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Personal Jurisdiction Over Nonresident Corporations After *Ford Motor Co. v. Montana Eighth Judicial District Court*

WEDNESDAY, JUNE 23, 2021

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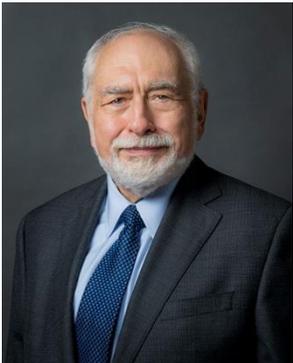
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Historic Principles of General and Specific Jurisdiction Before 2011

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Pennoyer v. Neff,
95 U.S. 714 (1878)

- “[E]very State possesses exclusive jurisdiction and sovereignty over persons and property within its territory.”

International Shoe Co. v. Washington,
326 U.S. 310 (1945)

- “[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”

International Shoe Co. v. Washington,
326 U.S. 310 (1945)

- “It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.”

McGee v. International Life Ins. Co.,
355 U.S. 220 (1957)

- “Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents.”

Hanson v. Denckla, 357 U.S. 235 (1958)

- “[I]t is a mistake to assume that this trend heralds the eventual demise of all restrictions on personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitation on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with the State that are a prerequisite to its exercise of power over him.”

22 Year Hiatus in Specific Jurisdiction Opinions

Between *Hanson v. Denckla* (1958)

and

*World-Wide Volkswagen Corp. v.
Woodson* (1980).

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)

- “The protection against inconvenient litigation is typically described in terms of ‘reasonableness’ or ‘fairness’”
- The Court “never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution.”

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985)

- “Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with ‘fair play and substantial justice.’”

Asahi Metal Indus. Co. v. Superior Court of Cal., 480 U.S. 102 (1987)

- “The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.”
- “Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.”

J. McIntyre Mach., Ltd. v. Nicastro,
564 U.S. 873 (2011).

- “A court may subject a defendant to judgment only when the defendant has sufficient contacts with the sovereign ‘such that the maintenance of the suit does not offend *traditional notions of fair play and substantial justice.*’”
- “Due process protects petitioner's right to be subject only to lawful authority. At no time did petitioner engage in any activities in New Jersey that reveal an intent to invoke or benefit from the protection of its laws.”

General Jurisdiction Before 2011

- “The overall result is that general jurisdiction cases have lurched along on the basis of unchallenged assumptions and judicially felt inclinations rather than any meaningful analysis.”
- The situation changed in 2014 after *Daimler AG v. Bauman*.



