STATE OF MINNESOTA
IN SUPREME COURT
A17-1182

Adam Bandemer,

Respondent,

vs.

Ford Motor Company,

Appellant

Eric Hanson, et al.,

Defendants.

BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANT

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LEGAL ISSUE ADDRESSED

I. May Minnesota courts exercise specific personal jurisdiction over an out-of-state business whose only suit-related conduct occurred outside Minnesota, resting the exercise of specific personal jurisdiction on the fact that the business advertised its general product line in Minnesota?

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INTRODUCTION[1]

The U.S. Supreme Court has repeatedly made clear that the appropriate test for determining whether a state court may exercise specific personal jurisdiction over an out-of-state defendant consistent with due process is whether the defendant's in-state conduct "give[s] rise to the liabilities sued on." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945). But the Court of Appeals here allowed respondent to maintain a lawsuit against Ford in Minnesota even though *all* of the conduct that gave rise to his claims occurred outside the state. That holding flatly conflicts with the U.S. Supreme Court's recent decisions explaining the limitations on specific personal jurisdiction, including *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017). This Court should reverse that manifest error of law.

The approach to specific jurisdiction reflected in the decision below is not only barred by U.S. Supreme Court precedent—it also poses a threat of serious practical harms to this state and its residents. Out-of-state businesses may be loath to invest in Minnesota, or do business here, if

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[1] Pursuant to Minn. R. Civ. App. P. 129.03, *amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amicus*, its members, and its counsel made any monetary contribution to the preparation or submission of the brief.

they could thereby become subject to specific jurisdiction for claims that have nothing to do with the company's in-state business activities. That would reduce economic opportunities for the people of Minnesota. Reversal of the Court of Appeals' decision approving of the overbroad exercise of personal jurisdiction here is thus warranted as a matter of both settled doctrine and sound policy.

ARGUMENT

I. The Court Of Appeals' Decision Conflicts With Binding U.S. Supreme Court Precedent.

The decision below conflicts with several decisions of the U.S. Supreme Court interpreting the limitations on personal jurisdiction established by the Due Process Clause of the Fourteenth Amendment. The Supreme Court has held—in no uncertain terms—that specific jurisdiction is permissible only where the claims in the lawsuit are themselves *directly connected* to the defendant's in-forum conduct. The lower court's approach simply cannot be squared with these decisions.

Indeed, the U.S. Supreme Court has long required a connection between the plaintiff's claims and the defendant's in-state activities for specific jurisdiction, reaching back to *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which first defined the "minimum contacts" approach to specific jurisdiction that is still in force today. Explaining why specific jurisdiction arising from such contacts can satisfy the due process limitations on personal jurisdiction, the Supreme Court observed that when "a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state." 326 U.S. at 319. "The exercise of that privilege," the Court reasoned, "may give rise to

obligations; and, so far as those obligations *arise out of or are connected with the activities* within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Id.* (emphasis added).

The Court went on to conclude that Washington's exercise of specific jurisdiction over the defendant was permissible because the defendant had engaged in activities within the state and "[t]he obligation which is here sued upon arose out of *those very activities*," making it "reasonable and just * * * to permit the state to enforce *the obligations which [the defendant] ha[d] incurred there*." *Id.* at 320 (emphases added).

The *International Shoe* framework thus rests on the principle that due process permits a State to subject an out-of-state defendant to the jurisdiction of the State's courts *only* with respect to claims that arise out of "the very activities" that the defendant engaged in within that state. That principle necessarily forbids state courts from exercising specific jurisdiction with respect to claims that do *not* arise out of in-state activities or obligations.

The U.S. Supreme Court's recent decisions have reaffirmed the requirement of a direct connection between a plaintiff's claims and the defendant's in-state conduct. In *J. McIntyre Machinery, Ltd. v. Nicastro*, for example, the plurality opinion contrasted specific jurisdiction with general jurisdiction, which allows a state "to resolve both matters that originate within the State and those based on activities and events elsewhere." 564 U.S. 873, 881 (2011) (plurality opinion). Specific jurisdiction, the plurality explained, involves a "more limited form of submission to a State's authority," whereby the defendant subjects itself "to the judicial power of an otherwise foreign sovereign *to the extent that power is exercised in connection with the defendant's activities touching on the State.*" *Id.* (emphasis added).

