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Ford v. Montana: The U.S. Supreme Court's Latest Foray into Personal Jurisdiction and What It Might Mean for Banks

Mark G. Hanchet, Christopher J. Houpt, Robert W. Hamburg, and Anjanique M. Watt*

The authors believe that financial institutions have powerful arguments that the U.S. Supreme Court's decision in Ford Motor v. Montana leaves undisturbed the approach by the U.S. Court of Appeals for the Second Circuit to specific jurisdiction.

The U.S. Supreme Court's recent decision in *Ford Motor Co. v. Montana Eighth Judicial District Court et al.*¹ bucks the Court's recent trend of reversing lower courts' approaches to personal jurisdiction. The Court held that Ford's contacts with the forum states sufficed to support specific personal jurisdiction in those states' courts over product liability suits brought by residents of those states stemming from car accidents in the states. Although Ford did not sell the specific vehicles involved in the accidents to purchasers in the forum states, it was enough, according to the Court, that Ford's forum contacts "related to" the plaintiffs' claims under the particular facts of the cases.

The Court said that the phrase "relate to" imposes "real limits" on the exercise of specific personal jurisdiction—but, the Court held, the personal jurisdiction standard does not require a but-for or proximate causal connection between the plaintiff's claims and the defendant's forum contacts. The contours of those "real limits" are likely to be hotly debated in future cases, and plaintiffs around the country may seek to apply *Ford Motor's* "related to" formulation outside of the product liability context to support jurisdiction over nonresident businesses whose services are offered or advertised in the forum, including foreign banks providing banking services in the United States.

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¹ https://www.supremecourt.gov/opinions/20pdf/19-368_febh.pdf.

BACKGROUND

Ford Motor Company, which is incorporated in Delaware and headquartered in Michigan, challenged two state court decisions holding that Ford was subject to personal jurisdiction in Montana and Minnesota because the plaintiffs, each of whom brought suit in their home states, were injured in their respective states while driving a Ford vehicle. For specific, or case-linked, jurisdiction to exist, due process requires that the plaintiff's claims "arise out of or relate to the defendant's contacts" with the forum.

Ford contended that this standard imposes a causation requirement and that the requirement was not satisfied because Ford did nothing in the states that had a causal connection to the plaintiffs' claims: it had not designed or manufactured the vehicles in the forum states, and Ford did not sell the specific vehicles involved in the accidents to purchasers in those states.

The Court rejected Ford's attempt to limit specific jurisdiction to only those cases where there is a strict causal relationship between the defendant's in-state activities and the plaintiffs' claims. Instead, the Court ruled that the exercise of specific jurisdiction may also be proper if the suit "relates to" the defendant's in-forum conduct—while noting that the phrase imposes "real limits" on the exercise of specific jurisdiction.

The Court then focused on the facts of the case, detailing Ford's in-state contacts—extensive advertising, selling, re-selling, and servicing the particular model of vehicle at issue in the cases—and determined that these contacts were "close enough" to support the exercise of specific personal jurisdiction under the circumstances.

ANALYSIS

The Court's decision may cause plaintiffs to seek to assert jurisdiction more aggressively over nonresident financial institutions by seizing on some language in *Ford Motor*. For instance, plaintiffs may point to the Court's statement "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" (emphasis added). It is unclear what it means to "serve a market" for a financial product—will the "product" be defined narrowly as, say, "mortgage loans," "interest rate swaps" or "cross-border correspondent accounts" or more broadly as "banking"?

In *Ford Motor*, the Court emphasized that the specific models of vehicles involved in the accidents (not just Ford cars in general) were advertised, sold, and serviced in Montana and Minnesota. That analysis indicates that to sustain

jurisdiction, the product in question should be defined narrowly. Of course, this question will undoubtedly be addressed by lower courts in the coming months and years as they grapple with *Ford Motor*.

Other types of plaintiffs might seek to interpret *Ford Motor* expansively as well. Since the Supreme Court's decision limiting general jurisdiction in *Daimler AG v. Bauman*, some courts have dismissed investors' claims against corporate trustees that are not brought in the trustee's home forum or relate to its in-forum activities. An investor may argue based on *Ford Motor* that if the bank "serves the market" for trustee services in the state, by soliciting local issuer clients, it makes itself susceptible to suit on claims involving out-of-state issuers.

More broadly, plaintiffs may also seek to use *Ford Motor* to open the door to jurisdictional discovery into a bank's activities in the forum. Indeed, those types of facts, relating to the defendant's general activities in the forum, are redolent of pre-*Daimler* litigation over *general* jurisdiction, when allegations about (and discovery into) advertising, physical locations, and sales volumes in the forum state were common.

That said, the better reading of *Ford Motor*'s holding is that it rests on the cases' particular facts. The majority closely examined the depth and nature of Ford's contacts—involving the very model of vehicle that caused the plaintiffs' injuries—in determining that these contacts "related" closely enough to the plaintiffs' claims to support specific jurisdiction.

As Justice Alito observed in his concurrence, these same contacts could easily have been said to bear a causal relationship to the injuries:

It is reasonable to infer that the vehicles in question here would never have been on the roads in Minnesota and Montana if they were some totally unknown brand that had never been advertised in those States, was not sold in those States, would not be familiar to mechanics in those States, and could not have been easily repaired with parts available in those States.

CONCLUSION

Given the specific facts in *Ford Motor* and the Court's extensive focus on those facts, financial institutions have powerful arguments that *Ford Motor* leaves undisturbed the approach by the U.S. Court of Appeals for the Second Circuit to specific jurisdiction:

Where the defendant has had only limited contacts with the state it may be appropriate to say that he will be subject to suit in that state only if the plaintiff's injury was proximately caused by those contacts.

Where the defendant's contacts with the jurisdiction that relate to the cause of action are more substantial, however, it is not unreasonable to say that the defendant is subject to personal jurisdiction even though the acts within the state are not the proximate cause of the plaintiff's injury.²

One last point. *Ford Motor* leaves *Daimler* unchanged. One possible reaction to *Daimler's* contraction of general jurisdiction as a vehicle for obtaining jurisdiction over defendants could be an expansion of specific jurisdiction. Whether *Ford Motor* represents such an expansion is sure to be frequently litigated in the lower courts in the coming months and years.

² *SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018).