

PERSONAL JURISDICTION LANDSCAPE

A look at three cases impacting Texas.

WRITTEN BY LORIN M. SUBAR

Three 2021 cases have significantly altered the landscape of corporate personal jurisdiction in Texas: the U.S. Supreme Court's decision in *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*,¹ the Texas Supreme Court's decision in *Luciano v. SprayFoamPolymers.com, LLC*,² and the decision by the U.S. District Court for the Eastern District of Texas in *In re Toyota Hybrid Brake Litig.*³ When read together, the three cases suggest that where a company is foreign to Texas, and even to the United States, the company should anticipate being haled into Texas if they know their products will be sold here.

Jurisdictional Primer

The jurisdictional issues for a court are two-fold—subject-matter jurisdiction and personal jurisdiction. The former asks whether the court can hear the matter, if the amount in controversy is sufficient, and if the issues are in the proper court (criminal cases in criminal courts, family law cases in family law courts), etc. The latter asks whether the defendant has sufficient contacts with the state of Texas that it would be fair that they be brought before a Texas court.

A Texas court can exercise jurisdiction over a foreign corporation (or any nonresident) if: “(1) the Texas long-arm statute authorizes the exercise of jurisdiction and (2) the exercise of jurisdiction is consistent with federal due-process guarantees.”⁴ Because the Texas long-arm statute permits jurisdiction to the fullest extent allowed under law,⁵ the second question, due process, is generally the focus of a personal jurisdiction challenge. The due process inquiry is satisfied if the court has general or specific jurisdiction over the nonresident. The general jurisdiction question is easier to dispose of, asking whether the nonresident corporation is “essentially at home” in Texas.⁶ It is the second inquiry, specific jurisdiction based on the notion of fundamental fairness, which is addressed in the remainder of this article.

The U.S. Supreme Court's Decision in *Ford v. Montana*

Every attorney practicing in Texas was introduced to the issue of subject matter jurisdiction early in law school through *Int'l Shoe Co. v. Washington*,⁷ *World-Wide Volkswagen Corp. v. Woodson*,⁸ and *Burger King Corp. v. Rudzewicz*.⁹ All three cases addressed the same basic theme: when a company has sufficient contacts with a state, it can be brought into court in the place where its product caused harm so long as “the maintenance of the suit” is “reasonable, in the context of our federal system of government,” and “does not offend traditional notions of fair play and substantial justice.”¹⁰ In *WW Volkswagen*, the U.S. Supreme Court put a fine point on the issue by holding that a “forum State does not exceed its powers under the Due Process

Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.”¹¹

In determining whether a nonresident corporation has opened itself up to being brought into a state's courts, the question is whether they have availed themselves of the rights and duties of the particular state. Therefore, traditionally, the courts did not accept the fact that a product had found its way into a state as sufficient evidence of a personal availing of that state's rights and duties. That was the issue addressed by the Supreme Court in *Ford*.¹² Specifically, Ford conceded that it was reasonable to anticipate being haled into court in a state where the car was designed, manufactured, or sold, but not in a state where the vehicle ended up simply by happenstance; the “causation-only” approach.¹³

The Supreme Court rejected Ford's causation-only approach as too narrow, noting 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.”¹⁴ Rather, the relationship must “arise out of or relate to the defendant's contacts with the forum.”¹⁵ Therefore, while the front half of the standard asks about causation, “the back half . . . contemplates that some relationships will support jurisdiction without a causal showing.”¹⁶ The Supreme Court found that a manufacturer like an automaker has clear notice that it will be subject to the jurisdiction of any state's court where the product malfunctions, regardless of where it was sold.¹⁷ Finally, the Supreme Court noted that under principals of interstate federalism, “[s]tates have significant interests at stake—‘providing [their] residents with a convenient forum for redressing injuries inflicted by out-of-state actors,’ as well as enforcing their own safety regulations.”¹⁸

The Texas Supreme Court applies *Ford*

Directly on the heels of the U.S. Supreme Court's decision in *Ford*, the Texas Supreme Court applied the holding of *Ford* to its decision in *Luciano*. In *Luciano*, the foreign defendant, a Connecticut company, had no presence in Texas other than the fact that its product, a spray foam applied during building construction, was used by builders in the state. The company did not manufacture, sell, or advertise its products in Texas, and the product in question came from a Colorado third-party logistics company.¹⁹

In *Luciano*, the Texas Supreme Court noted that, as in the federal courts, the touchstone inquiry was whether the company had purposefully availed itself of the benefits, advantages, or

profits of doing business in the state.²⁰ But rather than asking whether a company whose products are sold nationally has intentionally turned its eye toward Texas, the court found that “a nonresident defendant may ‘purposefully avoid’ a particular jurisdiction ‘by structuring its transactions so as to neither profit from the forum’s laws nor be subject to its jurisdiction.’”²¹ Moreover, “a truly interstate business may not shield itself from suit by a careful, but formalistic structuring of its business dealings.”²² Therefore, “a nonresident who places products into the ‘stream of commerce’ with the expectation that they will be sold in the forum state is subject to the forum’s jurisdiction.”²³

The *Luciano* court did touch on one aspect of the “stream of commerce” analysis in Texas that the *Ford* court did not disturb. In some states, Texas included, the courts have recognized a “stream-of-commerce-plus” test for specific jurisdiction, whereby the requirement for exercising jurisdiction is not only that the defendant has an expectation that the goods would be purchased in Texas, but, in addition, that the defendant has specifically targeted Texas.²⁴

The Eastern District extends *Ford* to foreign manufactures

In *In re Toyota*, the manufacturing defendant was Toyota Motor Corporation, or TMC. TMC is a Japanese corporation that designs, tests, and manufactures vehicles for foreign markets, including the United States, but does not place those vehicles into the stream of commerce. TMC argued that because it retains no interest in the vehicles, it plays no part in the entry of its vehicles into the U.S. stream of commerce.²⁵ Therefore, TMC cannot be haled into a Texas court. The court disagreed.

