

Ford Motor Co. v. Montana Eighth Judicial District Court: The Supreme Court Revisits Specific Personal Jurisdiction

ANAND AGNESHWAR, ANNA K. THOMPSON & JOCELYN WIESNER*

WHY IT MADE THE LIST

Last year, the U.S. Supreme Court yet again weighed in on personal jurisdiction. Since 2011, the Court has redefined all-purpose jurisdiction, concluding in no uncertain terms that a corporate defendant is subject to general jurisdiction only where it is “at home.”¹ But with respect to case-linked or specific jurisdiction, the Court has been much less clear. After years of reining in jurisdiction in *J. McIntyre Machinery, Ltd. v. Nicastro*,² *Walden v. Fiore*,³ and *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*,⁴ a unanimous Court affirmed the exercise of specific jurisdiction over out-of-state defendant Ford Motor Company. In *Ford Motor Co. v. Montana Eighth Judicial District Court*,⁵ the Supreme Court put a new gloss on the “relatedness” prong for specific jurisdiction, explaining that a strict causal connection between the claim and defendant’s forum contacts is not required.

In the few months since *Ford*, plaintiffs alleging injuries from drugs and medical devices are already using the decision to re-instate sprawling theories of jurisdiction. For example, plaintiffs who purchased and used medical devices outside the forum are citing *Ford* to suggest that in-state business activities other than a defendant’s manufacture and sale of a product can support jurisdiction.⁶ Plaintiffs suing brand-name manufacturers for alleged injuries caused by generic drugs are saying that, by

* Anand Agneshwar co-chairs Arnold & Porter LLP’s Product Liability Litigation practice group. He represents pharmaceutical and consumer product companies as national, strategic, trial, and appellate counsel in product liability litigation and related litigation. Anna K. Thompson is counsel in Arnold & Porter LLP’s Product Liability practice group and previously worked in FDA’s Office of Chief Counsel. She has substantial experience litigating pharmaceutical product liability actions and FDA enforcement actions. Jocelyn Wiesner is a senior associate in Arnold & Porter LLP’s Product Liability Litigation practice group. She has substantial experience litigating pharmaceutical product liability actions and consumer protection actions brought by state attorneys general.

¹ See generally *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017).

² 564 U.S. 873 (2011).

³ 571 U.S. 277 (2014).

⁴ 137 S. Ct. 1773 (2017).

⁵ 141 S. Ct. 1017 (2021).

⁶ See, e.g., *Kingston v. AngioDynamics, Inc.*, No. 21-cv-10234-DJC, 2021 WL 3022320, at *8 (D. Mass. July 16, 2021); *Simmons v. Cardinal Health, Inc.*, No. 20-2174, 2021 WL 1577843, at *4 (E.D. La. Apr. 22, 2021).

rejecting a strict “but-for” causation for relatedness, *Ford* means a court can properly exercise jurisdiction over innovator liability claims.⁷ Drug and medical device manufacturers should therefore expect plaintiffs to argue that *Ford* has loosened the requirements for specific personal jurisdiction, bolstering theories such as innovator liability to sue defendants in states even when there is no direct link between their in-state conduct and the alleged injury.

DISCUSSION

The Facts

The Supreme Court’s decision in *Ford* arose from two personal injury cases. In one, the decedent—a Montana resident—was driving her car in Montana when the tread separated from the rear tire, causing her to crash.⁸ The decedent’s estate sued Ford in Montana state court for design defect, failure to warn, and negligence.⁹ In the second, the plaintiff—a Minnesota resident—suffered severe brain damage after his passenger-side airbag failed to deploy during a car crash in Minnesota.¹⁰ The plaintiff sued Ford in Minnesota state court, asserting products liability, negligence, and breach of warranty claims.¹¹

Ford—a Delaware corporation headquartered in Michigan—moved to dismiss for lack of personal jurisdiction.¹² Because Ford was not “at home” in Montana or Minnesota, it argued that neither state could exercise general jurisdiction.¹³ And because Ford did not manufacture or sell the cars involved in the accidents in the forum states, it argued that there was no specific jurisdiction either.¹⁴ The cars were designed in Michigan, manufactured in Kentucky and Canada, and sold in Washington and North Dakota, making their way to the forum states through a series of resales and relocations.¹⁵

The Montana and Minnesota Supreme Courts disagreed.¹⁶ Even though the “particular vehicles” injuring the plaintiffs were not designed, manufactured, or first-sold in the forum states, Ford’s marketing and advertisements influenced forum residents like the plaintiffs to purchase its vehicles.¹⁷ That, the state high courts concluded, sufficiently connected Ford’s forum activities with the plaintiffs’ claims.¹⁸

On March 25, 2021, the U.S. Supreme Court affirmed.

⁷ See, e.g., *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 546 F. Supp. 3d 1192, 1203–04 (S.D. Fla. 2021).

