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PREVIEW; Ford Motor Company v. Montana Eighth Judicial District Court: *Can Corporations ‘Have It Their Way’ Under Burger King Corp. v. Rudzewicz and Specific Jurisdiction Jurisprudence?*

Lauren Amongero* & Kevin Ness†

The United States Supreme Court is set to hear oral argument in the matter of *Ford Motor Company v. Montana Eighth Judicial District Court* on October 7, 2020, at 11:00 a.m. via telephone. This matter is consolidated with another suit, *Ford Motor Company v. Bandemer*, on a petition of a writ of certiorari from the Minnesota Supreme Court. Neal Kumar Katyal will likely appear on behalf of the Petitioner, Ford Motor Company. Deepak Gupta will likely appear on behalf of the Respondents, Montana Eighth Judicial District Court and Adam Bandemer.

I. INTRODUCTION

The question presented is whether specific personal jurisdiction requires a direct causal relationship between a corporate defendant’s activities within a forum state and the plaintiff’s claims.¹ The United States Supreme Court’s decision on the Montana and Minnesota Supreme Courts’ interpretations of specific jurisdiction jurisprudence could have a significant impact on injured parties’ ability to seek redress against out-of-state corporate defendants.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*

Markkaya Jean Gullett, a Montana resident, died in a single-car accident on a Montana interstate near Alberton, in Mineral County, when a tire on her Ford Explorer suffered a tread/belt

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¹ Brief of Respondents at 1, 22, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.* (U.S. Mar. 30, 2020) (Nos. 19–368 & 19–369).

separation.² The Ford Explorer was assembled in Kentucky, sold to a dealer in Washington, and subsequently purchased by an Oregonian.³ Over ten years later, Ms. Gullet's mother purchased the used Explorer in Montana and registered it in Montana.⁴

Following Ms. Gullet's death, Charles Lucero, also a Montana resident, filed suit in Cascade County District Court against Ford Motor Company ("Ford") as personal representative of Ms. Gullet's estate.⁵ The complaint alleged three causes of action: strict liability for design defect, strict liability for failure to warn, and negligence.⁶ Ford moved to dismiss the suit, reasoning that there was no link between Ford's contacts and Lucero's claims sufficient to subject Ford to specific personal jurisdiction.⁷ District Court Judge Elizabeth Best disagreed and denied Ford's motion.⁸ Ford appealed to the Montana Supreme Court, seeking a writ of supervisory control.⁹

In an opinion written by Justice Laurie McKinnon, the Montana Supreme Court affirmed Judge Best's denial of Ford's motion, finding the District Court's application of specific jurisdiction over Ford proper.¹⁰ The Montana Supreme Court determined that: (1) Ford "purposely availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws" through delivering, advertising, and maintaining dealerships and automobile services in Montana; (2) Lucero's claims "relate to" Ford's activities in Montana because Ford "makes it convenient for Montana residents to drive Ford vehicles," and Ford "demonstrat[ed] a willingness to sell and service Montana customers like Gullet, who was injured while driving an Explorer in Montana"; and (3) jurisdiction over Ford in Montana was reasonable because Ford's "purposeful interjections into Montana are

² Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct., 443 P.3d 407, 411 (Mont. 2019); Associated Press, *Officials ID Superior woman killed in Alberton crash*, GREAT FALLS TRIBUNE, May 27, 2015, <https://perma.cc/5EDP-LBJD>.

³ Ford Motor Co., 443 P.3d at 411; Brief of Respondents, *supra* note 1, at 8.

⁴ Ford Motor Co., 443 P.3d at 411.

⁵ *Id.*; Brief of Respondents, *supra* note 1, at 7.

⁶ Ford Motor Co., 443 P.3d at 411.

⁷ *Id.* at 407, 411.

⁸ *Id.* at 407.

⁹ *Id.* at 411.

