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Supreme Court Holds That "But-For" Causation Is Not Required For Specific Jurisdiction

By Zack Tripp, Pravin R. Patel, Brian Liegel, and Elaina Aquila

The U.S. Supreme Court yesterday issued an important ruling in *Ford Motor Co. v. Montana Eighth District Court*, holding that, to obtain specific jurisdiction, it is not necessary to have a "but-for" causal link between the defendant's forum contacts and the plaintiff's injury.

Under the Due Process Clause, a defendant must have "minimum contacts" with the forum state seeking to exercise jurisdiction over the defendant such that exercising jurisdiction does not "offend traditional notices of fair play and substantial justice."[1] General or "all purpose" jurisdiction is available only when a defendant is "at home" in the jurisdiction.[2] But specific or "case-linked" jurisdiction is available if the suit "arise[s] out of or relate[s] to the defendant's conduct with the forum."[3]

In a string of recent opinions largely written by the late Justice Ginsburg, the Supreme Court had consistently reversed state court decisions that improperly blurred the lines between these two distinct approaches to establishing jurisdiction.[4] In *Ford Motor Co., v. Montana Eight Judicial District Court*, the Supreme Court addressed the "related to" prong of specific jurisdiction.[5] Does it require a but-for causal connection, or does it instead reach more broadly?

The facts are straight out of a law-school exam. They each involve personal injury tort suits filed against Ford—one in Minnesota and one in Montana. In each, plaintiffs sued Ford alleging that defects in the vehicles they purchased caused their vehicles to crash. But, in each case, the owner did not buy the car from Ford in Minnesota (or Montana). Instead, they bought the cars second-hand elsewhere, and the original sale was also in a different state. In the Minnesota action, Ford had originally sold the Crown Victoria in North Dakota; in the Montana action, Ford had originally sold the Ford Explorer in Washington State. The plaintiffs purchased the cars years later through an attenuated chain of dealerships and prior owners.

Ford argued that Minnesota and Montana did not have specific personal jurisdiction over it because, while Ford sold and advertised the same *type* of car in each state, it had not sold those *particular* cars involved in the accidents. So there was no but-for causal link between Ford's in-state conduct and the injury to the plaintiffs, which Ford asserted was necessary for each case to "arise out of or relate to" Ford's forum contacts.

The Minnesota and Montana state courts each found personal jurisdiction over Ford. They reasoned that Ford's in-state activity—particularly advertising and selling the same kinds of cars (although not plaintiff's vehicle)—"related to" the injury, and thus were sufficient.[6] Ford sought certiorari from the Supreme Court.

The Supreme Court granted the petition to decide the case during its 2019 Term, but it later rescheduled the case to the 2020 Term given the coronavirus pandemic. Due to this change, only eight members of the Court would ultimately hear the case. Justice Ruth Bader Ginsburg—the Supreme Court's long-time procedural maven and author of most of the Court's recent cases on personal jurisdiction—passed away just weeks before argument. Justice Amy Coney Barrett, the newest Justice, did not participate.

The Court Declines Ford's Further Narrowing

While many observers expected the Supreme Court to continue narrowing the scope of personal jurisdiction, the Court voted unanimously to reject Ford's arguments, thus stopping that trend. Justice Kagan authored the majority opinion, holding that the Due Process Clause does not require the defendant's contacts with the forum state to be the "but-for" cause of the plaintiff's injuries. Rather, the Supreme Court focused on Ford's cultivation of the State market for its cars, explaining that "[w]hen a company like Ford 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" because it "relates to" those conducts.

After providing a background of the Court's personal jurisdiction jurisprudence, Justice Kagan's opinion explained that "[n]one of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do." Instead, the Court's precedents require that a suit "arise out of *or relate to* the defendant's contact with the form." As Justice Kagan explained, the "first half of that standard" (arise out of) "asks about causation; but the back half" (relate to) "contemplates that some relationship will support jurisdiction without a causal showing." While the Court stated that the "relates to" standard "incorporates real limits," the Court rejected a limitation to only those cases where there was proof of causation. This decision aligns closely with Justice Kagan's questions at oral argument, which focused on the role of the "relate to" requirement.

