



DECEMBER 2021



Products liability: The limits of specific jurisdiction

Have the limits of specific jurisdiction finally been defined? Kind of...

BY DANIEL DELL’OSSO

On March 25, 2021, the United States Supreme Court issued its most recent analysis on the issue of specific jurisdiction in a products liability case. In *Ford Motor Co. v. Montana Eighth Judicial District* (2021) 141 S.Ct. 1017, the Court details the factors necessary to satisfy the jurisdictional requirements set out in *International Shoe v. Washington* (1945) 326 U.S. 310. Unfortunately, left unresolved is whether all or just some of the factors identified by the Court are necessary for specific jurisdiction to attach.

But before discussing *Ford* and its implication, a quick review of how we got here.

In 2014, the United States Supreme Court silenced virtually all debate about the reach of general or all-purpose jurisdiction, the authority to hear any and all claims against a defendant regardless of where the action arose or where the plaintiff resides by defining the term “at home.” (*Daimler v. Bauman et al.* (2014) 571 U.S. 117.) Prior to *Daimler* the test for general jurisdiction had been whether the defendant corporations’ affiliations with the State in which suit

was brought were so constant and pervasive “as to render [it] essentially at home in the foreign State.” (*Daimler v. Bauman* at 127 quoting *Goodyear Dunlop Tires Operations, S. A. v. Brown* at 2851, (2011) 564 U. S. ___, (slip op. at 2.) Ultimately the Court concluded that the term “at home” for the purposes of general jurisdiction was limited to a company’s state of incorporation or principal place of business. No other forum would suffice for the exercise of general jurisdiction.

However, the *Bauman* Court did not address the reach of specific



jurisdiction sometimes referred to as case-linked jurisdiction leaving some to wonder if the court would adopt a similar more restrictive view to specific jurisdiction as well. Initially, that appeared to be the case, because for a time, there was a rise in jurisdictional challenges by product manufacturers who argued with some success that they could be sued only in their state of incorporation or their principal place of business. In so doing the manufacturers and some courts blurred the distinction between general/all-purpose jurisdiction and specific or case-linked jurisdiction.

Three years after *Bauman*, in *Bristol-Myers Squibb v. Superior Court* (2017) 137 S.Ct. 1773 (*BMS*), the Supreme Court took the opportunity to clarify the line between general and specific jurisdiction, while at the same time describing the limits on specific jurisdiction.

BMS

BMS involved a suit by 600 plaintiffs in California alleging injuries as a result of defects in the design and manufacture of the drug Plavix. Of the 600 plaintiffs, fewer than 100 were California residents. None of the non-resident plaintiffs had purchased or been prescribed Plavix in California and none of them had been injured or treated for their injuries in California. In reversing the California Supreme Court's finding of jurisdiction, the Court rejected California's use of a sliding scale based upon the nature and quantity of contacts between the defendant and the forum to determine whether specific jurisdiction attached. In an eight-to-one decision, the Court initially reaffirmed that the paradigm for general jurisdiction was whether a defendant was "at home" in the forum, which for a corporation, meant the place of incorporation or the principal place of business, but then noted that specific jurisdiction was very different.

In order to exercise specific jurisdiction, the court explained, "the suit must

arise out of or relate to the defendant's contacts with the forum. In other words, the Court said there must be an affiliation between the forum and the underlying controversy, principally an activity or an occurrence that takes place in the forum state and is therefore subject to the state's regulation. The Court explained that specific jurisdiction is confined to the adjudication of issues derived from or connected with the very controversy that establishes jurisdiction. And in order for the court to exercise specific jurisdiction over a claim, there must be an affiliation between the forum and the underlying controversy, principally an activity or an occurrence that takes place in the forum. When there is no such connection, specific jurisdiction is lacking, regardless of the extent of a defendant's unconnected activities in the state. Since none of the out-of-state plaintiffs in *BMS* had purchased Plavix in California, been prescribed Plavix in California, been injured by Plavix or treated for injuries related to it in California, the Court concluded there was no specific jurisdiction over the claims of those plaintiffs.

Ford Motor Company

Unfortunately, the Court's affiliation analysis led to the next series of challenges to specific jurisdiction in which vehicle manufacturers (Ford specifically) argued that the exercise of specific jurisdiction required a causal connection between the actionable conduct and the forum state. Ford raised this argument in two separate products liability cases – one in Montana and the other in Minnesota. In each of those cases the Plaintiff was injured in an accident in the forum state because of alleged defects in a Ford vehicle. In both cases the vehicles had been purchased, used and brought into the forum state by the Plaintiff. In both cases Ford argued that jurisdiction was proper only if there was a causal link between Ford's conduct in the forum state and Plaintiffs' claims. According to Ford, that link only existed if the company had designed, manufactured or sold the vehicles involved in the

accidents in the forum states. The state supreme courts in Montana and Minnesota rejected Ford's causation argument.