¹⁰ *Id.* at 418.

extensive,” and Ford did not claim that it would be “burdened by defending in Montana.”¹¹

B. Ford Motor Co. v. Bandemer

Adam Bandemer was riding in the passenger seat of a 1994 Ford Crown Victoria when the driver of the vehicle rear-ended a Minnesota county snowplow.¹² Bandemer’s airbag failed to deploy and, as a result, he suffered a severe brain injury.¹³ Both Bandemer and the driver were Minnesota residents and both were treated for their injuries in Minnesota.¹⁴ In this instance, the Ford vehicle was manufactured and assembled in Ontario, Canada, and was originally sold at a Ford dealership in North Dakota.¹⁵ The vehicle was later twice resold and registered in Minnesota.¹⁶

Bandemer subsequently filed suit in Minnesota alleging claims in products liability due to defect, negligence, and breach of warranty against Ford, and negligence claims against the driver.¹⁷ Again, Ford moved to dismiss the suit for lack of specific jurisdiction because the Ford vehicle “involved in the accident was not designed, manufactured, or originally sold in Minnesota.”¹⁸ The District Court and Court of Appeals held that Ford was subject to specific jurisdiction, and Ford appealed.¹⁹

In a split decision, the majority of the Minnesota Supreme Court affirmed, also finding specific jurisdiction over Ford appropriate.²⁰ The Court found that: (1) Ford had sufficient contacts in its “data collection, markets, and advertising,” and delivery of products within Minnesota to purposely avail itself of Minnesota laws; (2) Ford’s contacts with Minnesota and Bandemer’s claims

¹¹ *Id.* at 414–18.

¹² *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019); David Brakke, *2 teens injured after crash with snow plow*, SC TIMES, Jan. 9, 2015, <https://perma.cc/KBL6-JU2Y>.

¹³ *Bandemer*, 931 N.W.2d at 748.

¹⁴ *Id.*

¹⁵ Brief of Respondents, *supra* note 1, at 6.

¹⁶ *Id.*

¹⁷ *Bandemer*, 931 N.W.2d at 748.

¹⁸ *Id.*

¹⁹ *Id.* at 748–49.

²⁰ *Id.* at 755.

were sufficiently related; and (3) the “reasonableness factors . . . heavily favor jurisdiction in Minnesota.”²¹

III. SUMMARY OF ARGUMENTS

A. *Petitioner’s Argument*

Petitioner’s central argument is that Montana and Minnesota lack specific personal jurisdiction to hear these cases because there are no direct causal connections between the Petitioner’s contacts with Montana and Minnesota and the Respondents’ claims.²²

Petitioner argues that under the Court’s specific jurisdiction precedent, a defendant must have “suit-related” contacts with the forum state and that, critically, these contacts must arise from the defendant’s conduct, rather than the plaintiff’s contact with the forum or merely because the injury occurred in the forum.²³ In other words, Petitioner maintains that to properly assert specific jurisdiction, there must be a causal connection between the defendant’s contacts and the “*specific claims* at issue.”²⁴ Here, Petitioner argues that the requisite causal connection is absent because the vehicles involved in these cases were not “designed, assembled, [or] sold” in Montana or Minnesota, and thus Respondents’ claims “would be precisely the same if Ford had never done anything in Montana and Minnesota.”²⁵

Next, Petitioner contends that a causal test for specific jurisdiction most closely comports with the due process principles of federalism and fairness.²⁶ Petitioner argues that requiring that a defendant’s suit-related contacts cause the plaintiff’s injury ensures that a defendant cannot be brought into court simply because “it does unconnected business there.”²⁷ If a non-causal test were used, Petitioner maintains that a defendant corporation will unfairly be

²¹ *Id.* at 750–55.

²² Brief for Petitioner at 2, 45, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.* (U.S. Feb. 28, 2020) (Nos. 19–368 & 19–369).

²³ *Id.* at 18–19 (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

²⁴ *Id.* at 19–20 (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S.Ct. 1773 (2017)).

