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Here's a snapshot of how courts have applied SCOTUS's unanimous 2021 ruling in *Ford Motor Co. v. Montana*—and the collective impact on personal jurisdiction.

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# Where Might *Ford* Take Us?

On March 25, 2021, the U.S. Supreme Court issued *Ford Motor Co. v. Montana Eighth Judicial District Court*, a unanimous opinion outlining the contours of specific personal jurisdiction. It held that "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 its residents, the State's courts may entertain the resulting suit."[1] The legal community has viewed the *Ford* decision as a solidification of consumers' rights to hold global and national corporations accountable for the injuries their products cause across the country.[2]

In the less than one year since *Ford* was published, it has been cited in at least 54 reported court opinions and 222 unreported court opinions—both federal and state.[3] Looking specifically at the reported opinions that include a detailed discussion of *Ford*, many have used the ruling as a lynchpin in holding that specific jurisdiction did or did not exist over a nonresident (both American and foreign) company defendant.[4] Here is a look at a few of those cases and what the courts' reasoning signals about specific jurisdiction going forward.

## A Selection of Cases Applying *Ford*

***Luciano v. SprayFoamPolymers.com, LLC.*** Last June, the Supreme Court of Texas found that specific jurisdiction could be exercised over an out-of-state insulation manufacturer, SprayFoamPolymers.com, in a products liability case.[5] The plaintiffs hired a locally based company to install the defendant's insulation product at their Texas home. The defendant, a Connecticut corporation, argued no personal jurisdiction existed since it never sold or advertised its products in Texas—rather, an "independent contractor sales representative" sold the product to the local installer.

The appellate court below looked to *Bristol-Myers Squibb Co. v. Superior Court of California* for support. In *Bristol-Myers*, the Supreme Court held that personal jurisdiction did not exist over claims brought by plaintiffs who resided, purchased their products, and used the products outside the forum state because those claims did not arise out of or relate to the defendant's contacts with the forum.[6] Based on that, the appellate court in *Luciano* reasoned the plaintiff's lawsuit did not relate to the defendant's Texas contacts because the plaintiffs had not alleged where the *exact* barrel of the product used in their home had shipped from.[7]

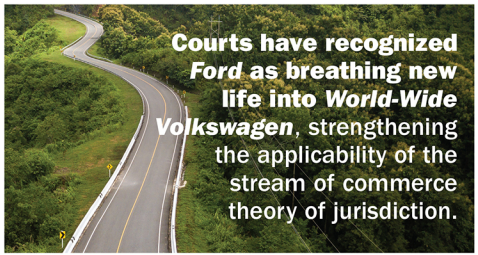
The court also found that the claims did not arise out of or relate to the defendant's contacts with the forum because there was no evidence that the plaintiffs intentionally chose their installer based on its relationship with the defendant—shifting the analysis away from the *defendant's* relationship with the forum state and instead looking to the *plaintiffs'* subjective intent in hiring the installer.[8]

The Supreme Court of Texas reversed, ruling that the appellate court "sought too exacting of a connection between SprayFoam's purposeful contacts in Texas and the suit."[9] And it quoted the *Ford* opinion, stating that "none of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do."[10]

The court rejected a direct causal connection requirement in light of *Ford*.[11] It found that "Spray Foam 'served a market' in Texas 'for the very [spray foam insulation] that the plaintiffs allege malfunctioned and injured them' in Texas" and that this demonstrated the "'relationship among the defendant, the forum, and the litigation'" as discussed in *Ford*.[12] The plaintiffs' subjective intent in hiring the installer was immaterial, as in *Ford*, because jurisdiction should not "'ride on the exact reasons for an individual plaintiff's purchase, or on his ability to present persuasive evidence about them.'"[13]

***Trimble Inc. v. PerDiemCo LLC.*** Here, the Ninth Circuit invoked the *Ford* opinion in an intellectual property context, showing how far *Ford*'s reach is. In this case, Trimble Inc. sought a declaratory judgment in California federal court, the state where it is headquartered, stating that it did not infringe on PerDiemCo's patents for geo-fencing technology. The Ninth Circuit found that specific jurisdiction existed over PerDiemCo, a Texas limited liability company, holding that "just as sales of similar vehicles and the presence of dealerships in a forum can support personal jurisdiction in the tort context, so too can nonexclusive patent licenses in this case."[14]