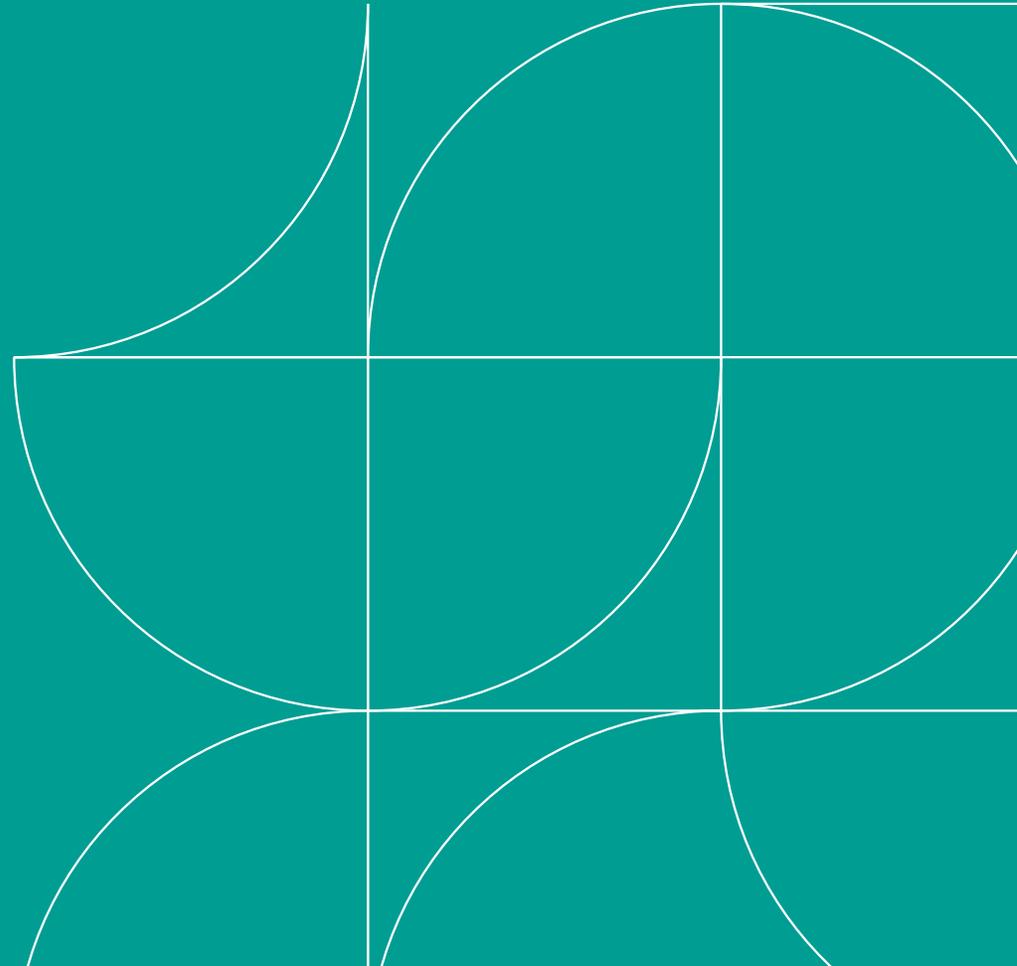
Personal Jurisdiction Over Non-Resident Corporations

Strafford Publications Webinar

June 23, 2021

Seyfarth Shaw LLP

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Agenda

- 01 *Daimler AG v. Bauman* (2014)
- 02 *BNSF Railway Co. v. Tyrrell* (2017)
- 03 *Bristol-Myers Squibb Co. v. Superior Court* (2017)
- 04 Application By District And Circuit Courts Pre-*Ford Motor*

General Jurisdiction – *Daimler AG v. Bauman*

- *Daimler AG v. Bauman (January 14, 2014)*

- In 2004, 22 Residents of Argentina sued Daimler in the Northern District of California for, among other things, violation of the Alien Tort Statute and Torture Victim Protection Act of 1991
- Plaintiffs sought to hold Daimler vicariously liable for the alleged acts of Mercedes-Benz Argentina, a Daimler subsidiary, which they alleged collaborated with state security forces during Argentina’s 1976-1983 “Dirty War” to kidnap, detain, torture plaintiffs

General Jurisdiction – *Daimler AG v. Bauman*

- Plaintiffs asserted that the court had general or “all purpose” jurisdiction over Daimler because another subsidiary, Mercedes-Benz USA, LLC, had contacts with California
- Mercedes-Benz USA, LLC, an *indirect subsidiary*, was incorporated in Delaware, headquartered in New Jersey, but distributed Daimler-manufactured vehicles to dealerships in California
- After the district court dismissed, on rehearing, the Ninth Circuit reversed, holding that Mercedes-Benz USA, LLC was Daimler’s “agent” for jurisdictional purposes and that it fell within the court’s “all purpose” jurisdiction

General Jurisdiction – *Daimler AG v. Bauman*

- Since *International Shoe*, specific jurisdiction has become the “centerpiece of modern jurisdictional theory,” but general jurisdiction remains confined to traditional limits
- In-state subsidiaries or affiliates do not render corporations amenable to suit simply because their operations are “important” to the operations of the parent company
- Even if MBUSA were at home in California, and even if its contacts were imputable to Daimler, the Ninth Circuit had no basis to subject Daimler to general jurisdiction in California
- A “limited set of affiliations” with a forum render a defendant “**essentially at home**”; for a corporation, the paradigm places include the **place of incorporation** and **principal place of business**