⁸ *Ford*, 141 S. Ct. at 1023.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 1022–23.

¹³ *Id.*

¹⁴ *Id.* at 1023, 1026.

¹⁵ *Id.* at 1023.

¹⁶ *Id.*

¹⁷ *Id.* at 1023–24.

¹⁸ *Id.*

Analysis and Holding

The Due Process Clause limits a court's authority to exercise jurisdiction over a defendant. For purposes of specific jurisdiction, the Supreme Court has explained that to comport with traditional notions of fair play and substantial justice, 1) the defendant must "purposefully avail[] itself of the privilege of conducting activities" in the forum state, and 2) the plaintiff's claim "must arise out of or relate to the defendant's contacts" with the forum state.¹⁹

Although the Supreme Court articulated this multi-step analysis for specific jurisdiction long ago, it has only recently defined the contours of the "relatedness" prong. In *Bristol-Myers Squibb*, more than 600 plaintiffs—the vast majority of whom were not California residents—brought product liability claims against the manufacturer of the prescription drug Plavix in California state court.²⁰ The manufacturer–defendant moved to quash for lack of personal jurisdiction over the nonresidents' claims.²¹ The Supreme Court agreed, concluding that those claims were not related to the defendant's forum contacts: "For specific jurisdiction, a defendant's general connections with the forum are not enough What is needed . . . is a connection between the forum and the specific claims at issue."²² As such, the Supreme Court held that the mere fact that Plavix is "prescribed, obtained, and ingested" by *other* plaintiffs in California is not enough to create specific jurisdiction over nonresident plaintiffs.²³

Relying on *Bristol-Myers Squibb*, Ford argued that although it did substantial business in the forum states (e.g., advertising, selling, and servicing cars), none of those activities related to the plaintiffs' claims.²⁴ The specific cars involved in the car accidents had not been designed, manufactured, or sold in the forum states.²⁵ The Supreme Court, however, rejected Ford's strict causation requirement: "None of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do The first half of [the Court's articulated] standard asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing."²⁶

Instead, the Court noted that Ford had advertised, sold, and serviced in Montana and Minnesota the same car models that were involved in the accidents.²⁷ Ford ran extensive advertisement campaigns, "urg[ing] Montanans and Minnesotans to buy its vehicles."²⁸ The company "encourage[d] a resale market for its products" by having its dealerships buy and sell used Ford vehicles.²⁹ And the company "foster[ed] an

¹⁹ *Id.* at 1024–25 (citations omitted).

²⁰ 137 S. Ct. at 1777–78.

²¹ *Id.* at 1778.

²² *Id.* at 1781.

²³ *Id.* at 1781.

²⁴ *Ford*, 141 S. Ct. at 1026.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 1028.

²⁸ *Id.*

²⁹ *Id.* at 1022, 1028.

ongoing relationship between Ford and its customers” through its maintenance and repair services.³⁰ The Court therefore hypothesized, despite the lack of any such allegation, that the car owners would not have bought their respective cars had Ford not advertised and provided services for those car models in the forum.³¹ The Court then contrasted the facts in *Ford* with those in *Bristol-Myers Squibb*, where nonresident plaintiffs had not purchased or used the product in the forum state and did not suffer any injuries there.³²

Accordingly, significant to the Court’s analysis in *Ford* was the fact that the car accidents occurred in the forum and injured forum residents.³³ As such, there was nothing “unfair” about “requiring Ford to litigate . . . in Minnesota and Montana” when “[t]heir residents, while riding in vehicles purchased within *their* borders, were killed or injured in accidents on *their* roads.”³⁴

THE IMPACT

Although the *Ford* Court rejected a “strict causal relationship” interpretation, it made clear that the relatedness requirement “incorporates real limits” and cautioned that its decision should not be interpreted to “mean anything goes.”³⁵ In a concurring opinion, Justice Alito further explained: “To say that the Constitution does not require the kind of proof or causation that Ford would demand . . . is not to say that no causal link of any kind is needed.”³⁶ That, however, has not stopped the plaintiffs’ bar from arguing that *Ford* significantly relaxed the standard for specific jurisdiction, including in drug and device cases.³⁷

In *Simmons v. Cardinal Health, Inc.*,³⁸ for example, the plaintiff tested the bounds of *Ford*. There, the plaintiff underwent knee surgery while living in Texas, which required the use of bone cement.³⁹ After moving to Louisiana, plaintiff underwent a revision surgery, allegedly due to the defectiveness of the bone cement.⁴⁰ He sued the German manufacturer of the cement in Louisiana, relying on *Ford* to argue that defendant knew or should have known that its product would reach Louisiana because it was generally available in the United States through a distributor.⁴¹ Unlike *Ford*, however, the defendant–manufacturer had no offices or employees in Louisiana, made

³⁰ *Id.* at 1023, 1028.

