

Update: Specific Personal Jurisdiction at the U.S. Supreme Court and the N.C. Court of Appeals

Personal jurisdiction, as the name implies, refers to the authority of a court over a particular person. In order for a court to have authority over someone in a civil case, three things must exist: (1) effective service of process, (2) a statute allowing the exercise of personal jurisdiction in the case (G.S. 1-75.4, North Carolina's long-arm statute, is the relevant statute in our state), and (3) compliance with the due process clause of the federal constitution.

Questions relating to personal jurisdiction normally arise when a defendant files a motion to dismiss for lack of personal jurisdiction. This is because a defendant waives her right to contest personal jurisdiction if she does not appropriately raise the defense pursuant to Rule of Civil Procedure 12(h)(1). Once a defendant raises a personal jurisdiction defense, the plaintiff must prove personal jurisdiction exists. In cases of default, G.S. 1-75.11 also requires the plaintiff prove personal jurisdiction exists before a default judgment can be entered.

This post summarizes two recent opinions dealing with the third prong of the personal jurisdiction analysis—what are the limits imposed on personal jurisdiction by the due process clause of the federal constitution? A September 7, 2021 decision by the North Carolina Court of Appeals, [Cohen v. Continental Motors International, Inc.](#), applies the U.S. Supreme Court's recent decision regarding specific personal jurisdiction, [Ford Motor Co. v. Montana Eighth Judicial Court](#), issued March 25, 2021. Both opinions involve motions to dismiss challenging the court's exercise of personal jurisdiction over the defendant as violating principles of due process.

Broadly speaking, federal due process requires what is known as "minimum contacts" between the defendant and the forum state—enough contacts to make it fair to require that person to appear and defend against a lawsuit in that state. For example, requiring a person who has never had any contact with the state of North Carolina to appear and defend against a lawsuit in this state would "offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quotation omitted).

Sometimes a defendant has such a high level of contacts with a forum state that they are subject to what is known as general personal jurisdiction, where the defendant is considered "at home" in that state and can be hailed into court there as a general matter without offending due process. General personal jurisdiction is not at issue in either *Ford* or *Cohen*. These cases instead consider the question of *specific* personal jurisdiction, a narrower type of personal jurisdiction that requires less in terms of the defendant's contacts with the forum state, but a closer affiliation between the state and the case in question.

Ford Motor Co. v. Montana Eighth Judicial Court

Once a question has been raised as to whether specific personal jurisdiction exists, a court must decide if: (1) the defendant “purposefully avail[ed]” herself “of the privilege of conducting activities within the forum State;” and (2) the claims brought by the plaintiff “arise out of or relate to the defendant’s contacts with the forum.” *Ford Motor Co. v. Montana Eighth Judicial Court*, 141 S. Ct. 1017, 1019 (2021) (quotations omitted).

Ford concerns a set of claims arising from accidents involving Ford automobiles in Montana and Minnesota. The exact Ford automobiles involved in the accidents were not designed, manufactured, or sold by Ford in the forum states. Instead, the vehicles made their way into those states (and into the plaintiffs’ possession) solely through the acts of third parties.

In *Ford*, the second portion of the specific personal jurisdiction test was in contention: does “arise out of or relate to” require a *causal* relationship between the defendant’s actions and the plaintiff’s claims? For example, a causal relationship between Ford’s activities and the plaintiffs’ claims would clearly exist if the accidents could be traced back to Ford selling the specific automobiles involved in Montana and Minnesota. The *Ford* opinion plainly answers the question of whether a causal relationship of this type is required: No. To understand what that implies, let’s delve a bit into Ford’s argument that a causal relationship is required.

Ford argued the courts of Montana and Minnesota did not have the power to exercise personal jurisdiction over the company. Ford conceded it had “purposefully avail[ed] itself of the privilege of conducting activities within” Montana and Minnesota—a reasonable concession given Ford’s extensive activities in those two states, which included advertising, selling, and servicing in the forum states the same type of vehicles as those involved in the accidents. But, Ford argued, the plaintiffs’ claims did not “arise out of or relate to” any of those activities, as there was no causal connection between Ford’s activities in the forum states and the claims. The accidents at issue could not be said to have arisen out of any action on Ford’s part in the forum states.

This argument did not prevail. The *Ford* opinion firmly rejects the requirement for a causal showing. Instead, the U.S. Supreme Court explains, the phrase “relate to” implies an additional type of relationship different than “arise out of,” which does imply causation. Although, the Supreme Court cautions, the phrase “relate to” still “incorporates real limits.” *Ford Motor Co.*, 141 S. Ct. at 1026. There must be “an affiliation between the forum and the underlying controversy,” that is, an “activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Id.* at 1025. In *Ford*, the Supreme Court finds the fact that the accidents occurred in the forum states and injured forum residents, combined with Ford’s activities in the forum states, is enough to satisfy the requirements of due process. There is no need for a causal link between Ford’s activities in the forum states and the accidents at issue where “Ford [] systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States,” a scenario the Supreme Court terms “an illustration—even a paradigm example—of how specific jurisdiction works.” *Id.* at 1028.

The North Carolina Court of Appeals recently had the opportunity to explore this newest refinement on the test for specific personal jurisdiction when it confronted a very similar situation to that in *Ford*.

Cohen v. Continental Motors International, Inc.

In *Cohen*, a couple was killed in a plane crash involving a potentially faulty starter adapter. The starter adapter at issue in the crash was originally manufactured by defendant, Continental Motors International, Inc. (“CMI”), but was not manufactured or sold by CMI in North Carolina. Instead, the part was overhauled by, made its way to North Carolina because of, and was installed in the plane by other actors. Just as in *Ford*, there was no causal link between the defendant’s activities in North Carolina and the plaintiff’s claims.

The Court of Appeals first concludes that CMI purposefully availed itself of the privilege of conducting activities in North Carolina because it: (i) made 2,948 sales of component parts through a distributor in NC totaling \$3,933,480.65; and (ii) provided maintenance support regarding CMI parts to NC companies—including the company that installed the starter adapter at issue in this case—through an interactive website with fourteen paid NC subscribers.

Next, the Court of Appeals assesses the same question presented in *Ford*: whether the claims brought “relate to” CMI’s contacts with North Carolina. Here, (i) the CMI starter adapter at issue was installed in North Carolina and (ii) the plane crash occurred in North Carolina, killing two North Carolina residents. Applying *Ford*, the Court of Appeals finds these occurrences provide the necessary “affiliation” between North Carolina and “the underlying controversy” to subject CMI to the jurisdiction of the North Carolina courts where CMI has “extensively serv[ed] the state market.” *Cohen v. Cont’l Motors, Inc.*, 2021-NCCOA-449, ¶ 26, ¶ 31 (quoting *Ford Motor Co.*, 141 S. Ct. at 1025, 1028).

In *Cohen*, the facts of the case make the application of *Ford* relatively straightforward. The full implications of the U.S. Supreme Court’s latest gloss on specific personal jurisdiction, however, remain to be seen.