

Have You Considered *Ford* Lately?

How to “Relate to”
Specific Personal Jurisdiction

BY JAMES JUO

This article examines evolving jurisprudence on specific personal jurisdiction in the US Supreme Court and the Tenth Circuit’s traditional focus on causation.

Specific personal jurisdiction requires that a defendant has purposefully availed itself of the benefits of doing business in a particular state (e.g., by expressly aiming conduct at that forum state) such that it may reasonably anticipate being haled into court there. But a plaintiff must also show that the claims brought against the defendant “arise out of or relate to” the defendant’s activities in that state.¹ This article focuses on *Ford Motor Co. v. Montana Eighth Judicial District Court*,² a recent US Supreme Court opinion that expands the considerations that “relate to” specific personal jurisdiction beyond those involving causation.

The Causation Backdrop

Traditionally, the phrase “arising out of” has been “given a broad reading such as ‘originating from’ or ‘growing out of’ or ‘flowing from’ or ‘done in connection with’—that is, it requires some causal connection to the injuries suffered, but does not require proximate cause in the legal sense.”³

The Tenth Circuit has wrestled with what causation-based principles should be applied in the “arise out of or relate to” prong of the specific personal jurisdiction analysis.⁴ In *Dudnikov v. Chalk and Vermilion Fine Arts, Inc.*,⁵ the Tenth Circuit noted that under a but for approach, “any event in the causal chain leading to the plaintiff’s injury is sufficiently related to the claim to support the exercise of specific jurisdiction,” but a proximate cause approach “is considerably more restrictive” in “examin[ing] whether any of the defendant’s contacts with the forum are relevant to the merits of the plaintiff’s claim.”⁶ Some courts also have considered a third approach that “instead asks whether there is a ‘substantial connection’ or ‘discernible relationship’ between the contacts and the suit.”⁷ *Dudnikov* rejected this third approach because it inappropriately blurred the distinction between specific and general jurisdiction.⁸ The Tenth Circuit then declined to choose between “but for” and “proximate” causation, finding that neither was outcome determinative for that case.⁹

Enter Ford Motor Co.

Against this backdrop, the US Supreme Court took up *Ford Motor Co.*, a case concerning specific personal jurisdiction in two separate product liability lawsuits from Montana and Minnesota against Ford Motor Company (Ford). The lawsuits arose from car accidents in those states. The cars at issue had been sold initially in other states, but subsequent resales brought the vehicles to Montana and Minnesota. The state courts in each case held that there was specific personal jurisdiction over Ford because the accidents occurred in the state in which the suit was brought, the plaintiffs were residents of that state, and Ford did substantial business with respect to the allegedly defective vehicle model in each state.¹⁰

Ford argued that jurisdiction was improper because there was no causal connection between its specific activities and the alleged injuries. The cars were first sold in other states and were neither designed nor manufactured in the states where the accidents occurred, so there was no strict causal link, even though the alleged vehicle malfunctions occurred in the forum states. Because personal jurisdiction attaches only if the plaintiff’s claims arose out of the defendant’s forum conduct, Ford argued that specific jurisdiction was limited to “where the vehicles in question were assembled (Kentucky and Canada), designed (Michigan), or first sold (Washington and North Dakota), or where Ford is incorporated (Delaware) or has its principal place of business (Michigan).”¹¹

The US Supreme Court unanimously rejected this argument, but with a split in the reasoning. Justice Kagan’s majority opinion explained that a strict causal relationship between a defendant’s in-state activities and the litigation was not the only way to satisfy due process. Instead, the Court noted that the most common formulation of the minimum contacts rule for specific personal jurisdiction requires that the suit in question “arise out of or relate to the defendant’s contacts with the forum.”¹² While the first half of that standard focuses on causation, the second disjunctive half after the word “or” contemplates that some relationships will support jurisdiction without a strict causal showing.¹³

The Court noted that while Ford designed the cars in Michigan, “its business is everywhere.”¹⁴ Ford’s promotional marketing (“Have you driven a Ford lately?”); dealerships in Montana and Minnesota for selling, repairing, and maintaining Ford cars; and distribution of Ford replacement parts to auto shops in those two states and nationwide (urging consumers to “Keep your Ford a Ford”) were all activities designed to “encourage Montanans and Minnesotans to become lifelong Ford drivers.”¹⁵ Because Ford systematically served a market in Montana and Minnesota for the vehicles that the plaintiffs alleged malfunctioned and injured them in those states, there was “a strong ‘relationship among the defendant, the forum, and the litigation’—the ‘essential foundation’ of specific jurisdiction.”¹⁶ Ford’s conduct as a global car company that extensively served the state market for vehicle models that were involved in an in-state accident was “a paradigm example”¹⁷ of how specific jurisdiction works.