Then, in a pair of decisions outlining the limitations on general (or all-purpose) personal jurisdiction, the U.S. Supreme Court reiterated the very different role played by specific personal jurisdiction. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Court explained that specific jurisdiction "depends on an affiliation between the forum and the underlying controversy, principally, *activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation*." 564 U.S. 915, 919 (2011) (emphasis added; brackets and internal quotation marks omitted). Thus, specific jurisdiction exists only where a defendant engages in continuous activity in the state "and *that activity gave rise to the episode-in-suit*," *id.* at 923, or where the defendant commits "'single or occasional acts' in a State [that are] sufficient to render [it] answerable in that State with respect to those acts, *though not with respect to matters unrelated to the forum connections*." *Id.* (emphasis added) (quoting *Int'l Shoe*, 326 U.S. at 318).

Similarly, in *Daimler AG v. Bauman*, the U.S. Supreme Court reaffirmed that specific jurisdiction is available only where the defendant's in-state activities "g[i]ve rise to the liabilities sued on," or where the suit "relat[es] to that in-state activity." 571 U.S. 117, 126-27 (2014) (internal quotation marks omitted).

Finally, in last year's decision in *Bristol-Myers Squibb Co. v. Superior Court of California* ("*BMS*"), the U.S. Supreme Court made it unmistakably clear that a court may not exercise specific jurisdiction unless the defendant has itself engaged in in-state activity that gives rise to the particular plaintiff's own claims. The plaintiffs in *BMS* included both California and non-California residents who sued a drug company in California on product liability claims. The Court held that the out-of-state plaintiffs could not invoke specific

jurisdiction, because "all the conduct giving rise to [their] claims occurred elsewhere." 137 S. Ct. 1773, 1782 (2017). The Court explained that specific jurisdiction requires a connection between the plaintiff's claims and the defendant's conduct in the forum and that, "*[w]hen there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State.*" *Id.* at 1781 (emphasis added).

In short, the U.S. Supreme Court has repeatedly held that specific jurisdiction is available *only* for claims that relate directly to a defendant's in-state activities. A state cannot exercise specific jurisdiction with respect to claims that do not directly relate to a defendant's forum contacts.

The decision below fails this test, and therefore violates the U.S. Supreme Court's precedents in this area. The car involved in the accident that is the subject of this lawsuit was not designed, made, sold, or serviced by Ford in Minnesota. Respondent's claims thus relate entirely to Ford's *out-of-state* conduct—and therefore fail to satisfy the constitutional requirement of a direct connection between the defendant's in-state activities and the claims in the lawsuit.

The lower court held that specific jurisdiction was proper because Ford *generally* markets its vehicles in Minnesota and "collected vehicle data from Minnesota drivers in its Minnesota driver service centers." *Bandemer v. Ford Motor Co.*, 913 N.W.2d 710, 715 (Minn. Ct. App. 2018). But Ford's marketing conduct in Minnesota had nothing to do with the claims in the lawsuit. Respondent's claims are product liability claims: he alleges that Ford was negligent in its manufacturing and design of the car in which he was injured and that Ford failed to warn consumers about the airbag system. Even if these claims arguably had some connection to

Ford's advertising—and they do not—the respondent did not (and likely could not) allege that advertising in Minnesota is relevant to *his own* claims. In short, Ford's in-state marketing did not give rise to respondent's claims in any way.

The same is true of Ford's purported collection of data from Minnesota drivers. For the reasons explained in Ford's brief, the Court of Appeals erred in relying on certain discovery responses to conclude that Ford had used Minnesota driver data in designing the airbags in the car in which respondent was injured. Ford Br. 23; *see BMS*, 137 S. Ct. at 1781 (fact that defendant "conducted research in California on matters unrelated" to plaintiff's claims did not support specific jurisdiction). But even if data from Minnesota *had* somehow been included in the design process for that particular vehicle's airbags, that circumstance by itself could not support specific jurisdiction. Large companies like Ford may gather data from many states—if not all of them—in order to inform the design process for new products. Subjecting them to "specific" jurisdiction in each one of those states would effectively create a new form of general jurisdiction, undermining decisions like *Daimler* that hold that general jurisdiction should be limited to the fora in which a defendant is truly at home. *See, e.g.*, *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014) (noting that finding specific jurisdiction over a company based on contacts that exist in every state "would violate the principles on which *Walden [v. Fiore*, 571 U.S. 277 (2014),] and *Daimler* rest").

