SCOTUS Scuttles Forum Shopping Litigation Tourists

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For the seventh time in eleven years,[1] the U.S. Supreme Court has curtailed the Constitutional concept of *in personam* jurisdiction. Superficially, *Ford Motor Company v. Montana Eighth Judicial District Court* [2] appears to be a pro-plaintiff decision, with all eight of the participating Justices affirming the exercise of specific personal jurisdiction over an out-of-state defendant sued by in-state plaintiffs for in-state injuries. Nonetheless, the opinion's reasoning emphasizes the restrictions the Court intended to impose on out-of-state plaintiffs – known as forum shoppers or litigation tourists for their intentional selection of non-native, pro-plaintiff jurisdictions. Justice Elena Kagan's opinion[3] goes to great lengths to explain that the Court's 2017 decision in *Bristol-Myers Squibb Co. v. Superior Court* divested state and federal courts of specific personal jurisdiction over out-of-state defendants for out-of-state plaintiffs.

Ford Motor Co. was a consolidated appeal of a Montana wrongful death action and a Minnesota brain damage action. Both cases involved the automaker which is incorporated and headquartered outside of the forum states. Likewise, the specific vehicles had been made outside, and sold outside of the two forum states. Relying heavily on *Bristol-Myers Squibb* and *Walden v. Fiore*,[4] Ford admitted that it had systematically entered both the Minnesota and Montana markets by way of advertising, sales and service. Still, Ford argued that it had done nothing within the two forum states to make or sell the two actual vehicles involved in the underlying accidents, and thus that the lower courts had erred in asserting specific personal jurisdiction over the company.

The Supreme Court disagreed. The Court reiterated that the Fourteenth Amendment's Due Process Clause limits a state court's power to adjudicate claims against an out-of-state defendant. Next, the Court reaffirmed that the "minimum contacts" analysis whereby personal jurisdiction is reasonable where it "does not offend traditional notions of fair play and substantial justice." [5] In turn, that analysis focuses on the nature and extent of "the defendant's relationship to the forum State," which gives rise to "two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction."

The Court reminded that general personal jurisdiction over a corporation exists only where a defendant is at-home – typically, its state (s) of its incorporation and principal place of business. Likewise, the Court recapped that specific personal jurisdiction is much narrower. "The contacts needed for [specific personal] jurisdiction often go by the name 'purposeful availment. The defendant … must take 'some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State.'"[6] Such minimal contacts "must be the defendant's own choice and not "random, isolated, or fortuitous."[7]

Justice Kagan's opinion emphasizes that a plaintiff "must show that the [out-of-state] defendant deliberately 'reached out beyond' its home—by, for example, 'exploi[ting] a market' in the forum State." Even then, the Court wrote, the plaintiff's claims "must arise out of or relate to the defendant's contacts" with the forum.[8] The Court emphasized, "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." Taken as a package, the Court wrote that these rules reflect two sets of values — one of treating defendants fairly and another of protecting interstate federalism. The Court emphasized that an out-of-state defendant must have "fair warning" that "a particular activity may subject [it] to the [specific personal] jurisdiction of" another state so that it can structure its conduct to lessen or avoid exposure to a given state's courts.[9]

Ford advertised, sold and serviced vehicles throughout the forum states. The Court ruled that such conduct was enough to confer specific jurisdiction over Ford in an action arising from a Ford vehicle that Ford made and sold out-of-state, but which action was brought by in-state residents for in-state accidents. "When a company like Ford serves a market for a product in a State and that product causes injury in the state to one of [the state's] residents, the State's courts may entertain the resulting suit."

The primary thrust of the *Ford Motor Co.* opinion was to explain why Ford had to defend itself outside of its home state(s) whereas back in 2017, drug-maker Bristol-Myers Squibb did not. Justice Kagan emphasized that the *Bristol-Myers Squibb* plaintiffs had not sued in either their home state or that of the pharmaceutical defendant; instead, "the [BMS] plaintiffs were engaged in forum-shopping – suing in California because it was thought [to be] plaintiff-friendly, even though their cases had no tie to the state." Such conduct, the Court emphasized, conflicted with the Due Process Clause.

Takeaway

Ford Motor Co. should be the final nail in the coffin of the long disavowed "stream of commerce" reasoning for the simple reason that while the concept was fully briefed by plaintiffs and their allies in "friend of the court" submissions, none of the eight Justices mentioned the concept in the majority or concurring opinions. Instead, there is no specific personal jurisdiction over out-of-state companies absent a showing that they "deliberately extended" their product into that state where a resident was injured thereby.

Ford Motor Co. solidifies the past decade's restatement of personal jurisdiction. A corporate defendant can expect to be hauled before courts only (1) in its home states and (2) in those states where the defendant systematically served the marketplace for a specific product that caused an in-state injury to an in-state resident.

White and Williams LLP counsels, represents, and, when needed, defends makers of both durable and digital products throughout all industries, including automotive, healthcare, robotic and construction sectors. If you have questions or would like more information, please contact Bill Kennedy (kennedyw@whiteandwilliams.com; 215.864.6816).

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[1] Specifically, the other six decisions are Bristol-Myers Squibb v. Superior Court, 137 S. Ct. 1773 (2017), BNSF Ry. v. Tyrell, 137 S. Ct. 1549 (2017), Walden v. Fiore, ___ U.S. ___, 134 S.Ct. 1115 (2014), DaimlerAG v. Bauman, 571 U.S. 117 (2014), J. McIntyre Machinery v. Nicastro, 564 U.S. 873 (2011), and Goodyear Dunlop Tires Operations, S. A., et al. v. Brown, 564 U.S. 915 (2011).

[2] _U.S._, 2021 U.S. Lexis 1610 (May 25, 2021).

[3] Chief Justice Roberts and Justices Breyer, Sotomayor, and Kavanaugh joined in the opinion, while Justices Alito, Gorsuch, and Thomas concurred in the result.

[4] International Shoe v. Washington, 571 U.S. 277 (2014).

[5] 326 U.S. 310 (1945).

[6] Citing Burger King Corp. v. Ruckewicz, 471 U. S. 462, 475 (1985) and Hanson v. Denckla, 357 U. S. 235, 253 (1958).

[7] Citing Keeton v. Hustler Magazine, Inc., 465 U. S. 770, 774 (1984).

[8] Also citing, Helicopteros Nacionales de Colombia, S. A. v. Hall, 466 U. S. 408, 414 (1984).

[9] Citing World-Wide Volkswagen v. Woodson, 444 U. S. 293 (1980).