General Jurisdiction – *BNSF Railway Co. v. Tyrrell*

- ***BNSF Railway Co. v. Tyrrell (May 30, 2017)***

- Plaintiff Nelson brought suit against BNSF in Montana state court seeking to recover under FELA for knee injuries he allegedly sustained while working as a fuel-truck driver
- Plaintiff Tyrrell brought suit against BNSF in Montana state court seeking to recover under FELA for kidney cancer arising from his alleged exposure to carcinogenic chemicals
- Neither Plaintiff alleged injuries arising from or related to work performed in Montana; indeed, neither Plaintiff alleged that he ever worked for BNSF in Montana

General Jurisdiction – *BNSF Railway Co. v. Tyrrell*

- Contending that it is not “at home” in Montana, BNSF moved to dismiss both suits for lack of personal jurisdiction
- After consolidating the cases, the Montana Supreme Court held that Montana law authorized courts to exercise jurisdiction over “persons found” in Montana
- The Supreme Court disagreed; due process constraints apply to “all state-court assertions of general jurisdiction”; they do not vary with the claim or business

General Jurisdiction – *BNSF Railway Co. v. Tyrrell*

- “A court may assert general jurisdiction over foreign . . . corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them **essentially at home** in the forum State”
- The exercise of general jurisdiction is not limited to places of incorporation and headquarters; in an “*exceptional case*,” a defendant’s operations in another forum “may be so substantial and of such a nature as to render the corporation at home in that State”
- BNSF is not incorporated in Montana and does not maintain its principal place of business there. Nor is BNSF so heavily engaged in activity in Montana “as to render [it] essentially at home” in that State

General Jurisdiction – Takeaways

- Over the last decade, the Supreme Court has dramatically narrowed the scope of power afforded under personal-jurisdiction doctrine
- The Court effectively has limited general jurisdiction over a corporate defendant to two locations: the forum state where it is incorporated, and the state where it has its principal place of business
- As a result, in the years since *Bauman* and *Tyrrell*, many cases that could previously have been brought under a theory of general jurisdiction must now rely on a specific-jurisdiction rationale

Specific Jurisdiction – *BMS v. Superior Court*

- ***Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (June 19, 2017)**

- A group of 678 Plaintiffs, 592 of whom were not California residents, sued in California State Court alleging products liability, negligent misrepresentation, and misleading advertising claims associated with Plavix
- BMS is a Delaware corporation headquartered in New Jersey; the non-resident Plaintiffs did not allege that they obtained Plavix, ingested Plavix, were injured by Plavix in California, or were treated for their injuries in California
- Asserting lack of personal jurisdiction, BMS moved to quash service of summons, but the California Superior Court found general jurisdiction over BMS “[b]ecause [it] engages in extensive activities in California”

Specific Jurisdiction – *BMS v. Superior Court*

- After *Daimler*, the California Supreme Court found no general jurisdiction, but the majority found *specific* jurisdiction based on a “sliding scale” approach – the more “wide ranging” the forum contacts, the easier to show a connection
- Applying this test, “[b]oth the resident and nonresident plaintiffs’ claims are based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product”

Specific Jurisdiction – *BMS v. Superior Court*

- In order for a state court to exercise specific jurisdiction, “the suit” must “aris[e] out of or relat[e] to the defendant’s contacts with the forum”
- Specific jurisdiction is confined to “adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction”
- When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State

“The mere fact *other* plaintiffs were prescribed, obtained, and ingested Plavix in California – and allegedly sustained the same injuries as the nonresidents – does not allow the State to assert specific jurisdiction over the nonresidents’ claims”

What About Claimants In Class or Collective Actions?

