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"What Goes" for Personal Jurisdiction after *Ford Motor Co.*?

by Andrew Tauber and Lauren Gailey

In which states does the Due Process Clause allow a corporation be sued? In recent years, the U.S. Supreme Court has taken up that question, revisiting and clarifying its precedents on personal jurisdiction. If a corporation is not "essentially at home" in the forum state—the touchstone of *general* personal jurisdiction[1]—there can be *specific* personal jurisdiction only if the corporate defendant has "purposefully availed itself of the privilege" of doing business in the state[2] and the plaintiff's claims "aris[e] out of or relate[] to" the corporate defendant's in-state contacts.[3]

The "arises out of or relates to" prong of the specific-jurisdiction test has caused confusion over the years. Does it require a causal relationship between contacts and claims? Or will other types of relationships suffice? In March 2021, the Supreme Court in *Ford Motor Co. v. Montana Eighth Judicial District Court* adopted the latter, broader approach. The Court reasoned that "arises out of *or* relates to" should be read in the disjunctive: while "[t]he first half of that standard asks about causation . . . the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing."[4] But, Justice Kagan's majority opinion warned, "[t]hat does not mean anything goes."[5]

"[T]hat," however, "hardly tells us what does" go, retorted Justice Gorsuch in his concurrence.[6] For him, the majority opinion raised as many questions as it answered. Will "the new test . . . prove more forgiving than the old causation rule," or will it "also sometimes turn out to be more demanding"?[7] And in the latter case, would a court "treat causation and 'affiliation' as alternative routes to specific jurisdiction, or . . . deny jurisdiction outright"?[8] For Justice Gorsuch, it is "far from clear" what type of connection between contacts and claims that will suffice to establish personal jurisdiction."[9]

By July 2021, the lower federal courts had already applied *Ford*'s refined personal-jurisdiction standard dozens of times. Although only a few months have passed and the sample size is still

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[1] *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014).
[2] *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).
[3] *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n.8 (1984).
[4] 141 S. Ct. 1017, 1026 (2021).
[5] *Id.*
[6] *Id.* at 1035 (Gorsuch, J., concurring in the judgment).
[7] *Id.*
[8] *Id.*
[9] *Id.* at 1034.

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relatively small, these decisions allow us to begin to glean preliminary answers to Justice Gorsuch's questions. So far, it seems that while he identified the correct questions—whether the causation-or-relation standard offers an "alternative route" to specific jurisdiction that is "more forgiving" than causation alone—he overestimated the trouble courts would have in answering them.

Causation and relation are "alternative routes." Since the *Ford* Court confirmed that it has "never" been necessary "that the plaintiff's claim came about because of the defendant's in-state conduct,"[10] district courts have not hesitated to recognize that their circuits' but-for causation requirements have been abrogated. Just hours after *Ford* came down, a district judge in Montana declared that the Ninth Circuit's "'causation-only approach' improperly narrows the inquiry" and could not be maintained after *Ford*,[11] and district courts in the Third and Eleventh Circuits soon reached similar conclusions as to their respective circuit's similar approaches.[12] In circuits where the existing test already accounted for a general "nexus between [plaintiffs'] claims for relief and defendants' forum-based activities" *in addition* to causation, as in the First and Seventh Circuits, the body of circuit-level specific-jurisdiction precedent has survived.[13] In the Sixth Circuit, where the test lies somewhere in between—it uses the phrase "arising under," but has read the term to mean "relates to"[14]—*Ford*'s effect remains "unclear."[15] Either way, *Ford* ensures that "causation does not *necessarily* have to be present."[16]

As Justice Gorsuch suspected, now that causation is not required, the "relates to" language offers plaintiffs another way to satisfy the connection prong of the specific-jurisdiction test.

For example, in the first post-*Ford* decision addressing specific personal jurisdiction, *James Lee Construction, Inc. v. Government Employees Insurance Co.*, 2021 WL 1139876 (D. Mont. Mar. 25, 2021), a putative class challenged GEICO's subrogation practices in Montana state court on the basis that the lead plaintiffs, Montana residents, were harmed by the in-state activities of GEICO's payment-recovery agent.[17] In light of *Ford*, the district court rejected GEICO's argument that there could be no personal jurisdiction because there was no direct causal connection between it and the plaintiffs' claims.[18] The court concluded that it was enough that GEICO and the agent "jointly developed its subrogation procedures," and the agent "specifically worked on the [lead plaintiffs'] claim" and "operates within Montana"—the only place the plaintiffs could bring their "unique" wrongful subrogation claims.[19] These connections, the court held, established specific jurisdiction over GEICO even though there was no real dispute that GEICO itself had not caused the alleged injuries.

