



March 26, 2021

THE SUPREME COURT'S *FORD MOTOR CO.* DECISION: FROM SPECIFIC TO NOT-SO-SPECIFIC JURISDICTION

by Andrew Tauber

Yesterday, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, the Supreme Court held that a state may, under certain (frequently occurring) circumstances, exercise personal jurisdiction over an out-of-state manufacturer when the plaintiff is a resident of the state and was injured in the state, even if the manufacturer's allegedly tortious conduct occurred outside the state. Although the Court cabined the newly announced rule in some ways, the decision expands the circumstances under which corporations may be subject to personal jurisdiction in a state.

If a corporation is "at home" and thus subject to general personal jurisdiction in a state, the corporation may be sued there on any claim. But if it is not subject to general personal jurisdiction in a state, the corporation may, under longstanding precedent, be sued in the state only if it deliberately conducts business there and the plaintiff's claims "arise out of or relate to" the defendant's contacts with the forum state. The issue in *Ford Motor Co.* was what it means for a claim to "arise out of or relate to" the defendant's contacts with the forum state.

The Court's decision resolved a pair of consolidated cases, one from Montana and the other from Minnesota. The Montana case stemmed from the fatal rollover of a 1996 Ford Explorer, for which the driver's estate blamed a defective rear-tire tread. The Minnesota case alleged that a defective airbag in a 1994 Crown Victoria caused the plaintiff's traumatic brain injury. Neither car was designed, manufactured, or originally sold in either state; rather, it was "[o]nly later resales and relocations by consumers" that "brought the vehicles to Montana and Minnesota."

Because it is not incorporated in either state and does not have its principal place of business in either state, Ford—under the Supreme Court's 2014 decision in *Daimler AG v. Bauman*—is not subject to *general* personal jurisdiction in either state. Thus, the question was whether Ford is subject to *specific* personal jurisdiction in the two states.

A unanimous Supreme Court held that it is.

The principal opinion, authored by Justice Kagan, places heavy emphasis on the disjunctive nature of the phrase "arise out of **or** relate to." It means, said the Court, that a state may exercise specific personal jurisdiction over a defendant even if the plaintiff's injury was not caused by—*i.e.*, does not arise out of—the defendant's in-state conduct. It is, the Court held, sufficient that the plaintiff's injury "relates to" a defendant's in-state activity.

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Thus, the fact that the particular cars at issue had been designed, manufactured, and originally sold in states other than Montana and Minnesota did not preclude Montana and Minnesota from exercising specific personal jurisdiction over Ford with respect to the plaintiffs' product-liability claims. In the Court's eyes, the plaintiffs' claims are related to Ford's in-state activity given that Ford actively markets its cars in Montana and Minnesota; maintains dealerships that not only sell new Fords but also sell and repair used Fords; and distributes replacement parts to both Ford dealerships and independent repair shops.

Although the decision expands the circumstances under which a state may exercise specific personal jurisdiction over an out-of-state corporate defendant, the Court insisted that its ruling "does not mean anything goes." And, indeed, the Court's opinion does suggest, primarily through its use of examples, that there are still limits to where a corporation may be sued.

First, the Court strongly suggests, but did not explicitly hold, that a state may exercise specific personal jurisdiction over an out-of-state corporate defendant only if the plaintiff resides and was injured in that state. In other words, as the Court had previously held in *Bristol-Myers Squibb Co. v. Superior Court of California*, a corporation not subject to general jurisdiction in a state may not be sued there by out-of-state plaintiffs for out-of-state injuries even if those injuries arise from a nationally marketed product sold in the forum state.

Second, the Court said that there is a distinction to be drawn between a corporation that continuously operates in a state and a corporation that conducts only "isolated or sporadic" activity in the state. Although it does not define what constitutes "isolated or sporadic," the Court suggests that such activity is not sufficient to support the exercise of specific personal jurisdiction.

The upshot is that now nationally active corporations are potentially subject to suit in any state in which a resident plaintiff suffers injury from the corporation's products.

Left for another day is the question of when a state may exercise specific personal jurisdiction over an out-of-state corporation when the corporation's only connections to the state are internet