- Collective Actions, 29 U.S.C. 216(b)
 - *Representative Action*: An employee “may maintain an action “for and in behalf of himself . . . and other employees”
 - *Similarly Situated*: The “other employees” must be “similarly situated”
 - *Opt-In Process*: Each “other employee” must “give his consent in writing”; file such consent “in the court in which such action is brought”; and become “a party plaintiff”
- Class Actions, Fed. R. Civ. P. 23
 - *Representative Action*: “One or more members of a class may sue or be sued as representative parties”
 - *Rule 23(a), 23(b) Criteria*: Among other things, there must be “common” questions of law or fact
 - *Opt-Out Process*: The court must direct notice and “exclude from the class any member who requests exclusion”

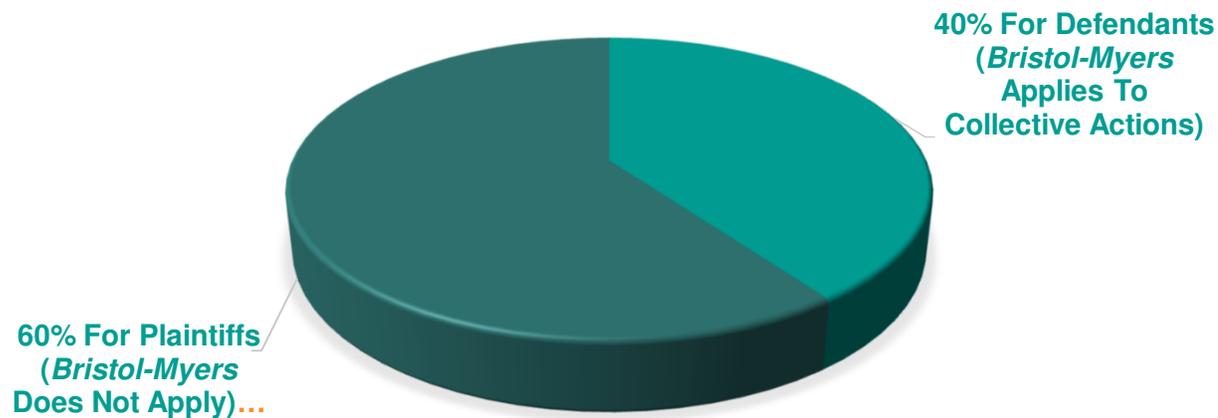
How Are Defendants Raising The Issue In The Class/Collective Context?

- Argument: The Court Lacks Specific Jurisdiction To Resolve The Claims Of Non-Resident Class Or Collective Action Members Because The Claims Do Not “Arise Out Of” Defendant’s Contacts With The Forum State
- Procedural Options Invoked:
 - Motion To Strike Class / Collective Allegations
 - Motion To Dismiss Claims Of Non-Residents
 - Motion To Deny / Response To Motion For Certification Of Class / Collective
 - Motion To Transfer Entire Action To State Where The Court May Exercise General Personal Jurisdiction Over Defendant

How Have Courts Ruled In Collective Actions?

- Do claims of potential collective action members need to arise from or relate to defendant's contact with the forum?
- District courts have reached different conclusions

FLSA COLLECTIVE ACTION RULINGS



How Have Courts Ruled In Rule 23 Class Actions?

- *Mussat v. IQVIA, Inc.*, No. 19-1204 (7th Cir. March 11, 2020)
 - An Illinois physician brought a nationwide class action in the Northern District of Illinois, against IQVIA, a Delaware corporation, for alleged violations of the TCPA
 - IQVIA moved to strike the class definition, arguing that the district court did not have personal jurisdiction over IQVIA to resolve claims from non-resident class members
 - The district court granted the motion; the Seventh Circuit reversed finding that only the “named representatives” must demonstrate general or specific personal jurisdiction

How Have Courts Ruled In Rule 23 Class Actions?