³¹ *Id.* at 1029.

³² *Id.* at 1030.

³³ *Id.* at 1031.

³⁴ *Id.* at 1032 (Alito, J., concurring) (emphases in original).

³⁵ *Id.* at 1026.

³⁶ *Id.* at 1033 (Alito, J., concurring).

³⁷ Invoking *Ford*, plaintiffs have tried to push the bounds in other areas of product liability litigation as well. *See, e.g.*, *Martins v. Bridgestone Americas Tire Operations, LLC*, 266 A.3d 753, 759–61 (R.I. 2022).

³⁸ 2021 WL 1577843.

³⁹ *Id.* at *1.

⁴⁰ *Id.*

⁴¹ *Id.* at *4.

no direct sales in Louisiana, and provided no support to Louisiana residents.⁴² Because the plaintiff “failed to establish any minimum contacts with Louisiana,” the court concluded there was no specific jurisdiction.⁴³

Similarly in *Kingston v. AngioDynamics, Inc.*,⁴⁴ the plaintiff sued the manufacturer of an implantable medical device, alleging that the manufacturing process resulted in a defective product. Although the plaintiff lived and sought medical treatment in Kentucky and the device had been manufactured in New York, she sued in Massachusetts.⁴⁵ Relying on *Ford*, she argued that the defendants’ research and development and regulatory activities in Massachusetts were sufficient to meet the relatedness prong and create specific jurisdiction.⁴⁶ The court disagreed, concluding that the connection between those in-state activities and the eventual (allegedly defective) manufacture of the product in New York and sale in Kentucky was too tenuous.⁴⁷

The debate about the impact of *Ford* is playing out in the context of innovator liability as well, with divergent results. In *Whaley v. Merck & Co.*,⁴⁸ for example, a California resident allegedly used the generic version of Singulair. Shortly after starting his prescription, he began experiencing confusion and hallucinations, and was eventually diagnosed with medication-induced bipolar disorder.⁴⁹ Although the plaintiff never ingested the brand-name medication, he sued the manufacturers of Singulair under a theory of innovator liability. As in *Ford*, the plaintiff argued that the brand-name defendants’ in-state activities—e.g., research, marketing, and sales of Singulair—gave rise to the warning label claims.⁵⁰ The court agreed, finding *Ford* “highly instructive” and explained that the defendants “advertised, marketed, and sold the Singulair product in California, which included the allegedly deficient label. These contacts are relevant even when they are not an effort to promote or sell [the generic version].”⁵¹

The court in *In re Zantac (Ranitidine) Products Liability Litigation*⁵² reached a different result. There, the plaintiffs sued the manufacturers and marketers of Zantac under theories of direct and innovator liability. The brand-name manufacturers moved to dismiss the innovator liability claim for lack of personal jurisdiction. As in *Whaley*, the plaintiffs responded that the defendants’ in-state sales force, promotion efforts, research, and sales conferred specific personal jurisdiction.⁵³ After considering *Ford*,

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 2021 WL 3022320, at *2.

⁴⁵ *Id.* at *2, 6.

⁴⁶ *Id.* at *7.

⁴⁷ *Id.* at *9 (“Kingston’s argument that certain operations occurred in [Massachusetts], and that those operations led to the ultimate—and allegedly flawed—design . . . , which led to its eventual manufacture in New York, which led to its distribution to and subsequent harm in Kentucky, is too tenuous to state a colorable claim.”).

⁴⁸ No. 3:21-cv-1985, 2022 WL 1153151 (S.D. Cal. Apr. 12, 2022).

⁴⁹ *Id.* at *2.

⁵⁰ *Id.* at *5.

⁵¹ *Id.* at *5, 7.

⁵² 546 F. Supp. 3d at 1203–04.

⁵³ *Id.* at 1202.

the court held that none of these activities related to labeling decisions, which is the sole basis to hold defendants liable under innovator liability.⁵⁴

Rather than clarify the “relatedness” requirement, then, the *Ford* decision will likely cause more confusion and jurisdictional fights. Indeed, Justices Alito and Gorsuch authored separate concurrences on this very point: “Where this leaves us is far from clear. For a case to ‘relate to’ the defendant’s forum contacts, the majority says, it is enough if the ‘affiliation’ or ‘relationship’ or ‘connection’ exists between them. But what does this assortment of nouns *mean*? Loosed from any causation standard, we are left to guess.”⁵⁵ While defendants can take some comfort that due process requires some connection between the litigation and defendants’ forum activities—i.e., blatant forum-shopping will not be condoned—lower courts will likely struggle with the exact contours of the *Ford* decision for months and years to come.

⁵⁴ *Id.* at 1214.

⁵⁵ *Ford*, 141 S. Ct. at 1034–35 (Gorsuch, J., concurring) (emphasis in original) (citation omitted).