The Court likened the decision to its prior decision in *Woodson*, in which the Court had stated that Audi and Volkswagen were subject to jurisdiction in Oklahoma for "purposefully availing" themselves of the state auto market, even when the sale was from a dealer in New York. Here, Ford's extensive contacts with the forum states were critical to the "relate to" analysis. Ford advertises "by every means imaginable," sells the exact models at issue at dozens of dealerships in each state, and "works hard to foster ongoing connections to the cars' owners" through warranty and repair offerings—including selling replacement parts and encouraging owners to buy them. The Court's decision makes clear that these contacts with the state sufficiently "relate to" the car accidents at issue: Ford had advertised, sold, and otherwise serviced the market for the exact car models at issue within the forum states.

Justice Kagan distinguished the Court's prior decision in *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017), which held that specific jurisdiction was lacking in California when non-resident plaintiffs sued in California for injuries allegedly arising from use of the prescription drug Plavix, even though those plaintiffs did not buy or use Plavix in California nor were they injured there. In *Ford*, by contrast, the plaintiffs were residents of the forum state, drove the cars in the forum state, suffered injury in the forum state, and Ford serviced the market for those cars in the forum state.

The Future: Line Drawing

While the Court did not bite on a "causation-only" approach to specific jurisdiction, the decision leaves significant uncertainty, especially for businesses. The Court focused on Ford's cultivation of the in-state market for its cars. But Ford and other major automobile manufacturers engage in unusually extensive activities to cultivate a market, including large-scale advertising as well as supporting dealerships, a second-hand market, and repair shops.

The Court suggested in a footnote that if "a retired guy in a small town in Maine carves decoys and uses a site on the Internet to sell them," then he would not be amenable to sue in "any state" if harm arises from the decoys. But many businesses fall somewhere between the two extremes of a person making an isolated online sale and a company like Ford at the other end of the spectrum. Consider an online business that engages in significant retail efforts but lacks a footprint in the state and does not specifically target the market there, or a company with more limited advertising, or retail facilities only in some states but not others.

It is not clear how the "relates to" prong will be resolved in between those two poles. The Court emphasized that the prong imposes "real limits." But the Court explicitly "did not address" a hypothetical different case in which Ford marketed the models in only a different state or region. Likewise, the Court explained that its decision did not address "internet transactions" which "may raise doctrinal questions of their own." The Court accordingly left those issues for another day.

Justice Alito wrote a separate opinion, concurring in the judgment. Justice Alito agreed that jurisdiction was proper, but explained that he considered "arise out of or relate to" to be overlapping requirements, not two independent bases for jurisdiction. He further noted that the Court's decision created uncertainty about the meaning of "relates to." Justice Gorsuch, joined by Justice Thomas, also concurred in the judgment. Justice Gorsuch questioned the applicability of these "old boundaries" of personal jurisdiction to the 21st century. After detailing the Court's personal jurisdiction jurisprudence over the centuries, he admitted that he finished "these cases with even more questions than [he] had at the start," and urged future litigants and the lower court to help them "sort out a responsible way to address the challenges posed by our changing economy in light of the Constitution's text and the lessons of history."

In Brief: Real Limits Remain

In many respects, the decision leaves personal jurisdiction doctrine unchanged: In a mine-run case in which the defendant's in-state conduct is the but-for cause of the plaintiff's injury, then the "arises out of or relates to" prong will be satisfied, and the focus of the inquiry will be on the "purposeful availment" prong, as it was before. But the decision leaves significant open questions when there is not a but-for causal link. Such a link is not required; it is enough that the injury "relate to" the forum contacts. But courts still must grapple with what it means to "relate to" those contacts.

While the decision establishes that businesses are likely to be amenable to suit in the states which they advertise, sell, and service their products, it leaves open the question of whether less pervasive contacts within a forum will suffice to meet the "relate to" prong. As the Court explained, the standard has "real limits." Where exactly those "real limits" are located, however, is largely open for further development.

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[1] *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017).

[2] *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

[3] *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cnty.*, 137 S. Ct. 1773, 1779–80 (2017).

[4] *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017); *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Walden v. Fiore*, 134 S. Ct. 1115 (2014); *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

[5] *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, 592 U.S. ___ (2021).

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Class Action Honors (cont.)

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***— Chambers USA*, 2020**

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If you have questions concerning the contents of this issue of Class Action Monitor, or would like more information about Weil's Class Action practice, please speak to your regular contact at Weil or to the editors listed below:

Editor:

David Singh	View Bio	david.singh@weil.com	+ 1 650 802 3010

Associate Editor:

Pravin Patel	View Bio	pravin.patel@weil.com	+ 1 305 577 3112

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