- *Molock v. Whole Foods Market Group, Inc.*, No. 18-7162, 2020 WL 1146733 (D.C. Cir. March 10, 2020)
 - Employees filed a nationwide class action for alleged lost wages
 - Defendants moved to dismiss based on *Bristol-Myers*; district court denied the motion
 - On interlocutory appeal, the D.C. Circuit ruled 2 to 1 that the question of whether and how *Bristol-Myers* applies to class actions is premature prior to a decision on class certification because, until a class is certified, putative class members are not parties

How Have Courts Ruled In Rule 23 Class Actions?

- *Cruson v. Jackson National Life Insurance Co.*, 954 F.3d 240 (5th Cir. 2020)
 - Plaintiffs filed a putative class action in the Eastern District of Texas alleging that defendant miscalculated annuity withdrawal fees
 - In its answer, defendant denied that the court had personal jurisdiction with respect to the claims of putative class members outside Texas
 - Defendant asserted such defense in response to plaintiffs’ motion for class certification; the district court found waiver and granted class certification
 - The Fifth Circuit disagreed holding that the defense first became “available” when the district court certified the class
- District courts in other Circuits remain divided
 - *See, e.g., Carpenter v. PetSmart, Inc.*, No. 3:19-CV-01731 (S.D. Cal.) (striking nationwide class claims; the procedural requirements for a class action do not supply any reasoned basis for distinguishing *Bristol-Myers*)

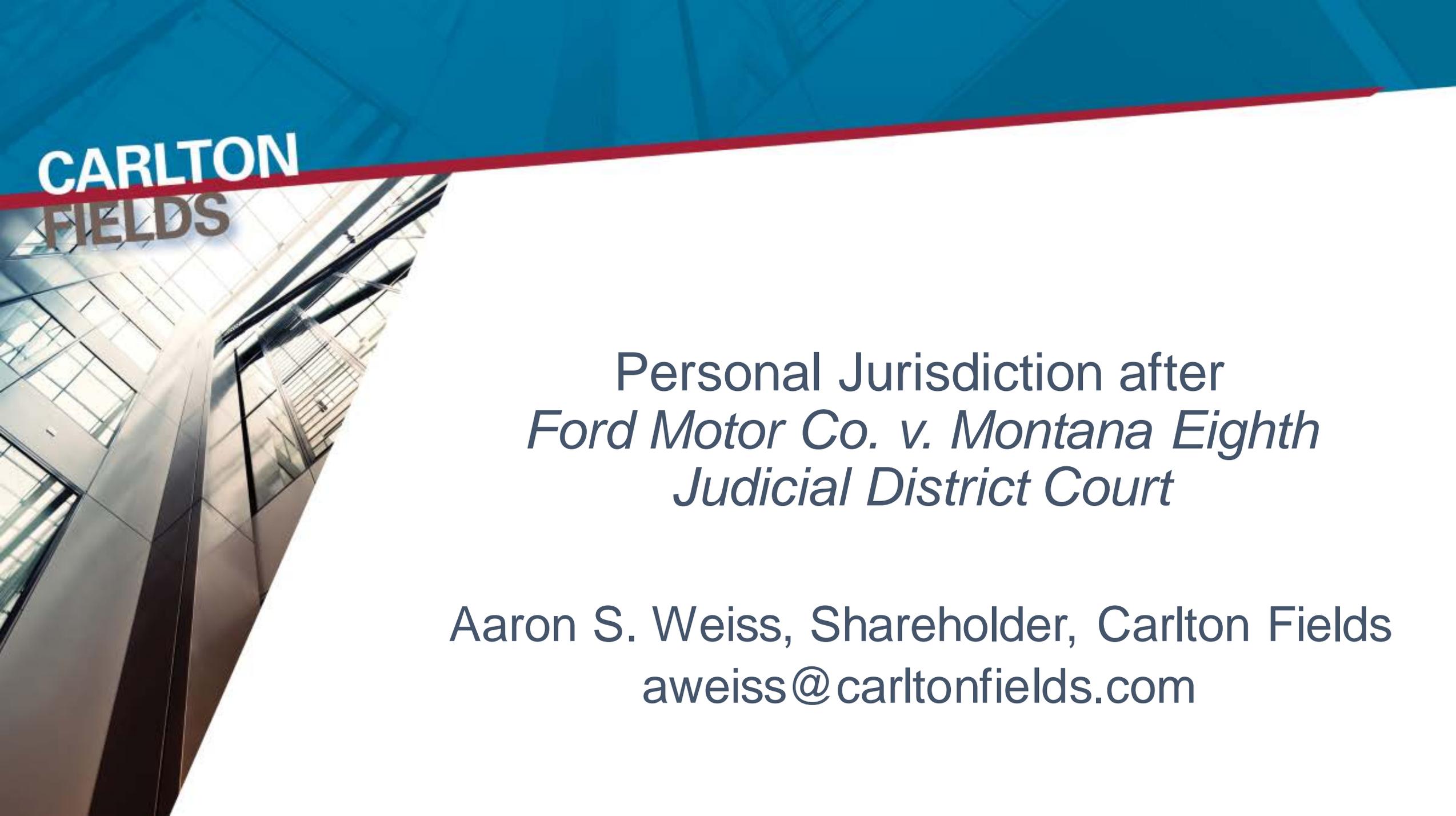
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you**

