

Update: US Supreme Court Addresses Specific Personal Jurisdiction Again

Nation's highest court rejects narrow causation test for specific jurisdiction and affirms requirement that forum contacts "relate to" the claim.

In the 2017 case *Bristol-Myers Squibb Co. v. Superior Court*, the United States Supreme Court confirmed that a claim must "arise out of or relate to" a defendant's forum-state contacts for specific personal jurisdiction to attach. Latham & Watkins discussed the case and its implications in [September 2016](#), [January 2017](#), and [June 2017](#). Now, the Court has again considered the scope of specific personal jurisdiction in *Ford Motor Co. v. Montana Eighth Judicial District Court*.¹

The *Bristol-Myers Squibb* Court overturned a California Supreme Court decision that had greatly expanded state court personal jurisdiction over out-of-state defendants. In an 8-to-1 opinion, the US Supreme Court held that the 14th Amendment requires a "connection between the forum and the *specific* claims at issue" for personal jurisdiction to lie.² The *Bristol-Myers Squibb* opinion left several open questions, and observers predicted that the Court would further limit personal jurisdiction. In October 2020, the *Ford Motor Co.* Court heard arguments on specific personal jurisdiction, but declined to define additional limiting factors in its March 2021 opinion. While the Justices rejected the defendant Ford's argument that specific jurisdiction requires a causal link between a defendant's forum contacts and a plaintiff's claim, they provided little new guidance about the meaning of the "arise out of or relate to" test.

Court Rejects Causal Test for Personal Jurisdiction

In *Ford Motor Co.*, Ford challenged separate decisions of the Montana Supreme Court and the Minnesota Supreme Court, each of which held that the state could exercise specific personal jurisdiction. In each case, the plaintiff was killed or injured in a motor vehicle accident while driving an allegedly defective Ford vehicle in the forum state. Ford had originally sold each vehicle outside the forum state, and the vehicle later entered the state through re-sale or relocation.³

Ford argued that the two plaintiffs had failed to meet the well-settled two-part specific personal jurisdiction test — whether the defendant had "purposefully avail[ed] itself of the privilege of conducting activities within the forum State" and whether the plaintiff's claims "arise out of or relate to the defendant's contacts with the forum."⁴ Ford conceded that it had "purposefully availed" itself of the privilege of doing business in both states, but argued that the plaintiffs' claims could only "arise out of or relate to" its conduct in Montana and Minnesota if Ford had designed, manufactured, or sold the particular vehicles involved in

the accidents in the forum state. In other words, Ford argued that the plaintiffs needed to show a *direct causal link* between Ford's conduct in the state and the plaintiffs' harms.⁵ Because Ford did not design, manufacture, or sell the cars in the forum state, Ford argued that there was no *causal* link between Ford's activities and the plaintiffs' claims, and therefore no personal jurisdiction.⁶

The Court disagreed in an 8-0 decision.⁷ In the majority opinion written by Justice Kagan, the Court found that a direct causal link need not exist between the defendant's conduct in the state and the plaintiff's harms for the state to exercise personal jurisdiction. Relying on the Court's "most common formulation of the rule," as affirmed in *Bristol-Myers Squibb*, the suit must "arise out of or relate to the defendant's contacts with the forum."⁸ The Court noted that, while "arise out of" implies causation, the second half of the standard — "relate to the defendant's contacts with the forum" — requires no such causation requirement.⁹ Rather, the latter part of the standard allows "some relationships" to establish specific jurisdiction without a causal showing.¹⁰

In applying the "relates to" part of the test, the Court emphasized that Ford undertook many contacts in both Montana and Minnesota. Ford engaged in marketing and advertisements "[b]y every means imaginable," sold new and used Ford vehicles at dealerships, encouraged efforts to maintain and repair Ford vehicles, and distributed replacement parts to Ford dealers and independent auto shops.¹¹ All of these activities "encourage Montanans and Minnesotans to become lifelong Ford drivers."¹² Ford "systematically served" those markets for the exact vehicles the plaintiffs were driving when they allegedly malfunctioned, and "there is a strong relationship among the defendant, the forum, and the litigation," sufficient to establish specific jurisdiction.¹³