The United States Supreme Court agreed to hear both cases together, and on March 25th of this year, handed down its decision in *Ford Motor Co. v. Montana Eighth Judicial District* (2021) 141 S.Ct. 1017. In an essentially unanimous decision (Alioto filing a concurring opinion, and Thomas joining in the concurrence filed by Gorsuch) the Court rejected Ford's causation argument and found the exercise of specific jurisdiction was proper in these cases. In doing so, the Court appears to have, once and for all, defined the parameters of specific jurisdiction.... maybe. Starting with the "canonical" decision in *International Shoe Co. v. Washington* (1945) 326 U.S. 310, the court reiterated that a tribunal's jurisdictional authority depends on the defendant having such "contacts" with the forum state that "the maintenance of the suit" is reasonable in the context of our federal system of government, and does not offend traditional notions of fair play and substantial justice.

As applied to specific or case-linked jurisdiction, the court observed that requirements of *International Shoe* are satisfied by demonstrating that the defendant has acted in a manner indicating that it has purposefully availed itself of the privileges of conducting activities in the forum state. What this means is that the defendant's interaction with the forum is intentional, such as, for example, exploiting a market in the forum state or entering into a contractual relationship there and not random, isolated or fortuitous. (*Ford* at 1025.)

However, even when the requisite interaction with the forum is shown, the exercise of specific jurisdiction still requires that plaintiff's claims arise out of or relate to the defendant's in-state activities. Stated another way, the exercise of specific jurisdiction requires an affiliation between the forum, and the underlying controversy – an occurrence that takes place in the forum state. More



importantly, the Court explained that the affiliation component of specific jurisdiction does not require a causal link between a defendant's in-state activity and the occurrence giving rise to the litigation, i.e., that the plaintiff's claim came about because of the defendant's in-state conduct. As a result, specific jurisdiction attaches when a company serves a market for a product in the forum state and the product malfunctions there. Here, it is worth noting that one of the factors the Court found persuasive was the fact that while Ford did not sell the accident vehicles in the forum state, they had sold that model vehicle in the past and continued to support it through service centers and replacement parts.

The traditional requirements for specific jurisdiction

Thus, the court seems to have reaffirmed the traditional requirements for establishing specific jurisdiction. At the same time, the case is important because: (1) It establishes that for specific-jurisdiction purposes, a defendant's intentional interaction with the forum does not need to relate to the Plaintiff's claim for jurisdiction to attach; and (2) The Court provided a detailed list of the type of interactions in the forum state, which will support a finding of jurisdiction. In this instance, the court found dispositive the fact that Ford marketed and advertised in the forum, that it sold new and used Fords in the forum states, that it had dealerships in the forum states which supported its products, and that it sold spare parts for its vehicles in the forum states.

Sadly, what the court does not address is whether all or just some of these interactions are required for

jurisdiction to attach. Nor does the court indicate whether some of these activities carry more weight than others. As a result, it would seem that the safest approach when preparing a complaint against a manufacturer is to allege that it conducts all of the activities enumerated by the Court in its decision, and if a motion to quash is anticipated, serve discovery on the defendant, asking about the nature of its interactions with the forum.

And while the decision seems to provide clarity relative to the contours of specific jurisdiction where interaction is constant and consistent, it fails to resolve or even address whether internet contacts with the forum are sufficient to establish jurisdiction. Consider the following hypothetical raised during oral argument and in a footnote to the opinion: A retiree in Maine starts a one-person business carving and selling duck decoys. Eventually he sells a defective decoy over the internet to a purchaser in another state who is injured. Is that single contact enough?

Nor does the decision answer the question of whether placing a product in the stream of commerce, understanding that it will be marketed in the forum state, is enough for jurisdiction to attach. Recall that in *Asahi Metal Industry Co. Ltd v. Superior Court of Cal.*, (1987) 480 U.S. 102, four of the eight justices were of the opinion that if a corporation is aware that its final product is being marketed in the forum state, there is a possibility of a lawsuit in the state. And four other justices opined that there must be an "intent or purpose to serve the market in the forum state, when a product is placed into the stream of commerce in the forum state." Though the *Ford* decision does not resolve this split, the factors it found

dispositive for the purposes of establishing jurisdiction all showed an intent by the manufacturer to market its product in the forum state. While not express, a reasonable reading of the decision would indicate that an "intent" to market in the forum state is required to prevail under a stream of commerce analysis.

Clearly, then, while helpful, the *Ford* decision does not resolve all potential questions relating to specific jurisdiction. At the same time, it does provide a clear list of the factors to plead and prove to avoid a jurisdictional challenge.

In sum then, the key takeaways would seem to be that specific jurisdiction will attach when:

- A manufacturer intentionally markets its product in the forum state;
- A manufacturer sells and supports its product in the forum state; and
- The incident giving rise to Plaintiff's claim occurred in the forum state.

Daniel Dell'Osso is an attorney with the Brandi Firm in San Francisco. He is licensed to practice in California, Arizona, and Nevada and has been involved in the preparation and/or trial of automobile crash-worthiness cases against Toyota, Mitsubishi, Honda, KIA, Nissan, General Motors, Ford, DaimlerChrysler, Volvo, Mercedes and Mazda in California, Arizona, Nevada, Hawaii, New York, and Pennsylvania. He is a member of the American Board of Trial Lawyers, the past chair of the Products Liability section of the American Association of Justice, and is a member of the Arizona Trial Lawyers. 



Dell'Osso