The Court pointed out in a footnote that “[n]one of this is to say that any person using any means to sell any good in a State is subject to jurisdiction there if the product malfunctions after arrival,” and that the Court’s jurisprudence has “long treated isolated or sporadic transactions differently from continuous ones.”¹⁸ But by firmly rejecting a strict causation approach, the Court’s approach to the “relate to” prong in *Ford Motor Co.* has expanded the realm of factors that may be considered for purposes of establishing specific personal jurisdiction.

Distinguishing Precedent

The Court distinguished two of its recent decisions, *Bristol-Myers Squibb Co. v. Superior Court of California*¹⁹ and *Walden v. Fiore*,²⁰ both of which Ford had cited in support of its position. These cases provide examples of contacts that were insufficient to establish personal jurisdiction.

In *Bristol-Meyers*, plaintiffs brought mass tort claims in California state court against Bristol-Myers Squibb, the manufacturer of the drug Plavix. The plaintiffs included nonresidents who had not been prescribed Plavix in California, had not ingested Plavix in California, and had

not suffered their injuries in California.²¹ This violated the Fourteenth Amendment because the defendant's activities in the forum state lacked any connection to the plaintiffs' claims.²² "In short, the plaintiffs were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State."²³ The plaintiffs' lack of any real relationship with the forum state thus doomed the "arising out of or relating to" prong for specific jurisdiction.

In *Walden*, a Georgia police officer searched and seized money from two Nevada residents at an Atlanta airport before they embarked on their flight to Las Vegas.²⁴ The Nevada residents sued in their home state. Even though the plaintiffs' alleged injury—their inability to use the seized money—was experienced in Nevada, the exercise of jurisdiction in Nevada was improper because "only the plaintiffs had any contacts with the State of Nevada; the defendant-officer had never taken any act to 'form[] a contact' of his own" there.²⁵ The police officer had not purposefully availed himself of the privilege of conducting activities in Nevada, so there was "no occasion to address the necessary connection between a defendant's in-state activity and the plaintiff's claims" under the "arising out of or relating to" prong.²⁶

Notwithstanding these distinctions, the Court reiterated that once a defendant has purposefully availed itself of the benefits of doing business in a particular forum state, the place of a plaintiff's injury and residence "may be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit—including its assertions of who was injured where."²⁷ Although a plaintiff's contacts with the forum state may be considered for the limited purpose of determining whether its claims "relate to" the forum, "the place of a plaintiff's injury and residence cannot create a defendant's contact with the forum State[.]"²⁸ That black letter law and the traditional focus on whether a defendant structured its conduct "to lessen or avoid exposure to a given State's courts" remain intact.²⁹

The resident-plaintiffs in *Ford Motor Co.* used the allegedly defective products in the states where they suffered injuries that were due to

defective products that Ford had extensively promoted, sold, and serviced in those states. Thus, their suits were based on an affiliation between the forum and the underlying controversy.³⁰ The Court concluded that "the relationship among the defendant, the forum[s], and the litigation" was "close enough" to support finding specific jurisdiction.³¹

Questioning Concurrences

Two concurring opinions questioned whether the majority's analysis went too far in construing the "relate to" requirement.

In his concurrence, Justice Alito agreed that but-for causation was not required. But he asserted that some causal link nonetheless is needed and that a traditional analysis under *International Shoe Co. v. Washington*³² would have arrived at the same conclusion on specific jurisdiction, so analyzing the phrase "relate to" based on a parsing of case law as if it were a statute was "unnecessary and . . . unwise."³³ Justice Alito noted that the "common-sense relationship" between Ford's activities "to put more Fords (including those in question here) on Minnesota and Montana roads" and these lawsuits was "causal in a broad sense of the concept, and personal jurisdiction can rest on this type of link"; thus this "sort of rough causal connection" should be what limits the potential reach of the phrase "relate to."³⁴

Justice Gorsuch wrote a more pointed concurrence arguing that this "new test risk[s] adding new layers of confusion to our personal jurisdiction jurisprudence," and "supplies no meaningful guidance about what kind or how much of an 'affiliation' [with a forum state] will suffice."³⁵ Given the concerns about "inappropriately blur[ring] the distinction between specific and general personal jurisdiction" expressed in *Dudnikov* (a decision written by then-Judge Gorsuch),³⁶ Justice Gorsuch's cold reception to this new "relate to" approach for specific personal jurisdiction should come as no surprise.