The court found relevant the extensive communications, including cease-and-desist letters and offers for licensing agreements, that PerDiemCo sent to Trimble Inc. in a short period of time. It stated that these communications were "akin to 'an arms-length negotiation in anticipation of a long-term continuing business relationship,'" with the California plaintiff.[15] Additionally, the court found the plaintiff's California headquarters were relevant in connecting its claims to the state, reversing and remanding the district court's finding against specific jurisdiction.[16]




***Griffin v. Ste. Michelle Wine Estates Ltd.*** The Supreme Court of Idaho found specific jurisdiction over an Italian bottle manufacturer, reversing the lower court's dismissal of a plaintiff's claim that a defective wine bottle broke in her hand while she was opening it, causing injury.[17] The court held that because the defendant "place[d] millions of its bottles in the United States by selling them to a manufacturer it reasonably knew exported those bottles throughout the United States through a network of exporters, distributors, and retailers," it could exercise personal jurisdiction over the defendant.[18]

This connection was sufficient even though the defendant did not design its bottles specifically for the Idaho market, advertise in Idaho, establish channels for providing regular advice to customers in Idaho, employ distributors as sales agents in Idaho, operate any office in Idaho, own or lease property in Idaho, or send employees to Idaho for any reason.[19]

The Idaho high court primarily relied on *World-Wide Volkswagen Corp. v. Woodson*,[20] noting that in *Ford*, the U.S. Supreme Court cited *World-Wide Volkswagen* multiple times in support of its ultimate ruling.[21] In that case, a couple purchased a vehicle in New York and subsequently crashed in Oklahoma on their way to their new home in Arizona. They sued the automaker in Oklahoma state court, alleging that the location of the gas tank made it susceptible to being punctured and igniting.

The defendant distributed vehicles, parts, and accessories under contract with Volkswagen to retail dealers in Connecticut, New Jersey, and New York but not in Oklahoma. The *World-Wide Volkswagen* Court held that exercising jurisdiction over a nonresident manufacturer is a violation of due process even if it was foreseeable that the product was going to be used in the state and that the defendant should be able to reasonably anticipate being haled into court.

But the Court noted that "if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in [several or all] other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others."[22] This rule is now called the "stream of commerce" theory of jurisdiction,[23] and *Ford* used *World-Wide Volkswagen* specifically for that point.[24]

While the defense in *Ford* complained that the language was merely "dicta," the Court explained that the rule outlined "has appeared and reappeared in many cases since."[25] Looking to subsequent cases such as *Daimler AG v. Bauman*,[26] the *Ford* Court showed that despite its ultimate outcome, *World-Wide Volkswagen* has been used consistently for the point that "the Court did not limit jurisdiction to where the car was designed, manufactured, or first sold."[27]

The Supreme Court of Idaho took note of the unanimity of the Court's decision in *Ford* and its strong reliance on *World-Wide Volkswagen*: "In short, rumors of *World-Wide Volkswagen*'s imminent demise may be greatly exaggerated."[28] And other courts have similarly recognized *Ford* as breathing new life into the previously questioned weight of the Court's ruling in *World-Wide Volkswagen*,[29] strengthening the applicability of the stream of commerce theory of jurisdiction.

***Cox v. HP Inc.*** But not all cases using *Ford* have found specific jurisdiction. In rejecting a strict causation standard, the *Ford* Court emphasized the importance of the word "or" in "arises out of or relates to."[30] However, the Court emphasized, this "does not mean anything goes," and the relatedness requirement "encompasses real limits."[31]

Looking to that language in a case arising out of the explosion of a hydrogen generator, the Supreme Court of Oregon refused to find specific jurisdiction over a third-party defendant, TÜV—a Delaware company that allegedly negligently certified the design of the generator. The plaintiff, who was severely injured in the explosion, sued his employer, HP, which then brought a claim for contribution against TÜV. The court found "some guidance [in the *Ford* opinion] as to those 'real limits' that 'protect defendants foreign to a forum.'"[32] The court noted that "the 'essential foundation' of specific jurisdiction is 'a strong relationship among the defendant, the forum, and the litigation.'"[33]

