



Products Liability / Litigation ADVISORY ■

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How Will Supreme Court's New Decision on Personal Jurisdiction Impact Manufacturers?

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On March 25, 2021, the U.S. Supreme Court broadened the reach of specific personal jurisdiction by finding that Ford Motor Co. can be sued in Montana and Minnesota for vehicles that were “designed, manufactured, and first sold” out of state. The Supreme Court held that “[w]hen a company . . . serves a market for a product in a State and that product causes injury in the State to one of its residents, the State’s courts may entertain the resulting suit.” The decision could mark the beginning of new cases where the underlying claims only “relate to” a defendant’s activities in the state, or the decision could further confuse lower courts that try to determine what activity relates to the underlying claims.

Current *Bristol-Myers* Standard

While the precise impact of this decision remains to be seen, this is the first potential expansion of specific personal jurisdiction since the Court’s decision limiting jurisdiction in *Bristol-Myers Squibb Co. v. Superior Court of California*. In that 2017 case, the Supreme Court held that the Due Process Clause requires both that the defendant has “purposefully availed itself of the privilege of conducting activities within the forum State” and that the plaintiff’s claims “arise out of or relate to” the defendant’s forum contacts. Determining what connection satisfies the “arise out of or relate to” standard has been difficult for lower courts since *Bristol-Myers*.

Ford Motor Co. Decisions

In *Ford Motor Co. v. Montana Eighth Judicial District Court* and *Ford Motor Co. v. Bandemer*, Ford moved to dismiss two suits in Montana and Minnesota because the vehicles involved were “not first sold in the forum State,” nor were they “designed or manufactured there.” Because the company “purposefully availed itself of the privilege of conducting activities in both places,” it argued that a “state court (whether in Montana or Minnesota) had jurisdiction only if the company’s conduct in the State had given rise to the plaintiff’s claims.” This necessary causal link to establish jurisdiction would exist “only if the company had designed, manufactured, or—most likely—sold in the State the particular vehicle involved in the accident.”

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The Supreme Court rejected the “causation-only approach” and upheld the state courts’ exercise of specific jurisdiction. Writing the court’s opinion, Justice Kagan explained that the company “had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those states. So there is a strong ‘relationship among the defendant, the forum, and the litigation’—the ‘essential foundation’ of specific jurisdiction.” Justice Kagan noted that the “most common formulation of the rule demands that the suit ‘arise out of *or relate to* the defendant’s contacts with the forum” (emphasis original). This “‘or’ contemplates that some relationships will support jurisdiction without a causal showing.” Although the decision was unanimous (8–0), only five Justices joined the Court’s opinion.

Justice Alito wrote in a separate concurring opinion that some “causal link” is still required, but not a “proximate cause” standard. Justice Alito also accused the Court of parsing through the phrase “must arise out of or relate to the defendant’s contacts” with the forum and creating a new category of cases in which specific jurisdiction is permitted when the claims only “relate to” the defendants’ contacts “in some undefined way.” While Justice Alito contends the decision reaches too far, he nevertheless believes the standard for specific jurisdiction was satisfied here.

Justice Gorsuch, with whom Justice Thomas joined, wrote in a concurring opinion that “[n]ot only does the majority’s new test risk adding new layers of confusion to our personal jurisdiction jurisprudence. The whole project seems unnecessary.” Justice Gorsuch explained that “between the poles of ‘continuous’ and ‘isolated’ contacts lie a virtually infinite number of ‘affiliations’ waiting to be explored,” and “when it comes to that vast terrain, the majority supplies no meaningful guidance about what kind or how much of an ‘affiliation’ will suffice.”

What to Expect

Before this most recent Supreme Court jurisdictional decision, defendants generally benefited from the Court’s interpretation of *Bristol-Myers*, but now they can expect future plaintiffs to attempt to stop that momentum. The ambiguity that troubled Justices Alito and Gorsuch will likely create further confusion for lower courts, and manufacturers may be subject to specific jurisdiction in states where they extensively market, sell, repair, or maintain their products, regardless of whether the claims are directly connected to their conduct in the state. Plaintiffs could even try to use this decision as a way to test the limits of specific jurisdiction when the defendant’s sole activity in the forum state is advertising their products.

However, the *Bristol-Myers* holding that courts lack specific jurisdiction in cases where nonresident plaintiffs have no connection to the forum state, even if the defendant’s activities in the forum state are extensive, will continue to benefit manufacturers. Plaintiffs must still be injured in the forum state, or purchase the product in the forum state, to establish specific jurisdiction. This decision is not an open invitation for nonresident plaintiffs to “forum shop.” Additionally, it still sets a high bar for the type of activity required for specific jurisdiction, and it will be up to lower courts to try to formulate a clear standard from the decision.

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