Looking back at the *International Shoe Co.* dichotomy between general and specific jurisdiction, Justice Gorsuch noted that "some of the old guardrails have begun to look a little battered."³⁷ In particular, "[a] test once aimed

at keeping corporations honest about their out-of-state operations now seemingly risks hauling individuals to jurisdictions where they have never set foot."³⁸ Justice Gorsuch concluded by admitting that the expanded "relate to" test has left him "with even more questions than . . . at the start."³⁹

Causation Now?

As noted above, the Tenth Circuit in *Dudnikov* rejected a "substantial connection" or "discernible relationship" approach for specific personal jurisdiction, as opposed to causation-based approaches.⁴⁰ Thus the question arises, has *Ford Motor Co.* abrogated the Tenth Circuit's causation-only requirement for specific jurisdiction? Several district courts in other circuits with similar causation-only requirements suggest it has.⁴¹ In particular, the US District Court for the District of New Jersey in *Rickman v. BMW of North America LLC* recently held that *Ford Motor Co.* abrogated the Third Circuit's precedent in *O'Connor v. Sandy Lane Hotel Co.* that "causation is a *minimum* requirement" for specific jurisdiction.⁴² This is significant because *Dudnikov* cited *O'Connor* in support of its causation-only approach, suggesting a similar conclusion of abrogation seems likely in the Tenth Circuit.


Open Questions

Ford Motor Co. did not address internet transactions, and how to analyze specific personal jurisdiction for virtual conduct generally remains an open question.⁴³ But in a recent post-*Ford Motor Co.* decision involving internet sales, *Chouinard v. Marigot Beach Club and Dive Resort*, the US District Court for the District of Massachusetts denied a Fed. R. Civ. P. 12(b)(2) motion to dismiss without prejudice where the record was "devoid of evidence that the website . . . generates a regular flow or course of sales to Massachusetts residents."⁴⁴ The court stated it would allow a renewed motion after 90 days of jurisdictional discovery on the relatedness prong of the due process inquiry.⁴⁵

As Justice Gorsuch pondered, "maybe all we have done since [*International Shoe*] is struggle for new words to express the old ideas."⁴⁶ Or, "[m]aybe, too, *International Shoe* just doesn't

work quite as well as it once did.”⁴⁷ Either way, questions remain for another day.

Conclusion

Ford Motor Co. rejected a strict causation approach for personal jurisdiction and expanded the factors that courts may consider when analyzing whether claims against a defendant “relate to” the defendant’s activities in the forum state. In the wake of *Ford Motor Co.*, the Tenth Circuit’s causation-only requirement for specific jurisdiction likely will be found to have been abrogated. Further developments in the “relate to” jurisprudence for specific jurisdiction will reveal the extent of *Ford Motor Co.*’s ultimate impact. 