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Personal Jurisdiction after
*Ford Motor Co. v. Montana Eighth
Judicial District Court*

Aaron S. Weiss, Shareholder, Carlton Fields
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Background on *Ford Motor Co. v. Montana Eighth Judicial District Court*

- Two separate state court cases filed in Montana and Minnesota.
- Product liability claims brought against Ford where the accidents occurred in the states where each suit was brought and the plaintiff was resident of that state.
- In each case, the vehicle at issue was purchased out of state, and then brought into the state before the accident occurred.

What did Ford Argue?

- Ford argued that specific personal jurisdiction was lacking because it neither sold nor designed the vehicles in Montana or Minnesota.
- Ford acknowledged its significant contacts with each state, including marketing and dealerships, but argued that these activities did not “give rise” to the plaintiffs’ product liability claims.
- No “causal link” between Ford’s conduct in those states and plaintiffs’ claims.

What did the Supreme Court Rule in *Ford*?

- In an 8-0 decision (Justice Barrett did not participate), the Court rejected Ford's "causal link" test.
- The Court held that the phrase "arise[s] out of or relate[s] to" forum conduct embraces a broader scope of relationships between a defendant's in-state conduct and a plaintiff's claims.
 - "Arise out of" → Causation
 - "Relate to" → "contemplates that some relationships will support jurisdiction without a causal showing"

What did the Supreme Court Rule in *Ford*?

- The Court found that Ford's activities in Montana and Minnesota, including marketing and selling the same models of cars at issue, encouraged residents to purchase these vehicles (whether new or used) and create specific jurisdiction.
- The Court limited the scope of its holding, disclaiming any intent to address e-commerce contacts and noting 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.”

- A causal link is not required for specific jurisdiction.
- *Ford* does not disturb the Court's rejection in *Bristol-Myers* of specific jurisdiction over claims by non-resident plaintiffs against a non-resident company.
- Interpreting the “relate to” standard.
 - The Court stated that it is not true that “anything goes.”
 - The relationship between the forum state, the parties, and the case still matters.

So what does this mean?

- A lower bar to establish specific jurisdiction. Plaintiffs gain back some leeway to sue large multi-state corporations in places where they do business.
- There are likely to be more creative efforts by plaintiffs to haul corporations into unfavorable forums.
- Focus will shift to lower courts tasked with interpreting the limits of “related to” jurisdiction.