²⁵ *Id.* at 2, 46.

²⁶ *Id.* at 23.

²⁷ *Id.* at 25–26.

subject to suit wherever it does business and will not have sufficient notice of its potential liability.²⁸

Thus, Petitioner contends that the Montana and Minnesota Supreme Courts incorrectly found specific jurisdiction proper by applying relatedness of the Petitioner's contacts and the Respondents' claims too broadly.²⁹

B. Respondents' Argument

Respondents argue that the decisions of the Montana and Minnesota Supreme Courts should be affirmed because specific personal jurisdiction is proper where a plaintiff has been injured in a forum by a product that the defendant has "systematically marketed, sold, and serviced in the forum."³⁰

Respondents assert that it is reasonable for a defendant to be subject to suit for allegedly defective products that have caused injury in a state in which the defendant has purposely developed a market for its product.³¹ They argue that the Court's modern jurisprudence examines "the relationship among the defendant, the forum, and the litigation."³² Respondents contend that if the relationship is such that the following requirements have been met, then specific jurisdiction is appropriate: (1) the defendant has "purposely availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws"; (2) the plaintiff's claims "arise out of or relate to the defendant's contacts with the forum"; and (3) jurisdiction is reasonable.³³

Respondents argue that these requirements are met in the cases presented here because (1) Petitioner purposefully availed itself of the privilege of conducting advertising, marketing, sales, and service activities in Montana and Minnesota; (2) Respondents' claims arise out of Petitioner's allegedly defective vehicle; and (3)

²⁸ *Id.* at 26–28.

²⁹ *Id.* at 30.

³⁰ Brief of Respondents, *supra* note 1, at 1, 12, 45.

³¹ *Id.* at 13.

³² *Id.* at 14.

³³ *Id.* at 14–15.

it is not unreasonable to subject Petitioner to suit where it has “regularly sold the product and where the accident and the injuries occurred.”³⁴

Next, Respondents rebut Petitioner’s contention that a causation test applies to specific jurisdiction, denying that such a test follows the Court’s jurisprudence and due process principles.³⁵ First, Respondents argue that the Court has never deprived a state of its ability to provide a forum of redress for citizens who have been injured in the state by products that a defendant routinely markets and sells in the state.³⁶ Next, Respondents maintain that Petitioner’s reading of a causation standard into the “arising out of” language contradicts the Court’s jurisprudence when the Court has clearly established that a plaintiff’s claims must “arise out of *or [be] connected with*” the defendant’s contacts.³⁷ Last, Respondents contend that Petitioner’s causation standard would, in reality, undermine federalism and fairness principles because it would greatly restrict a state’s ability to protect its citizens from allegedly defective products and frustrate injured parties’ ability to litigate such claims.³⁸

IV. ANALYSIS

The Court’s decision will likely turn on whether specific jurisdiction, specifically whether the “arise out of or relate to” language, requires a direct causal connection between a defendant’s contacts with a forum state and the plaintiff’s claims. In other words, what relationship must exist between a defendant’s purposeful state conduct and a plaintiff’s claims in order to support specific personal jurisdiction?³⁹

³⁴ *Id.* at 15–18.

³⁵ *Id.* at 22–23.

³⁶ *Id.* at 13–14.

³⁷ *Id.* at 23.

³⁸ *Id.* at 27–28, 34.

³⁹ Brief of Professors of Civil Procedure and Federal Courts as Amici Curiae in Support of Respondents at 4, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, <https://perma.cc/L7AM-CBFS>, (U.S. Apr. 3, 2020) (No. 19–368 and 19–369).