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NOTES

1. *E.g.*, *Trierweiler v. Croxton and Trench Holding Corp.*, 90 F.3d 1523, 1534 (10th Cir. 1996) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). See also *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 592 U.S. ___, 141 S.Ct. 1017, 1025 (2021) (“Or put just a bit differently, there must be an affiliation between the forum and the underlying controversy. . . .” (internal quotation marks and internal citations omitted)).
2. *Ford Motor Co.*, 141 S.Ct. 1017.
3. *Fed. Ins. Co. v. TriState Ins. Co.*, 157 F.3d 800, 804 (10th Cir. 1998) (discussing “arising out of” in the context of a commercial general liability insurance policy).
4. *Compania de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 970 F.3d 1269, 1285 (10th Cir. 2020) (“This court on several occasions has declined to choose between but-for and proximate causation, finding that neither test was outcome determinative given the facts at hand.”).
5. *Dudnikov v. Chalk and Vermilion Fine Arts, Inc.*, 514 F.3d 1063 (10th Cir. 2008).
6. *Id.* at 1078.
7. *Id.* See also *TV Azteca, S.A.B. de C.V. v. Ruiz*, 490 S.W.3d 29, 52–53 (Tex. 2016) (noting the “substantial connection” standard in Texas considers what the claim is “principally concerned with” and whether the contacts are “related to the operative facts”).
8. *Dudnikov*, 514 F.3d at 1078–79 (citing *O’Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 321 (3d Cir. 2007)).
9. *Id.* at 1079.
10. *Ford Motor Co.*, 141 S.Ct. at 1023. See also *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 443 P.3d 407, 414 (Mont. 2019); *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 754 (Minn. 2019).
11. *Ford Motor Co.*, 141 S.Ct. at 1032 (Alito, J., concurring).
12. *Id.* (emphasis in original).
13. *Id.*
14. *Id.* at 1022. See also *Trimble Inc. v. PerDiemCo LLC*, 997 F.3d 1147, 1156 (Fed.Cir. 2021) (“Rather than focus on the contacts related to the specific vehicles, the [Ford] Court focused on the broader efforts by Ford to sell similar vehicles in each state.”).
15. *Ford Motor Co.*, 141 S.Ct. at 1028.
16. *Id.* (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).
17. *Id.*
18. *Id.* at 1028 n.4.
19. *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 582 U.S. ___, 137 S.Ct. 1773 (2017).
20. *Walden v. Fiore*, 571 U.S. 277 (2014).
21. *Ford Motor Co.*, 141 S.Ct. at 1031. See also *Bristol-Myers*, 137 S.Ct. at 1778.
22. *Ford Motor Co.*, 141 S.Ct. at 1031; *Bristol-Myers*, 137 S.Ct. at 1781 (“When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.”).
23. *Ford Motor Co.*, 141 S.Ct. at 1031.
24. *Id.* See also *Walden*, 571 U.S. at 280.
25. *Ford Motor Co.*, 141 S.Ct. at 1031 (quoting *Walden*, 571 U.S. at 290).
26. *Id.*
27. *Id.* at 1031–32; *Bristol-Myers*, 137 S.Ct. at 1781 (finding no specific jurisdiction because of nonresident plaintiffs’ lack of “connection” with the forum).
28. *Ford Motor Co.*, 141 S.Ct. at 1031. See also *Walden*, 571 U.S. at 285 (“the plaintiff cannot be the only link between the defendant and the forum”).
29. *Ford Motor Co.*, 141 S.Ct. at 1025; *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297 (1980) (“The Due Process Clause . . . gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.”). See also *Dudnikov*, 514 F.3d at 1078–79 (noting a defendant should be allowed “to anticipate his jurisdictional exposure based on his own actions”).
30. *Ford Motor Co.*, 141 S.Ct. at 1031.
31. *Id.* at 1032 (citing *Walden*, 571 U.S. at 284). Cf. *TV Azteca*, 490 S.W.3d at 52–53 (“A claim arises from or relates to a defendant’s forum contacts if there is a ‘substantial connection between those contacts and the operative facts of the litigation.’” (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007))).
32. *Int’l Shoe Co. v. Wash.*, 326 U.S. 310 (1929).
33. *Ford Motor Co.*, 141 S.Ct. at 1033 (Alito, J., concurring).
34. *Id.* at 1033–34. See also *Fed. Ins. Co.*, 157 F.3d at 803 (noting the general consensus that “arising out of” required only “some causal connection to the injuries suffered”).
35. *Ford Motor Co.*, 141 S.Ct. at 1035 (Gorsuch, J., concurring).
36. *Dudnikov*, 514 F.3d at 1078–79.
37. *Ford Motor Co.*, 141 S.Ct. at 1034.
38. *Id.* at 1038. See also *Dudnikov*, 514 F.3d at 1078 (“Specific jurisdiction . . . is premised on something of a *quid pro quo*: in exchange for ‘benefitting’ from some purposive conduct directed at the forum state, a party is deemed to consent to the exercise of jurisdiction for claims related to those contacts.”); The Backboard And The Basket For Personal Jurisdiction (May 3, 2021), <https://thowardlaw.com/2021/05/the-backboard-and-the-basket-for-personal-jurisdiction> (discussing *Dudnikov*’s basketball analogy about conduct directed at the forum state under the “expressly aiming” analysis) in *Calder v. Jones*, 465 U.S. 783 (1984).
39. *Ford Motor Co.*, 141 S.Ct. at 1039.
40. *Dudnikov*, 514 F.3d at 1078–79.
41. See *Lewis v. Mercedes-Benz USA, LLC*, No. 19-CIV-81220, 2021 WL 1216897 at *35 (S.D.Fla. Mar. 30, 2021); *James Lee Constr., Inc. v. Gov’t Emps. Ins. Co.*, No. 20-68, 2021 WL 1139876 at *2 (D.Mont. Mar. 25, 2021).
42. *Rickman v. BMW of N. Am. LLC*, No. CV1804363KMJBC, 2021 WL 1904740 at *8 (D.N.J. May 11, 2021) (emphasis in original).
43. *Walden*, 571 U.S. at 290 n.9 (“We leave questions about virtual contacts for another day.”); *Ford Motor Co.*, 141 S.Ct. at 1028 n.4 (“we do not here consider internet transactions”).
44. *Chouinard v. Marigot Beach Club and Dive Resort*, No. CV 20-10863-MPK, 2021 WL 2256318 at *10 (D.Mass. Jun. 3, 2021). See also *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 889 (2011) (requiring facts showing a “regular . . . flow” or “regular course” of sales to establish specific personal jurisdiction).
45. *Chouinard*, 2021 WL 2256318 at *13.
46. *Ford Motor Co.*, 141 S.Ct. at 1039.
47. *Id.* at 1038.