'Relate to' is more forgiving than 'arise from'—but not everything goes. As another district court put it, after *Ford*, "some non-causal relationships" between claims and contacts "will suffice" to

[10] *Id.* at 1026 (majority opinion).
[11] *James Lee Constr., Inc. v. Gov't Emps. Ins. Co.*, No. 20-68, 2021 WL 1139876, at *2–3 (D. Mont. Mar. 25, 2021) (quoting *Ford*).
[12] *Lewis v. Mercedes-Benz USA, LLC*, No. 1981220, 2021 WL 1216897, at *35 (S.D. Fla. Mar. 30, 2021); *Rickman v. BMW of N. Am.*, No. 184363, 2021 WL 1904740, at *8 (D.N.J. May 11, 2021).
[13] *See Chouinard v. Marigot Beach Club & Dive Resort*, No. 2010863, 2021 WL 2256318, at *6 (D. Mass. June 3, 2021); *see also Rogers v. City of Hobart*, 996 F.3d 812, 820 & n.14 (7th Cir. 2021) (*Ford* "does not alter" but "supports" the "governing principle").
[14] *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1267 (6th Cir. 1996) ("If a defendant's contacts with the forum state are related to the operative facts of the controversy, then an action will be deemed to have arisen from those contacts.").
[15] *Shelter Mut. Ins. Co. v. Bissell Homecare, Inc.*, No. 20813, 2021 WL 1663585, at *5 (M.D. Tenn. Apr. 28, 2021).
[16] *Id.* (citing *Ford*, 141 S. Ct. at 1026).
[17] *James Lee Construction*, 2021 WL 1139876, at *1–2.
[18] *Id.* at *2.
[19] *Id.* at *3.

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establish specific personal jurisdiction.[20] By endorsing a more holistic analysis that considers more than causation, *Ford* "weaken[ed] the required connection between the contacts and the particular claims at issue."[21]

Although the full scope of what "relates to" means in practice has remains be seen, there are already some "connections" that district courts have been consistently holding sufficient to satisfy the *Ford* test.

One such connection is some degree of direct involvement in in-forum activities on the part of the defendant, even if it was the defendant's agent or subsidiary that actually engaged in it. The defendant's involvement can take the form of joint conduct, as when GEICO "utilize[d], direct[ed] and support[ed]" its Montana agent's "subrogation activities" and "jointly developed its subrogation procedures" in *James Lee Construction*.[22] "[T]op-down initiative[s]" have also sufficed, as when corporate parents of foreign automakers facing product suits "developed" vehicle concepts and "provided" them to in-state subsidiaries "to tailor to and deploy in the U.S. market,"[23] or "directed the distribution and sales of its vehicles" in the forum state and "direct[ed]" other subsidiaries" that maintained in-state operations.[24]

Other relationships that have been found sufficient to support specific jurisdiction following *Ford* involve a defendant's "systematic" activities in the forum—which, notably, is also a key component of the *general* jurisdiction standard.[25] Activities found to be sufficient have included "systematic business contacts" like meetings and deliveries relevant to the subject matter of the claim,[26] or, as in *Ford*, "systematically serv[ing] a market" for the product at issue in the state where it injured the plaintiff,[27] even if the product was not "designed, manufactured, or sold" there.[28] And, finding that "specifically target[ing] [the forum state's] consumers" with marketing and advertising is "[m]ost important[]" factor,[29] especially in a consumer case, at least some courts have held that "the specific product model at issue" does not necessarily have to be marketed in the forum state for there to be specific personal jurisdiction.[30]

Still, these courts have repeatedly reiterated the *Ford* Court's demand that the "relationship among the defendant, the forum, and the litigation" be "strong."[31] "Sporadic," "scant" contacts between the defendant and the forum, like mailings and calls to the forum state, are still not enough,

