Ford Explorer and 1994 Crown Victoria. In both cases, the subject accident took place in Minnesota and/or Montana. But neither of the subject vehicles were first sold in Montana or Minnesota, nor were they manufactured or designed there. Based on these facts, Ford moved to dismiss both claims for lack of personal jurisdiction. The motions were unsuccessful. Ford, however, appealed the decisions to the state supreme courts. Both states' supreme courts rejected Ford's contention, and affirmed the trial court holding that its activities in the state had the needed connection to establish personal jurisdiction.

The Supreme Court granted certiorari on both appeals. After oral argument, the Court held that Minnesota and Montana state courts had personal jurisdiction over defendant Ford Motor Company because Ford's activities (marketing, dealerships, repair shops, and sales of replacement parts in the forum states) were sufficiently connected to plaintiffs' product liability claims arising from in-state car accidents to confer specific jurisdiction, even though the automobiles involved in the accidents were manufactured and first sold out of state.

In coming to this conclusion, the Supreme Court rejected "Ford's causation-only approach." As the Court explained, specific jurisdiction "demands that the suit 'arise out of or relate to the defendant's contacts with the forum.'" Thus, causation is only half of the equation. The second half – the "relate to" half – signals that some relationships support jurisdiction "without a causal showing." Specifically, this relationship exists when a defendant "cultivates a market for a product in the forum state and the product malfunctions there."

Ford met this definition because it:

- Marketed and urged residents of both states to buy Ford cars (including the models at issue) through every form of advertisement (e.g., billboards, radio, TV, print ads, and direct mail);
- Sold cars, including the models at issue, at used and new car dealerships in both states;
- Repaired and maintained Ford cars at its dealerships in both states; and
- Distributed replacement parts to its dealerships and independent auto shops in both states.

In other words, "Ford had ***systematically served a market*** in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those [s]tates." (emphasis added) This connection was sufficient to confer personal jurisdiction.

### Key takeaways from the Court's holding

1. **The Supreme Court's *Bristol-Myers* framework remains intact:** This decision does not alter the Court's holding in *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cnty.*, 137 S. Ct. 1773, (2017). *Bristol-Myers* prevents out-of-state plaintiffs from suing out-of-state defendants for out-of-state injuries based solely on the defendants' connections. *Ford*, as the Court noted, was distinguishable from *Bristol-Myers*. This is

because in *Ford* the plaintiffs were in-state residents whose injuries took place in-state. In other words, they were not “forum shopping.”

2. **The “relate to” standard likely opens the door for interpretation:** The Court does not specifically define its “relate to” test for specific jurisdiction. Although Justice Kagan states the test has “real limits,” none, apart from examples and facts at issue in the opinion, are provided. This will likely invite varying interpretations by the lower courts, and will leave the precise boundaries of the “relate to” test to be defined in future decisions. As such, businesses and practitioners need to be on high alert when the causation prong is not met. This is because it will be left to the parties to persuade the Court that the connections do, or do not, meet the Court’s “relate to” test.
3. **The decision will likely resonate most in product liability actions:** *Ford* involved product liability cases, and so the decision will be most easily applied in that context. Product liability plaintiffs are likely to try to expand *Ford*’s holding by arguing a state has personal jurisdiction anytime an in-state plaintiff used a defective product and the defendant marketed its product in that state. Plaintiffs will use these facts to allege the defendant “systematically marketed” the product in the forum state. Defendants, on the other hand, will need to argue that *Ford* applies narrowly to the facts of the case. Namely, the Court in *Ford* considered personal jurisdiction when the plaintiffs sued in the states where they lived, where they used the product, where the defect materialized, and where they were injured. If any of these facts are missing, *Ford* does not control or it is distinguishable. In sum, *Ford* lays the groundwork for likely future lower-court battles.

### Looking ahead

The Court likely will not be done with personal jurisdiction anytime soon. Rather, the Court expressly excluded the impact and role of internet transactions and e-commerce from its reasoning. Further, the concurrences in judgment of Justices Alito and Gorsuch express an interest in reconsidering the Court’s current personal jurisdiction framework in light of the changes to the operations of modern business and corporate structures.

### ADDITIONAL INFORMATION

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