Despite finding purposeful availment through the undisputed evidence that TÜV conducted business in Oregon, including product certification work at HP, the Supreme Court of Oregon ruled that the Delaware defendant's forum activities were not sufficiently *related* to the plaintiff's claim so as to exercise specific jurisdiction over the company.[34]

Comparing the facts from *Ford* to the facts in *Cox*, the court noted a lack of evidence of any sales to Oregon businesses, any urging of Oregon residents to purchase its hydrogen generators, or the performance of any work on hydrogen generators after purchase by Oregon residents.[35] There was also no evidence of what products TÜV certified for HP or other Oregon businesses.[36] So it found that HP's specific claim was not a reasonably foreseeable consequence of the company's forum activities.[37]

***Zurich American Life Insurance Co. v. Nagel.*** The Southern District of New York also attempted to locate the "real limits" spoken of in *Ford* in a case involving a former employee of a U.S. subsidiary of two Swiss entities who alleged age discrimination and retaliation in his termination. The court ruled that the defendants lacked the necessary minimum contacts with the



PREVIOUS SPREAD: DAREKM101/GETTY IMAGES; THIS PAGE: BOYLOSO/GETTY IMAGES

U.S for specific jurisdiction.[38]

It found relevant that neither of the Swiss entities were organized under New York law, had any place of business or headquarters in New York, had any offices in New York, sold any real or personal property or service in New York, or paid any taxes in or to New York. And the plaintiff was never directly an employee or board member of either Swiss entity. Rather, their subsidiary, Zurich American Life Insurance, employed and terminated the plaintiff.[39]

The plaintiff countered that the Swiss entities had sufficient minimum contacts and that they met the definition of an "employer" under New York law. He argued that one entity's general counsel had visited New York and attended meetings with him, that his termination was sent on an entity's letterhead, and that an entity had a policy requiring all subsidiaries to terminate board members after age 70.[40] The plaintiff also argued that an employee from one of the Swiss entities sent a disciplinary warning via email to his supervisor, an action that related to his discriminatory termination claims.[41]

The district court disagreed and found that the threshold for sufficient minimum contacts serves as a "real limit" under the *Ford* decision, requiring that defendants' "contacts be more than remotely related to [the plaintiff's] employment discrimination claims and termination."[42] The court found the plaintiff had not made sufficient factual allegations to establish a prima facie case for minimum contacts related to his claims.[43]

***Hepp v. Facebook.*** The Third Circuit similarly refused to find personal jurisdiction over social media platforms Imgur and Reddit in a case involving a photo of a woman that was circulated and used on their platforms and Facebook's without her permission.[44] The plaintiff's complaint alleged two counts based in Pennsylvania state law. Facebook conceded jurisdiction, but Imgur and Reddit claimed the court lacked personal jurisdiction because the plaintiff's claims did not arise out of or relate to their contacts with Pennsylvania.

**_Ford_ has also sparked new questions** of what 'real limits' come with the newly emphasized '*or relate to*' portion of the standard.

The appellate court agreed, finding the connection between the claim and the defendants' contacts was "too weak."[45] While the defendants targeted their advertising business to Pennsylvania, the misappropriation of the plaintiff's "likeness" was not sufficiently related to their contacts with Pennsylvania. The court noted that the plaintiff did not allege that the defendants used her likeness to sell advertising or featured the photo in their merchandise, nor did she allege the photo was taken, uploaded, or hosted in Pennsylvania.[46] For those reasons, the court ruled the plaintiff "failed to establish the strong connection present in *Ford*."[47]

## Trends and Predictions for the Future

So, where might the *Ford* opinion take us? Recently, *Ford* has been used in reversing several circuits' precedents requiring a direct causal connection for specific jurisdiction, shifting the analysis away from the plaintiff's subjective intent and taking some teeth out of prior applications of the *Bristol-Myers* holding. Now, plaintiffs have solid ground to argue that despite some direct causal connection, their claim is related enough to a defendant's forum contacts to support specific jurisdiction (not accounting for any long-arm statute issues that may arise on a state-by-state basis).[48]

In that same vein, *Ford* has been credited with breathing new life into *World-Wide Volkswagen*, reaffirming the stream of commerce theory and rendering irrelevant any defense argument about where a defective product was designed, manufactured, or first sold, so long as the defendant's contacts are *related* to the plaintiff's claimed injury and the defendant made efforts to serve, directly or indirectly, the market for its product in the forum where the injury occurred.

