New Supreme Court Case Revisits Where a Business May Be Sued

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In its recent decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, the U.S. Supreme Court addressed the question of when a party's activities in a state will allow it to be sued in that state or, in legalese, when do a state's courts have *in personam* personal jurisdiction over a corporation. It is a topic to which the Supreme Court has repeatedly returned over the past 75+ years, but clear answers have proved elusive. As explained below, they remain so.

With considerable over-simplification, under current law, a corporation can always be sued in the state of its headquarters or incorporation and can also be sued in other states on a particular claim if that claim "arise[s] out of or relate[s] to the defendant's contacts" with that other state. But that seemingly simple rule has led to thousands, probably tens of thousands, of cases attempting to apply it to particular facts. Many of those cases have focused on what it means to "arise out of or relate to" a defendant's contacts. That is the question which the Court addressed in the *Ford* case.

The facts were seemingly common. Ford was sued in Montana after a Montana resident (Gullett) was injured in a Montana auto accident, allegedly caused by a vehicle defect, while driving a Ford Explorer.[1] Gullett had purchased the vehicle from a Montana Ford dealer, but it was a used vehicle and had originally been purchased in another state.

Ford argued that it could not be sued in Montana on these facts. Ford admitted that it "actively seeks to serve the market for automobiles and related products" in Montana, but that nothing they did in Montana caused the accident. Ford pointed to the facts that: the alleged vehicle defect was a result of engineering and design decisions made in Michigan; the vehicle was manufactured in Kentucky; and the vehicle was sold new to a Washington resident by a Washington Ford dealer. Therefore, Ford argued, the claim "would be precisely the same if Ford had

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never done anything in Montana."

In an 8-0 opinion (Justice Coney Barrett had not been confirmed when the case was argued and thus did not participate in the decision), with a five justice majority opinion and two concurrences, the Supreme Court disagreed and held that Ford's activities were sufficiently connected to the Montana accident to allow it to be sued there. The Court observed that "Ford had systematically served a market in Montana" by "among other things, advertising, selling, and servicing the model of vehicle the suit claims is defective." And the Court found that that the accident in Montana "related to" those activities because:

> *the owners of these cars might never have bought them, and so these suits might never have arisen, except for Ford's contacts with [Montana]. Those contacts might turn any resident of Montana . . . into a Ford owner—even when he buys his car from out of state. He may make that purchase because he saw ads for the car in local media. And he may take into account a raft of Ford's in-state activities designed to make driving a Ford convenient there: that Ford dealers stand ready to service the car; that other auto shops have ample supplies of Ford parts; and that Ford fosters an active resale market for its old models.*

The Court 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 . . . our most common formulation of the rule demands that the suit arise out of *or relate to* the defendant's contacts with the forum." The Court continued that "we have never framed the specific jurisdiction inquiry as always requiring proof of causation—*i.e.*, proof that the plaintiff's claim came about because of the defendant's in-state conduct." *Id.* In other words, the Court ruled that a "arise out of" and "relate to" are not synonymous and that a defendant's activities can relate to a lawsuit even if they are not a "but-for" cause of the lawsuit.

As noted above, there were two concurring opinions. The first, by Justice Alito, argued, in substance, that Ford's activities directed to Montana were a cause of the accident, so there was no need for the majority's distinction between "arise out of" and "relate to," which distinction was likely to be the source of yet more confusion. Or, as Justice Alito succinctly concluded "I would leave the law exactly where it stood before we took these cases." The concurring opinion by Justice Gorsuch, joined by Justice Thomas, is more provocative. It agrees with Justice Alito's concerns, but goes on to question whether the current conceptual framework, rooted in a 1944 case called *International Shoe*, remains appropriate in the world of 2021 when "corporations with global reach often have massive operations spread across multiple States." While this idea is now just a piece of a concurring opinion, and raises questions, rather than providing answers as to what a reimagined law might look like, it may signal things to come when the question of personal jurisdiction is next before the Supreme Court.

So, what does the new opinion mean for businesses? As the 8-0 outcome suggests, *Ford* was an easy case. We suspect that it is intuitively obvious to many readers of this Alert that a Montana resident injured by a defective Ford vehicle in Montana should be able to sue Ford in Montana; no conceptual framework is needed. And pervasive connections to Montana, and every other state, is integral to Ford's business. But the case may not provide clear guidance on how to apply the law to more

nuanced facts. We know from the majority opinion that "strict causation" is not required, and that it is enough that a lawsuit is "related to" a defendant's forum state activities, but it is still not clear what "related to" means. We know from the majority opinion that what is true for Ford is not true for a company that does only "isolated or sporadic" business in a state, but where isolated or sporadic ends and something sufficient to establish jurisdiction begins remains fact-bound and uncertain. Perhaps the only conclusion is that with which Justice Gorsuch ends his concurrence: "I readily admit that I finish these cases with even more questions than I had at the start."

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[1] The Opinion also addressed a second, essentially identical case, filed in Minnesota. For simplicity, this Alert discusses only the Montana case.