- It is unclear how the “related to” test will apply to jurisdictional decisions regarding corporations that are “present” in a forum strictly via internet marketing and sales.
 - Lead opinion did not consider “internet transactions, which may raise doctrinal questions of their own.”
 - An internet-based corporation may find more success arguing that their contacts do not amount to purposeful activities in a jurisdiction.
- After *Ford*, even national corporations have prevailed in limiting the argument that they are subject to jurisdictional in any state because of internet sales.
 - *Johnson v. Blue Nile, Inc.*, 2021 WL 1312771 (N.D. Cal. Apr. 8, 2021),
 - *Massie v. Gen. Motors Co.*, 2021 WL 2142728 (E.D. Cal. May 26, 2021)

- The Court's opinion does not provide much guidance on how similar products must be in order to support specific jurisdiction.
 - Ex: Would it have made a difference if Ford had only marketed the 1995 Explorer, but not the 1996 model, in Montana?
- At least one court has found that a car manufacturer can be hailed into a single state for all of its national sales. *Rickman v. BMW of No. Am. LLC.*, 2021 WL 1904740, at *8 (D.N.J. May 11, 2021)

- *Mussat v. IQVIA, Inc.*, 953 F.3d 441 (7th Cir. 2020)
 - An Illinois doctor brought a nationwide class action in the Northern District of Illinois, against IQVIA, a Delaware corporation based in Pennsylvania, for alleged violations of the TCPA. The claim was that Pennsylvania-based IQVIA had sent the same unwanted faxes to doctors' offices around the country.
 - IQVIA moved to strike the class definition, arguing that the Illinois district court did not have personal jurisdiction over IQVIA to resolve claims from non-Illinois class members.
 - The district court granted the motion; the Seventh Circuit reversed finding that only the "named representatives" must demonstrate general or specific personal jurisdiction.

- *Molock v. Whole Foods Market Group, Inc.*, 2020 WL 1146733 (D.C. Cir. March 10, 2020)
 - Employees of a national retailer filed a nationwide class action for alleged lost wages.
 - Defendants moved to dismiss based on *Bristol-Myers*; district court denied the motion.
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 - In its answer, defendant denied that the court had personal jurisdiction with respect to the claims of putative class members outside Texas.
 - Defendant asserted such defense in response to plaintiffs' motion for class certification; the district court found waiver and granted class certification.
 - The Fifth Circuit disagreed holding that the defense first became "available" when the district court certified the class.

- *Lyngaas v. Curaden AG*, 992 F.3d 412 (6th Cir. Mar. 24, 2021)
 - A dentist sued a Swiss toothbrush manufacturer and its American subsidiary, for sending unsolicited fax advertisements in violation of TCPA.
 - The court held that Swiss parent purposefully availed itself of the American market by launching the American subsidiary.
 - Plaintiff's alleged injuries caused by the fax advertisements "relate to" the Swiss parent's creation of its U.S. subsidiary and its direction for the subsidiary to promote the Swiss parent's products throughout the U.S.
 - The exercise of jurisdiction over the Swiss parent would be reasonable, such that it would "comport with traditional notions of fair play and substantial justice" because Plaintiff's interest in obtaining relief is particularly high given that the American subsidiary was not profitable and was unlikely to be profitable in the immediate future.

What About General Jurisdiction by Registration?

- A group of Supreme Court cases from about 100 years ago have sometimes been used to support the theory of general jurisdiction via registering to do business in a particular state. See *Pa. Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917); *Robert Mitchell Furniture Co. v. Selden Breck Constr. Co.*, 257 U.S. 213 (1921); *Hess v. Pawloski*, 274 U.S. 352(1927).
- If that argument worked, challenging nationwide class actions would become very difficult for most businesses.
- Most courts, though, have applied more modern Supreme Court long-arm cases to reject the jurisdiction by consent theory.

Some States Are More Favorable to General Jurisdiction by Registration

- However, there is state case law support for this theory in Iowa, Minnesota, and Nebraska.
- Further, Pennsylvania's statute specifically says that registration subjects a corporation to general jurisdiction. The constitutionality of that statute is presently on appeal to the Pennsylvania Supreme Court. See *Mallory v. Norfolk S. Ry. Co.*, 241 A.3d 480 (Pa. Super. Ct. 2020) (transferring appeal to the Pennsylvania Supreme Court).

Questions?

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