But *Ford* has also sparked new questions of what "real limits" come with the newly emphasized "*or relate to*" portion of the standard. Defense attorneys are sure to point to these "real limits" in arguing against specific jurisdiction, and it is not yet clear where lower courts will determine these limits lie. Justice Samuel Alito's concurrence averred that *no* clear limits were set by the Court.[49] Justice Neil Gorsuch's concurrence, joined by Justice Clarence Thomas, similarly stressed that "the majority promises that its new test 'does not mean anything goes,' but that hardly tells us what does."[50]

These "limits" are gradually taking shape as lower courts continue to apply *Ford*. As demonstrated by the outcome in *Cox*, if the claim is based in products liability, plaintiffs should look for evidence of any sales of the specific product in the forum, any advertising directed to forum residents to purchase the specific product, or the performance of any work on the specific product in the forum. As shown by the cases discussed earlier, courts' assessment of minimum contacts is fact-intensive, and jurisdictional splits on this issue are all but certain until the Court faces specific jurisdiction head-on again.

Interestingly, Justice Gorsuch's *Ford* concurrence seemed to suggest a complete overhaul of the personal jurisdiction analysis as we know it. While he agreed with the outcome of the case, stating "the company, seeking to do business, entered those jurisdictions through the front door . . . I cannot see why, when faced with the process server, it should be allowed to escape out the back,"[51] he also criticized the continued use of *International Shoe Co. v. Washington*,[52] which first adopted the concept of general versus specific personal jurisdiction.

Justice Gorsuch seemingly advocated for the abolition of specific jurisdiction altogether, in favor of expanding general jurisdiction. He referred to "global conglomerates" boasting of their many "headquarters" and questioned why the Court still usually limits general jurisdiction to only one or two states.[53] "Nearly 80 years removed from *International Shoe*," he wrote, "it seems corporations continue to receive special jurisdictional protections in the name of the Constitution. Less clear is why."[54] He went on to assert that "maybe, too, *International Shoe* just doesn't work quite as well as it once did."[55]

While two Supreme Court justices alone are not enough to change personal jurisdiction as we know it, perhaps somewhere down the road those thoughts might gain traction. But for now, *Ford* creates greater clarity and a more equitable outcome for consumers across America.

