CLIENT ALERTS & INSIGHTS

What's in an "or"? Recent Supreme Court Decision Broadens the Scope of Specific Personal Jurisdiction, Narrowing Defendants' Options When Sued Out of State

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In a much-anticipated decision issued on March 25, 2021, the United States Supreme Court tackled when companies can be sued outside their "home" state. Ford Motor Co. v. Montana Eight Judicial District Court, 592 U.S. ___ (2021). The case had the potential to dramatically limit specific personal jurisdiction by concluding that it exists only when a claim arises out of or relates to the defendant's in-state contacts. But the Court chose a different path by a unanimous 8–0 vote. The decision has important ramifications for manufacturers, distributors, and sellers who market and sell their products in multiple states. Businesses should be familiar with this decision as it may foreclose one early avenue to challenge a state court's jurisdiction.

Personal Jurisdiction

Personal jurisdiction is a court's power to resolve disputes involving the *parties* to a lawsuit. It differs from subject-matter jurisdiction, which is a court's power to decide the dispute itself. Personal jurisdiction is rooted in the Fourteenth Amendment's provision that "no state shall deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV. The rules of personal jurisdiction seek to ensure that defendants are treated fairly and protect "interstate federalism." *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

Under modern personal-jurisdiction doctrine, courts consider two different forms of personal jurisdiction: general personal jurisdiction and specific personal jurisdiction. A court may exercise general jurisdiction over a party who is "essentially at home" in the forum state, even where the claims are not related to forum state contacts or activity. *Goodyear Dunlop Tires Operations v. S.A. Brown,* 564 U.S. 915 (2011). For example, courts in Michigan or Delaware may exercise general personal jurisdiction over Ford Motor Company because those are the states where Ford is headquartered and incorporated, respectively, and thus Ford is essentially "at home" in those states.

Specific personal jurisdiction is largely based on the Supreme Court's landmark decision in *International Shoe Co. v. Washington* and its progeny. 326 U.S. 310 (1945). *International Shoe* sets out the "minimum contacts" test, which holds that a state court may exercise personal jurisdiction only over an individual or entity with "sufficient minimal contacts" with the forum state such that the particular suit "does not offend traditional notions of fair play and justice." *Id.* at 320. Additionally, and most relevant to the Supreme Court's recent decision, the claim must arise out of *or* relate to those contacts that the defendant has with the forum state.

Ford Motor Co. v. Montana Eight Judicial District Court

The consolidated appeal came from separate cases in Montana and Minnesota. In each case, a consumer sued Ford, alleging that manufacturing defects in their vehicles caused car accidents, which in turn caused the plaintiff's injuries. Ford is headquartered in Michigan and incorporated in Delaware. It moved to dismiss for lack of personal jurisdiction, arguing that it had done nothing in Montana or Minnesota that "*gave rise* to plaintiffs' claims." Slip Op. at 8. Ford designed, manufactured, and initially sold the vehicles out-of-state, and the vehicles were brought into the forum states only after the owners relocated or resold the cars. *Id.* at 1, 3.

The Court's opinion turned on grammar, and the importance of the word "or" in the requirement-first articulated by the Court in 1984 in *Nacionales de Colombia, S.A. v. Hall*-that a claim must "arise out of or relate to the contacts between the defendant and the forum." 466 U.S. 408, 427 (1984). Nearly 40 years later, the Court now instructs that specific jurisdiction can be based on claims that arise out of a defendant's conduct *or* claims that merely relate to the defendant's conduct in-state. Slip Op. at 8. Effectively jettisoning the requirement that the defendant's in-state conduct *cause* the claim, the Court reasoned that only "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." *Id.*

Justice Kagan authored the majority opinion, holding that the presence of licensed Ford Dealers and Ford's extensive sales in Montana and Minnesota supported specific jurisdiction. Slip Op. at 4. Because "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" the lawsuits "related to" Ford's conduct in the states. *Id.* at 12. The Court found no unfairness in the ruling, even though no causal link connected plaintiffs' injuries and Ford's in-state conduct. As the Court put it, "[i]n conducting so much business in Montana and Minnesota, Ford 'enjoys the benefits and protection of [their] laws'- the enforcement of contracts, the defense of property, the resulting formation of effective markets." *Id.* at 14. Because Ford receives those benefits in those states, the Supreme Court reasoned, it also must incur certain obligations, including being amenable to suit in those states. *Id.*

Principles of "interstate federalism" also animated the ruling. Montana and Minnesota had significant interests in adjudicating claims brought by their own citizens. *Id.* at 15. Ford's proposed rule, the Court pointed out, would require these claims to be brought in North Dakota and Washington, the states where the subject cars were purchased, but North Dakota and Washington otherwise had no connection to the suit. *Id.*

The Court also distinguished its holding from its 2017 decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, a case in which nonresident plaintiffs brought suit in California state court against Bristol-Myers Squibb, which manufactured a nationally marketed prescription drug that the plaintiffs used outside of California. 137 S. Ct. 1773 (2017). The Supreme Court held that California courts could not exercise jurisdiction over Bristol-Myers because California lacked any connection to the plaintiffs' claims. *Id.* at 1777. In *Ford Motor Co.*, the plaintiffs were citizens of the forum state, and were injured in the forum state after using the allegedly defective product in the forum state. Slip Op. at 17.

The only limiting principle provided in the *Ford Motor Co.*

opinion is that specific jurisdiction is not supported when a defendant's contacts with a forum are "isolated" or "sporadic," and not continuous. Slip Op. at 12 n.4. For companies like Ford with meaningful multi-state operations and nationwide marketing and sales campaigns, this provides little comfort, as contacts in most forums are not likely to be deemed "isolated" or sporadic"

The precarity of the Court's reasoning was not lost on Justice Gorsuch, who noted in concurrence, that while the Court has instructed lower courts to keep the concepts of general and specific jurisdiction distinct, "some of those old guardrails have begun to look a little battered." *Id.* at 1-2 (Gorsuch, J., concurring). Offering no real cure to what he perceived as defects in the Majority's reasoning, however, Justice Gorsuch instead telegraphed his expectation that this issue will be taken up by the country's highest court yet again: "future litigants and lower courts will help us . . . sort out a responsible way to address the challenges posed by our changing economy." *Id.* at 11 (Gorsuch, J., concurring).

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