As the *Toyota* court noted, “Justice Thomas made clear that ‘a defendant’s contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties.’”²⁶ “The reality is this: finding specific jurisdiction under the stream-of-commerce theory may very well be appropriate when a third party is involved in, but not directly responsible for, a product’s arrival in a particular forum.”²⁷ Therefore, “jurisdiction may attach both to manufacturers who supply their own delivery systems and to those that make use of the distribution systems of third parties.”²⁸ In 2021, the Dallas Court of Appeals made nearly the same statement, noting that “a manufacturer is subject to specific personal jurisdiction in Texas when it intentionally targets Texas as the marketplace for its products, and that using a distributor-intermediary for that purpose provides no haven from the jurisdiction of a Texas court.”²⁹

The *Toyota* court found TMC’s “purposeful availment” defense—that it had others handling marketing and sales in the U.S.—unavailing. In doing so, the court wrote, “[s]imply put, given its volitional actions that placed the Class Vehicles in Texas, TMC should have foreseen that its conduct would render them liable to suit here.”³⁰ In further relying on *Ford*, the court noted that TMC could have structured its conduct to lessen its exposure to the state of Texas, but it did not.³¹ “Therefore, TMC could reasonably anticipate that its geographically unlimited product flow would reach, among other states, Texas—one of the largest and most consumer-heavy states in the country—thereby subjecting TMC to the jurisdiction of Texas courts.”³²

Finally, the *Toyota* court found no difference between a U.S. corporation foreign to Texas and a corporation foreign to the U.S. While the court noted that courts must be mindful of foreign relation policies, “observation of this principle does not—and cannot—permit the abdication of the Court’s duty to exercise the judicial power.”³³

Conclusion

In the span of just over three months—March 5 to July 6, 2021—federal and Texas courts redefined and expanded the right of Texas courts to exercise jurisdiction over foreign manufacturers, giving notice that the failure to have a literal footprint in Texas will not insulate a company from injuries and damages incurred in the state. **TBJ**

NOTES

- 141 S. Ct. 1017 (2021).
- 625 S.W.3d 1 (Tex. 2021).
- 2021 U.S. Dist. LEXIS 124918 (E.D. Tex. 2021).
- Luciano*, 625 S.W.3d at 7-8.
- Id.* at 8 (“The Texas long-arm statute broadly permits jurisdiction over a nonresident doing ‘business in this state’ if the nonresident ‘commits a tort in whole or in part in this state.’”) (citing Tex. Civ. Prac. & Rem. Code § 17.042(2)).
- Ford*, 141 S.Ct. at 1024 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011)). A court has general personal jurisdiction if the nonresident corporation is either incorporated or maintains its principal place of business in the forum state.
- 326 U.S. 310 (1945).
- 444 U.S. 286, 297 (1980).
- 471 U.S. 462, 473 (1985).
- See supra note 7 at 158.
- See supra note 8 at 297-98.
- In *Ford*, the Supreme Court considered and ruled on two separate cases, one arising in Montana (*Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 2019 MT 115, 395 Mont. 478, 443 P.3d 407 (2019)), and one arising in Minnesota (*Bandemer v. Ford Motor Co.*, 931 N.W.2d 744 (Minn. 2019)). For ease of reading, plaintiffs refer to the parties and the vehicle in each case in the singular.
- Ford*, 141 S.Ct. at 1023.
- Id.* at 1026.
- Id.* (emphasis in original text).
- Id.*
- Id.* at 1030 (citing *WW Volkswagen*, 444 U.S. at 297).
- Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)).
- Luciano*, 625 S.W.3d at 7.
- Id.* at 8 (citing *Spir Star AG v. Kimich*, 310 S.W.3d 868, 873 (Tex. 2010)).
- Id.* at 9 (quoting *Michiana Easy Livin’ Country, Inc. v. Holten*, 168 S.W.3d 777, 785 (Tex. 2005) (in turn, citing *Burger King*, 471 U.S. at 473)).
- Id.* (quoting *Siskind v. Villa Found. for Educ., Inc.*, 642 S.W.2d 434, 437 (Tex. 1982)).
- Id.* at 11 (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 576-77 (Tex. 2007) (in turn, quoting *WW Volkswagen*, 444 U.S. at 297-98)).
- Id.* at 13, cf. *Zoch v. Magna Seating (Germany) GmbH*, 810 F. App’x 285, 293, n.8 (5th Cir. 2020) (“stream-of-commerce-plus” does not apply in the federal Fifth Circuit).
- In re Toyota*, 2021 U.S. Dist. LEXIS 124918, at *17, 20.
- Id.* at *20-21 (emphasis in original text) (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)).
- Id.* at *21.
- Id.* at *22 (quoting *Luv n’ Care, Ltd. v. Insta-Mix, Inc.*, 438 F.3d 465, 471 (5th Cir. 2006)).
- Careington Int’l Corp. v. First Call Telemedicine, LLC*, 2021 Tex. App. LEXIS 3383, at *8 (Tex. App.—Dallas 2021, no pet.) (citing *Spir Star*, 310 S.W.3d at 871).
- See supra note 25 at 33.
- Id.* at *31 (citing *Ford*, 141 S.Ct., at 2025).
- Id.*
- Id.* at *44-45.



LORIN M. SUBAR,

celebrating his 35th year as a lawyer, is appellate counsel for the Tracy Law Firm in Dallas, a firm focused on auto safety litigation. When not researching and writing, he is baking breads, cakes, and pastries for friends, family, and the firm.