Ford argued that it was similarly situated to the defendant in *Bristol-Myers Squibb* and that the plaintiffs' claims lacked connection with the defendant's conduct in the forum state. The Court, however, disagreed, upholding its *Bristol-Myers Squibb* precedent, but contrasting the claims here. The Court reasoned that the *Bristol-Myers Squibb* plaintiffs were engaged in pure "forum shopping" — they were not residents of California; they had not been prescribed the allegedly harmful drug in California; they had not ingested the drug in California; and their harms did not arise in California.¹⁴ In *Ford Motor Co.*, in contrast, the plaintiffs were residents of the forum states and used the allegedly defective vehicles in the forum states, and the accidents causing their injuries occurred in the forum states.¹⁵ Indeed, the Court noted that plaintiffs "brought suit in the most natural State" because they were "residents of the forum States."¹⁶

Court Provides Little Practical Guidance on the "Relates To" Test

The Court provided some gloss on what it means for a defendant's conduct to "relate to" a plaintiff's claim but did not provide any definitive guidance for defendants seeking to avoid specific jurisdiction. For example, the Court reasoned that Ford's conduct was related to the plaintiffs' claims because Ford's contacts in Montana and Minnesota sought to encourage residents of those states to drive Ford vehicles. Residents might have bought a Ford vehicle because of advertisements they encountered, the availability of Ford dealers, and the availability of Ford parts to service the vehicles.¹⁷ While the Court did not require the plaintiffs to make any specific showing that these forum contacts *caused* them to buy a Ford, it cited these hypothetical causal links as ways in which Ford's conduct "relates to" the plaintiffs' accidents in Ford vehicles.

As noted by Justice Alito's concurring opinion, the Court stated that the phrase "relate to" "incorporates real limits" to protect defendants from being haled into any forum, but did not delineate any such limits.¹⁸ The Court re-emphasized the need for "continuous" contacts in a state to support jurisdiction, and stated that "isolated or sporadic" contacts in a state will not suffice.¹⁹ Still, as noted in Justice Gorsuch's concurring opinion, the point at which contacts turn from isolated to continuous is unclear, and the

majority provides little guidance.²⁰ While the Court was clear that, on the one hand, a showing of causation is *not* required, and on the other hand, forum shopping is discouraged, the actual contours of the “relate to” test remain unclear.

The Court’s limited new guidance is unlikely to create any practical differences in applying the personal jurisdiction precedent going forward. The Court emphasized that its decision was in line with precedent, stating that specific jurisdiction attaches to a defendant “in cases identical to the ones here.”²¹ In *World-Wide Volkswagen Corp. v. Woodson*, for example, the *Ford Motor Co.* Court noted that jurisdiction attached where the sale of a product was “not simply an isolated occurrence, but [arose] from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in [several or all] other States.”²² Since *World-Wide Volkswagen*, the Court has reaffirmed that, when a defendant makes continuous efforts to do business in a state’s market, the defendant should reasonably expect to be subject to the jurisdiction of that state’s courts.²³ Nothing in the *Ford Motor Co.* opinion disturbs or alters that precedent.

The Future of Personal Jurisdiction Jurisprudence

Ford Motor Co. does little to change the personal jurisdiction landscape, and therefore leaves numerous questions unanswered, including those that Latham identified in previous *Client Alerts*. The *Ford Motor Co.* Court provided little guidance on, for example, whether the plaintiffs’ status as forum residents was a conclusive deciding factor, or whether a manufacturer with systematic and continuous contacts with a forum could be subject to personal jurisdiction whenever an accident occurred in that forum. It is similarly unclear how the “relates to” test might be applied outside the products liability realm — the *Ford Motor Co.* Court’s opinion does not explain how the test applies beyond the specific facts of the case.

In short, district courts are likely to grapple with the question of how much “relatedness” is necessary to satisfy due process for years to come.

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Endnotes

¹ No. 19-368 (U.S. March 25, 2021).

² *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S.Ct. 1773, 1781 (2017) (emphasis added).

³ *Id.* at *3.

⁴ *Id.* at *5-6 (citations omitted).

⁵ *Id.* at *3.

⁶ *Id.* at *3.

⁷ Justice Amy Coney Barrett did not participate.

⁸ *Ford Motor Co.* at *8 (emphasis in original); see *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

⁹ *Id.* at *8.

¹⁰ *Id.* at *8.

¹¹ *Id.* at *11-12.

¹² *Id.* at *12.

¹³ *Id.* at *12 (citations omitted).

¹⁴ *Id.* at *16.

¹⁵ *Id.* at *17.

¹⁶ *Id.* at *11.

¹⁷ *Id.* at *13-14.

¹⁸ *Id.* at *9; see also Alito concurrence at *4.

¹⁹ *Ford Motor Co.* at *12, n. 4.

²⁰ Gorsuch concurrence at *4.

²¹ *Id.* at *9.

²² *Id.* at *9-10 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 297 (1980)).

²³ *Id.* at *10-11.