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### Notes

1. 141 S. Ct. 1017, 1022 (2021).
2. For more on the *Ford* decision, see Deepak Gupta, *A Victory for Common Sense*, Trial, July 2021, at 46.
3. This article focuses specifically on the key reported cases citing the *Ford* decision, but practitioners may find the following unreported cases particularly useful: *Choi v. Gen. Motors LLC*, 2021 WL 4133735, at *6–7 (C.D. Cal. Sept. 9, 2021) (the mere purchase of a vehicle in a jurisdiction, delivered there by an affiliate dealership of the manufacturer, without more, may be sufficient to subject the manufacturer to specific jurisdiction there); *Murphy v. Viad Corp.*, 2021 WL 4504229, at *6 (E.D. Mich. Oct. 1, 2021) (*Ford* does not stand for a rule subjecting a defendant to specific jurisdiction when they direct *some* products and/or business to the forum but not the specific product at issue, because that would fall outside the "real limits" the Court described); and *Cameron v. Thomson Int'l, Inc.*, 2021 WL 3409999, at *7 (D. Mont. July 19, 2021) (questioning the applicability of *Ford* in purposeful availment arguments, and distinguishing isolated or sporadic transactions from systematically serving a market).
4. *See, e.g., Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1 (Tex. 2021); *Trimble Inc. v. PerDiemCo LLC*, 997 F.3d 1147 (9th Cir. 2021); *Rickman v. BMW of N. Am. LLC*, 2021 WL 1904740 (D.N.J. May 11, 2021); *Cisco Sys., Inc. v. Dexon Computer Inc.*, 2021 WL 2207343 (N.D. Cal. Jun. 1, 2021); *Kaliannan v. Liang*, 2021 WL 2483854 (8th Cir. Jun. 18, 2021); *Lewis v. Mercedes-Benz USA, LLC*, 530 F. Supp. 3d 1183 (S.D. Fla. 2021); *Cirrus Design Corp. v. Berra*, 633 S.W.3d 640 (Tex. App. 2021); *Fed. Corp., Inc. v. Truhlar*, 632 S.W.3d 697 (Tex. App. 2021).
5. *See Luciano*, 625 S.W.3d 1.
6. *Bristol-Myers Squibb Co. v. Superior Ct. of California*, 137 S. Ct. 1773, 1780 (2017).
7. 625 S.W.3d at 17.
8. *Id.* at 12.
9. *Id.* at 14.
10. *Id.* (quoting *Ford Motor Co.*, 141 S. Ct. at 1026).
11. *Id.*
12. *Id.* at 17 (quoting *Ford Motor Co.*, 141 S. Ct. at 1028 and *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408, 414 (1984)).
13. *Id.* at 12–13 (quoting *Ford Motor Co.*, 141 S. Ct. at 1029).
14. *Trimble Inc.*, 997 F.3d at 1156.
15. *Id.* at 1154.
16. *Id.* at 1157.
17. *Griffin v. Ste. Michelle Wine Estates Ltd.*, 491 P.3d 619 (Idaho 2021).
18. *Id.* at 636.
19. *Id.*
20. 444 U.S. 286, 297 (1980).
21. *Ford Motor Co.*, 141 S. Ct. at 1021 (citing *World-Wide Volkswagen*, 444 U.S. at 286).
22. *World-Wide Volkswagen*, 444 U.S. at 297.
23. *Griffin*, 491 P.3d 619, 630–31.
24. *Ford Motor Co.*, 141 S. Ct. at 1027.
25. *Id.*
26. 571 U.S. 117, 127 (2014).
27. *Ford Motor Co.*, 141 S. Ct. at 1028.
28. *World-Wide Volkswagen*, 444 U.S. at 297.
29. *See, e.g., Luciano*, 625 S.W.3d 1.
30. *Ford Motor Co.*, 141 S. Ct. at 1025.
31. *Id.* at 1026.
32. *Cox v. HP Inc.*, 2021 WL 3417045, at *8 (Or. Aug. 5, 2021).
33. *Id.* at *11 (quoting *Ford Motor Co.*, 141 S. Ct. at *1028).
34. *Id.* at *15.
35. *Id.*
36. *Id.* at *12.
37. *Id.* at *13.
38. *Zurich Am. Life Ins. Co. v. Nagel*, 2021 WL 5225947, at *3 (S.D.N.Y. Nov. 10, 2021).
39. *Id.* at *5–6.
40. *Id.* at *6–7.
41. *Id.* at *8.
42. *Id.* at *6.
43. *Id.* at *8; *see also XPX Armor & Equipment, Inc. v. SkyLIFE Co., Inc.*, 2021 WL 3161202 (Ohio App. July 23, 2021).
44. *Hepp v. Facebook*, 14 F.4th 204, 207 (3d Cir. 2021).
45. *Id.* at 208.
46. *Id.*
47. *Id.*
48. *See, e.g., Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81, 87 (2021).
49. *Ford Motor Co.*, 141 S. Ct. at 1033 (Alito, J., concurring) (quoting *Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring)).
50. *Ford Motor Co.*, 141 S. Ct. at 1035 (Gorsuch, J., concurring).
51. *Id.* at 1039.
52. 66 S. Ct. 154 (1945).
53. *Ford Motor Co.*, 141 S. Ct. at 1038.
54. *Id.*
55. *Id.*