A. *Specific Personal Jurisdiction Jurisprudence*

A State’s ability to hale a distant defendant into court rests on personal jurisdiction jurisprudence “principles of federalism, fairness, and predictability.”⁴⁰ The Due Process Clause allows a state to enforce its laws against distant defendants so long as it is “reasonable and just according to our traditional conception of fair play and substantial justice.”⁴¹ General personal jurisdiction permits a court to hear “any and all claims” against a corporate defendant when their contacts with the forum are so “‘continuous and systematic’ as to render them essentially at home in the forum State.”⁴² By contrast, specific jurisdiction requires a closer examination of “the relationship among the defendant, the forum, and the litigation.”⁴³

When the Court began its modern analysis of specific personal jurisdiction, it used a sliding-scale approach to determine the boundary of a state court’s jurisdiction.⁴⁴ This scale balanced the extent of a defendant’s contacts with the forum state, which gave rise to the plaintiff’s claims weighed against the burden of requiring the defendant to litigate in the forum.⁴⁵ Exercise of state court jurisdiction in situations where a defendant had no, or isolated, contacts with a forum would violate due process. Conversely, substantial or pervasive conduct by a defendant would make them amenable to suit.⁴⁶

⁴⁰ Brief of Respondents, *supra* note 1, at 3.

⁴¹ *International Shoe Co. v. State of Wash.*, 326 U.S. 310, 323 (1945).

⁴² *Goodyear Dunlop Tires Operations v. Brown*, 564 U.S. 915, 919 (2011) (quoting *International Shoe*, 326 U.S. at 317).

⁴³ *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984).

⁴⁴ *See International Shoe*, 326 U.S. at 319 (“It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.”) (internal citations omitted).

⁴⁵ Jonathan Remy Nash, *National Personal Jurisdiction*, 68 EMORY L.J. 509, 519 (2019).

⁴⁶ *Id.*

The Court’s decision regarding whether the “arising out of” language requires a direct causal relationship will depend on how the Court interprets its precedent in this area. In *World-Wide Volkswagen Corp. v. Woodson*, the Court stated that where a defendant corporation sells a product, not in an “isolated occurrence,” but as a coordinated marketing effort, “it is not unreasonable to subject it to suit . . . if its allegedly defective merchandise” has caused injury “to its owner or to others.”⁴⁷ The Court further explained that a state does not violate due process when it exercises personal jurisdiction over a defendant that has “deliver[ed] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State,” and the Court reiterated this principle in *Burger King Corp. v. Rudzewicz*.⁴⁸ In *World-Wide Volkswagen*, the Court found specific jurisdiction improper because the petitioners/defendants there did not conduct any sales, marketing, or service activities in Oklahoma, where the accident occurred, and the vehicle involved was sold in New York.⁴⁹ In a similar vein to *World-Wide Volkswagen*, *Keeton v. Hustler Magazine*, reversed a lower court’s dismissal of a plaintiff’s suit for want of personal jurisdiction because Hustler had “continuously and deliberately exploited the New Hampshire market” and must therefore reasonably anticipate being haled into court there.⁵⁰ Similarly, here, Petitioner has extensively cultivated a market for its products in both Montana and Minnesota.⁵¹

Petitioner argues that its advertising, marketing, and sales contacts with Montana and Minnesota are unrelated to the Respondents’ claims because the vehicles involved in Respondents’

⁴⁷ 444 U.S. 286, 297–98 (1980).

⁴⁸ *Id.* at 295–98 (1980); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985).

⁴⁹ *World-Wide Volkswagen*, 444 U.S. at 295–98.

⁵⁰ *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984).

⁵¹ *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.* 443 P.3d 407, 411 (Mont. 2019) (finding “Ford advertises in Montana, is registered to do business in Montana, and operates subsidiary companies in Montana. Ford has thirty-six dealerships in Montana. . . . Ford’s conduct clearly establishes channels that permit it to provide regular assistance and advice to customers in Montana.”); *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 748 (Minn. 2019) (stating “[t]his is not a case where a 1994 Ford Grand Victoria fortuitously ended up in Minnesota. Ford has sold thousands of such Crown Victoria cars and hundreds of thousands of other types of cars to dealerships in Minnesota.”).