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[20] *Chouinard*, 2021 WL 2256318, at *8.
[21] *Rickman*, 2021 WL 1904740, at *9 n.9.
[22] 2021 WL 1139876, at *2–3.
[23] *Rickman*, 2021 WL 1904740, at *9 & n.10.
[24] *Lewis*, 2021 WL 1216897, at *35.
[25] *Daimler*, 571 U.S. at 139 (inquiry is whether corporate defendant's "affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State" (cleaned up)); *see also Rickman*, 2021 WL 1904740, at *9 n.9 (speculating that "*Ford* may have eroded the distinction between general and specific jurisdiction to some degree").
[26] *Crestview Farms, LLC v. Cambiaso*, No 201288, 2021 WL 2434845, at *7 (N.D. Tex. June 15, 2021).
[27] *Chouinard*, 2021 WL 2256318, at *11.
[28] *Shelter Mutual*, 2021 WL 1663585, at *5.
[29] *Lewis*, 2021 WL 1216897, at *35.
[30] *Godfried v. Ford Motor Co.*, No. 19372, 2021 WL 1819696, at *5 (D. Me. May 6, 2021); *see also Rickman*, 2021 WL 1904740, at *9 ("Ford's requirement that the *particular* car have a connection to the forum, said the Court, was too stringent." (citing *Ford*, 141 S. Ct. at 1029)).
[31] *Ford*, 141 S. Ct. at 1028; *see, e.g.*, *Chouinard*, 2021 WL 2256318, at *9; *Rickman*, 2021 WL 1904740, at *9 n.10; *Israel v. Alfa Laval, Inc.*, No. 20-2133, 2021 WL 1662770, at *7 (M.D. Fla. Apr. 28, 2021), *appeal filed*, No. 2111849 (11th Cir. May 28, 2021); *Kearney v. Bayerische Motoren Werke Aktiengesellschaft*, No. 17-13544, 2021 WL 1207476, at *5 n.13 (D.N.J. Mar. 31, 2021); *Lewis*, 2021 WL 1216897, at *35; *James Lee Construction*, 2021 WL 1139876, at *3; *accord Garrett-Alfred v. Facebook, Inc.*, No. 20-585, 2021 WL 1946699, at *3 (M.D. Fla. May 14, 2021) ("substantial" relationship).

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even after *Ford*.[32] Nor are "serendipitous" contacts.[33] In one instance, the only connection to the forum, Florida, was that the plaintiff, who alleged that he had been exposed to cancer-causing asbestos while in the Navy, served on a ship that happened to briefly dock in Jacksonville—20 years after the defendant manufacturer's predecessors had sold the equipment that allegedly caused the exposure. That, said the court, did not suffice.[34]

Not only must there be a connection between the defendant and the forum, those in-forum contacts must also be connected to the plaintiff's specific claims. For example, one court has held that New Jersey did not have specific jurisdiction over BMW's corporate parent in a product-defect class action where it "conduct[ed] no marketing or sales activities in New Jersey," and "no Plaintiff resides, purchased a vehicle, or suffered injury in New Jersey."[35] Nor was there specific jurisdiction, another court held, when a group of Arizona-based employees who had worked for a third-party vendor as Facebook content moderators sued the vendor in Florida over the graphic images they had been forced to view, given that none of the vendor's "activities in Florida [we]re linked to the operation of the Arizona content moderation site, the basis of the Arizona plaintiffs' claims."[36]

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Although these courts confronted the open questions Justice Gorsuch identified in his *Ford* concurrence to some degree, none acknowledged having done so. Nor did they evince difficulties in applying the *Ford* test. Their decisions have been consistent and straightforward, generally accompanied by little analysis. Although closer fact patterns could cloud the picture in future cases, and contrary decisions might emerge as more courts address questions of specific personal jurisdiction in the post-*Ford* era, early indications are that Justice Gorsuch's concerns about *Ford* might have been overblown.

[32] *Williams v. Dragone Classic Motor Cars*, No. 20115, 2021 WL 1214498, at *6 (D. Me. Mar. 30, 2021) (quoting *Ford*, 41 S. Ct. at 1028 n.4).
[33] *Israel*, 2021 WL 1662770, at *6.
[34] *Id.* at *1, *6.
[35] *Kearney*, 2021 WL 1207476, at *5 n.13.
[36] *Garrett-Alfred*, 2021 WL 1946699, at *3 n.3.

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