In short, the in-state activities of Ford upon which the Court of Appeals relied lacked a connection to the respondent's claims, and thus do not permit Minnesota courts to exercise specific personal jurisdiction over those claims. If the activities cited by the Court of Appeals were sufficient, then any plaintiff who purchased a car anywhere in the country could sue in

Minnesota or any other state where Ford advertises and collects data. But that is not how the Due Process Clause works. The U.S. Supreme Court's decisions all hold that a defendant's in-state conduct must be *directly* related to a plaintiff's claims, in that the particular conduct "giving rise" to those claims occurred in the state. *See, e.g.*, *BMS*, 137 S. Ct. at 1782; *see also, e.g.*, *Goodyear*, 564 U.S. at 923. The decision below should therefore be reversed.

II. The Approach to Specific Jurisdiction Adopted Below Would Have Serious and Harmful Consequences.

Reversal is also warranted because the Court of Appeals' decision (if allowed to stand) will have negative practical consequences for the citizens and economy of Minnesota. An approach to specific jurisdiction that does not require a direct connection between the plaintiffs' claim and the defendant's particular in-state activity will make it less attractive for out-of-state corporations to do business in Minnesota, thereby threatening investment here. For this reason, the decision below threatens to impose serious costs on the state and its citizens.

The U.S. Supreme Court has observed that due process limits on personal jurisdiction confer "'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.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). As Justice Ginsburg has explained, a corporation's place of incorporation and principal place of business—the jurisdictions in which a corporation is subject to general jurisdiction—"have the virtue of being unique." *Daimler*, 571 U.S. at 137. "[T]hat is, each ordinarily indicates only one place"—a forum that is "easily ascertainable." *Id.* *Daimler*'s rule thus allows corporations to

anticipate that they will be subject to general jurisdiction in only a few (usually one or two) well-defined jurisdictions. Such "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (explaining benefits of clear jurisdictional rules in the context of the diversity jurisdiction statute).

The approach to specific jurisdiction embodied in the decision below undermines that predictability, making it impossible for corporations to structure their affairs to limit the number of jurisdictions in which they can be sued on any claim by any plaintiff residing anywhere. Many corporations advertise their products in a large number of states—if not all of them. If merely advertising products in a forum were deemed sufficient to give rise to specific jurisdiction on any claim related to those products—even products sold *outside* the state—a corporation could be sued throughout the country regardless of whether the company's in-state activity had any connection to a particular claim. The respondent here, for example, could on that theory sue in California, Alaska, Missouri, or Texas. Yet "[s]uch exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants" to structure their affairs to provide some assurances about where they could be sued. *Daimler*, 571 U.S. at 139.

Under the reasoning of the court below, a company could face litigation in Minnesota courts over any claim relating to conduct anywhere in the nation—irrespective of whether it has any connection to the company's activities in this state. Any rational business would have little choice but to weigh carefully the benefits of investing in Minnesota in light of the substantial risk of being sued here on claims that have nothing to do with its in-state conduct. That risk will likely result in the movement of jobs and capital investment away from Minnesota and an aversion to future investment in the state. *Cf*, *e.g.*, *Genuine Parts Co. v. Cepec*, 137 A.3d 123,

142 (Del. 2016) (declining to subject out-of-state corporations to *general* jurisdiction based on their registration to do business because "[o]ur citizens benefit from having foreign corporations offer their goods and services here. If the cost of doing so is that those foreign corporations will be subject to general jurisdiction in Delaware, they rightly may choose not to do so.").

There are no countervailing benefits to Minnesota from imposing these significant costs on the state's economy. If a nonresident corporation creates meaningful contacts with Minnesota and its in-state conduct is alleged to harm a Minnesota resident, it likely can be sued in Minnesota on a specific jurisdiction theory. *See, e.g.*, *Walden*, 571 U.S. at 284. The broader approach taken by the Court of Appeals is therefore not necessary to ensure that companies that conduct business in Minnesota may be held accountable for their conduct *in Minnesota*. Rather, it serves only to consume the resources of the courts of this state in deciding disputes that—like this case—have only random or "fortuitous" connections to Minnesota. *World-Wide Volkswagen*, 444 U.S. at 295.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be reversed.

Respectfully submitted,

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CERTIFICATION OF LENGTH OF DOCUMENT

I hereby certify that this Brief conforms to the requirements of Minnesota Rule of Civil Appellate Procedure 132 and other applicable rules and was prepared using Microsoft Word 2007 and with a proportional 13 point font. The length of this Brief is 2,565 words, exclusive of the table of contents and table of authorities.

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