accidents were designed, manufactured, and sold outside of the states.⁵² Relying on *Bristol-Myers Squibb*,⁵³ Petitioner maintains that the conduct underlying Respondents' products liability claims has no affiliation with Montana or Minnesota.⁵⁴

Unlike the cases at issue here, *Bristol-Myers Squibb* involved a class action lawsuit brought by California residents and non-residents over alleged harm caused by the drug Plavix and asserted state law products liability, negligent misrepresentation, and misleading advertising claims.⁵⁵ Though the Court held that the non-resident plaintiffs could not be joined in the class action in California state court, it reached this conclusion by reasoning that the non-residents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured in California.⁵⁶ Thus, the Court determined that there was "an affiliation" between the forum and the California residents' claims, but not the non-residents' claims.⁵⁷ Here, Respondents were subject to Petitioner's extensive marketing and advertising in Montana and Minnesota, Respondents drove Petitioner's product in Montana and Minnesota, and were injured by Petitioner's product in Montana and Minnesota. Accordingly, it is likely that the Court will find "an affiliation" between the Petitioner's conduct in Montana and Minnesota and Respondents' claims.

Therefore, considering its precedent in this area, the Court may likely hold that specific personal jurisdiction does not require a direct causal connection between a defendant's forum contacts and a plaintiff's claims.

⁵² Brief for Petitioner, *supra* note 22, at 2, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.* (U.S. Feb. 28, 2020) (Nos. 19–368 & 19–369).

⁵³ *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S.Ct. 1773, 1781 (2017).

⁵⁴ *Id.* at 1781 ("In order for a 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 State.'") (citations omitted).

⁵⁵ *Id.* at 1778.

⁵⁶ *Id.* at 1781.

⁵⁷ *Id.* at 1780.

B. *Due Process Considerations*

If the Court agrees with Petitioner and finds that specific jurisdiction requires a direct causal relationship, and that here Petitioner's contacts with Montana and Minnesota did not directly cause the Respondents' claims, a state's ability to adjudicate claims brought by its citizens alleging redressable injury against corporate defendants will be significantly limited.⁵⁸

Under Petitioner's proposed rule, a defendant will not be subject to specific jurisdiction, even if it has continuously marketed and sold a product in a forum and a plaintiff is injured by the product in the forum, if the initial sale of the *specific* product involved was made to a third party outside the state.⁵⁹ The Court will likely find that if Petitioner's proposed test were to be applied for specific jurisdiction, it will "deny jurisdiction to the very states with the most at stake in these cases" and will deny a state's citizens of "a convenient forum for redressing injuries inflicted by out-of-state actors."⁶⁰ Similarly, it is unlikely that the Court will be convinced by Petitioner's argument that applying a "non-causal" test will provide Petitioner's insufficient notice of where they may be subject to suits related to their products, because Petitioner should already be aware of this possibility by virtue of the fact that it sells its products in all states.⁶¹

V. CONCLUSION

The Court's decision will expound upon what is required to find that a defendant's conduct in a forum is sufficiently related to a plaintiff's claim to properly subject the defendant to specific jurisdiction in the forum. The Court will likely affirm both lower courts' opinions and hold that since the Petitioner has "continuously and deliberately"⁶² exploited the Montana and Minnesota markets, "traditional notions of fair play and substantial justice"⁶³ would dictate that Petitioner's contacts are related to Respondents' claims,

⁵⁸ Brief of Respondents, *supra* note 1, at 22.

⁵⁹ *Id.* at 16.

⁶⁰ *Id.* at 27; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985).

⁶¹ Brief for Petitioner, *supra* note 22, 2, 27–28.

⁶² *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984).

⁶³ *International Shoe v. State of Wash.*, 326 U.S. 310, 316 (1945).

and that Petitioner can reasonably anticipate being haled into court to defend against injuries allegedly caused by its products, regardless of where those products were manufactured, assembled, and initially sold.