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Revisiting the Relatedness Standard: The Supreme Court's Decision in *Ford Motor Co. v. Montana Eighth Judicial District Court* Refines the Standard for Specific Jurisdiction and Leaves Unanswered Questions

Last week, the U.S. Supreme Court issued an important decision that expands the scope of personal jurisdiction while leaving many unanswered questions for manufacturers and retailers sued outside their home states. Justice Kagan's majority opinion held that when an automobile company "serves a market for a product in a State and that product causes the injury in the State to one of its residents, the State's courts may entertain the resulting suit." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, No. 19-368, 2021 WL 1132515, at *3 (U.S. Mar. 25, 2021). Along the way, the Court also specifically rejected a standard — applied in several states and federal circuits — that had required a "causal link" between the defendant's forum contacts and the plaintiff's claims in order to support an exercise of specific personal jurisdiction.

This case arose from two accidents involving Ford vehicles in the states of Montana and Minnesota. *Id.* In both cases, residents of those states purchased used Ford vehicles that had been designed, manufactured and originally sold in other states and then brought into the forum states by way of resales and relocation by consumers. *Id.* The plaintiffs brought suits in the states where they resided and where the accidents took place, and Ford moved to dismiss for lack of personal jurisdiction, arguing that the state courts lacked jurisdiction over Ford because it had not designed, manufactured or sold the "particular vehicle involved in the accident" in the forum states. *Id.* Both the Montana and the Minnesota Supreme Courts affirmed the lower court decisions rejecting Ford's arguments. *Id.* at *4.

Under *International Shoe Co. v. Washington*, specific personal jurisdiction turns on the "nature and extent of the 'defendant's relationship to the forum State.'" *Id.* (citing *Bristol-Myers Squibb Co. v. Superior Ct. of Cal. San Francisco Cty.*, 137 S. Ct. 1773, 1779 (2017)). Before the Court, Ford agreed that it had purposely availed itself of the privilege of conducting activities in both the forum states as it actively sought to serve the market for automobiles and related products in both states. *Id.* at *5. Ford argued, however, that none of those contacts arose out of or related to the actual events at issue in the lawsuits, because there was no causal connection between any of its in-state contacts and the accidents in question.

In rejecting Ford's causal link argument, the Court resolved an issue that had been left open for almost 40 years and concluded that relatedness for purposes of specific jurisdiction does not require any causal connection. The Court noted that Ford regularly conducted business in the forum states by marketing within the states. *Id.* at *6. Ford also made its cars – including the two models at issue – available for sale at 36 dealerships in Montana and 84 in Minnesota. *Id.* Further, Ford continued to foster relationships with its cars' owners by providing replacement parts to its dealers and independent auto shops and through its dealers providing maintenance and repair services within those states, even after the relevant warranties expired. *Id.* The Court then turned to the facts of the claims in the cases and noted that Ford had "systemically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States." *Id.* at *7. The strong relationship between the defendant, the forums and the litigation met the relatedness standard and warranted an exercise of specific personal jurisdiction. *Id.*

In the course of its analysis, the majority took pains to distinguish Ford from both Internet-based companies and smaller businesses that engage in only "isolated or sporadic transactions" in a forum state. The Court specifically noted that a sole proprietor in Maine who "carves decoys and uses a site on the internet to sell them" across state lines would raise very

different jurisdictional questions. See *id.* But the differences between Ford's conduct "outside its home bases" and those of a small Internet retailer "practically list[ed] themselves." *Id*. n.4

The Concurrences' Critique of the Relatedness Standard

Justice Alito and Justice Gorsuch concurred and wrote separate opinions. Justice Alito based his concurrence on *International Shoe* as well and noted that the standard was "easily met" in this case and was in line with "traditional notions of fair play and justice." *Id.* at *9-*10. He disagreed with the Court's view that the "arise out of *or relate to*" standard was a disjunctive test. In doing so, the majority opinion had unnecessarily recognized a new category of cases in which personal jurisdiction is permitted where the claims relate to but do not arise out of the defendant's contacts. *Id.* at *10. He noted that the two phrases are "not really two discrete grounds for jurisdiction." *Id.* In Justice Alito's opinion, recognition of this separate standard will result in complications because while the majority stated that there were real limits on this standard, it did not describe what these real limits were. *Id.*

Justice Gorsuch similarly noted that the majority's decision left questions regarding the meaning and limits of the relatedness standard in its wake. *Id.* at *12. He focused on the hypothetical that the majority had described in its footnote to contrast Ford's activities in the forum states, *id.* at *7, n.4, involving a Maine resident decoy-maker, whose act of selling defective decoys to residents of other states through the Internet could be too "isolated" or "sporadic" to entitle the injured buyer to sue in its resident state. *Id.* at *12. Justice Gorsuch noted that the majority opinion provided no guidance on what measure of "affiliation" is enough for exercise of jurisdiction. Delving into the Supreme Court's history, he proposed that the Court go back to the principles set forth in *International Shoe* and rethink even its more recent attempts to bring some clarity to the law of general personal jurisdiction. *Id.* at *14. In his view, pursuant to the current *International Shoe* standard, the Maine decoy-maker may be subject to jurisdiction in the injured party's resident state if he is found to have purposely availed himself of the chance to do business there. *Id.* at *14-*15.

What's Next?

This decision changes the law in some circuits, a number of which had required at least some causal connection between the defendants' forum contacts and the plaintiff's' claims. E.g., *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312 (3d Cir. 2007) (but-for causation); *Shute v. Carnival Cruise Lines*, 897 F.2d 377 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991) (but-for causation); *United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080 (1st Cir. 1992) (proximate causation). By rejecting any causation requirement, the Court has undoubtedly expanded the scope of personal jurisdiction for major retailers and manufacturers that operate in multiple states. At the same time, rejection of any bright-line causation rule also leaves many unanswered questions and makes the rules governing specific jurisdiction more fact-intensive. This uncertainty is less than optimal for a doctrine designed to bring a "degree of predictability to the legal system" so that out-of-state defendants can "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." See *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

Based on the Court's opinion, it is clear that Ford and the hypothetical Maine decoy-maker stand at opposite ends of the specific jurisdiction spectrum. The Court repeatedly emphasized that Ford extensively marketed, sold and provided repair services for the specific car models at issue in the forum state. It is less clear whether a manufacturer that engages in only some of these activities — e.g., marketing but no sales or repair presence — in the forum state will satisfy the relatedness standard. Similarly, it is unclear whether or how the relatedness standard might apply to component manufacturers that do not market their products to retail consumers. As Justice Gorsuch noted, the Court did not define terms such as "affiliation," "relationship" or "connection," and interpretation of what constitutes the same will be left up to the individual circuits to establish and the Court's future opinions to clarify.

By not providing concrete guidance, the Court continues to leave unanswered the question posed in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415, n.10 (1984): "[W]hat sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists." This will require lawyers evaluating issues of specific jurisdiction to rely on the general standards articulated in *World Wide Volkswagen*: the burden on the defendant, the forum state's interest in adjudication of the dispute, the plaintiff's interest in obtaining convenient and effective

relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies. 444 U.S. at 292.

Unfortunately, the Court's Maine decoy-maker hypothetical further complicates the relatedness analysis. The Court ignores other avenues through which the circuit courts have established personal jurisdiction, such as tests used by some circuits to assess Internet-based claims and other situations where there is no physical presence or activities in the forum state. See generally *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273 (4th Cir. 2009) (effects test); *Mink v. AAAA Dev. LLC,*190 F.3d 333 (5th Cir. 1999).

At least for now, confident predictions about how the courts will apply its relatedness standard in future cases appear elusive.

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