

**FILED**

**NO. A17-1182**

September 25, 2018

State of Minnesota  
In Supreme Court

**OFFICE OF  
APPELLATE COURTS**

Adam Bandemer,  
*Respondent,*

vs.

Ford Motor Company,  
*Appellant,*  
Eric Hanson, et al.,  
*Defendants.*

**BRIEF OF RESPONDENT  
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## STATEMENT OF THE ISSUES

1. Is Ford subject to specific jurisdiction when Ford engaged in activities directed towards Minnesota which bear relation to the events of Bandemer's claim?

Suggested answer:

Yes, the exercise of jurisdiction comports with due process because Ford's contacts with the forum makes lawsuits in Minnesota related to those type of contacts reasonably foreseeable.

Apposite Authority:

- *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321 (Minn. 2016)
- *Butler v. JLA Indus. Equipment, Inc.*, 845 N.W.2d 834 (Minn. App. 2014)
- *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017)
- *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 104 S.Ct. 1868 (1984)

## STATEMENT OF THE CASE

Minnesota resident Adam Bandemer commenced this suit against Ford Motor Company ("Ford") and Eric and Greg Hanson in the Hennepin County district court in September 2016.<sup>1</sup> Plaintiff alleged he was a passenger in a Ford Crown Victoria which had been defectively designed, manufactured, and marketed. Plaintiff asserted

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<sup>1</sup> See Doc. 2.

strict-liability, negligence, and breach-of-warranty claims against Ford relating to defects with the vehicle's airbag system.<sup>2</sup> Plaintiff also asserted negligence and negligent entrustment claims against Minnesota residents Eric and Greg Hanson. Ford transferred the suit to the Todd County district court.<sup>3</sup>

Ford then moved to dismiss Bandemer's claims for lack of personal jurisdiction.<sup>4</sup> In conducting jurisdictional discovery, Bandemer confirmed extensive contacts and activities in Minnesota which either gave rise to his claims or were related to his claims. Bandemer confirmed that Ford placed the vehicle in the stream of commerce with the expectation that it may be used in Minnesota, and took affirmative steps towards providing permanent channels for vehicle service and advice to Minnesota users of Ford vehicles, new and used.<sup>5</sup> Ford also conducted extensive marketing in the forum, making safety assurances to Minnesota motorists.<sup>6</sup> Ford also collected and analyzed vehicle data from Minnesota drivers in Minnesota service centers as part of its design development process, meaning that the defective design of the subject vehicle resulted in part from Ford's activities in the forum.<sup>7</sup> Finally, Ford admitted that it had registered to do business under Minnesota Statutes § 303.

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<sup>2</sup> *Id.* at 4-6.

<sup>3</sup> *See* Doc. 1

<sup>4</sup> *See* Doc. 36.

<sup>5</sup> *See* Doc. 46; 47.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

Based on these facts, the district court (Hon. Douglas P. Anderson) denied Ford's Motion to Dismiss on May 25, 2017, holding that Ford consented to general jurisdiction in Minnesota by registering to do business in the State and appointing an agent for service of process.<sup>8</sup> The district court also noted that Ford was alternatively subject to specific jurisdiction on Bandemer's claims because of its related activities in the forum.<sup>9</sup>

Ford's appeal followed.<sup>10</sup> The Court of Appeals affirmed the district court's decision holding that specific jurisdiction over Ford was proper because Ford's marketing activities were not "random, fortuitous, or attenuated" but rather constituted "intertwined" contacts with both Minnesota residents and the state of Minnesota. As such, Ford established a "substantial connection between the defendant, the forum, and the litigation, such that it purposefully availed itself of the forum and reasonably anticipated being haled into court" in Minnesota. The Court of Appeals held that Bandemer met its burden by making a *prima facie* showing that Ford's marketing activities are sufficiently related to the cause of action to survive Ford's motion to dismiss.

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<sup>8</sup> See Ford Add. 1, 5-7.

<sup>9</sup> *Id.* at 7-8.

<sup>10</sup> See Doc. 85, 90.

## ARGUMENT

### **I. Ford Targeted Minnesotans, Manifesting an Intention to Submit to Minnesota Courts.**

Even ignoring its consent to general jurisdiction, the district court recognized that it could exercise specific jurisdiction over Ford Motor Company due to its activities in Minnesota targeting Minnesotans. To determine whether the due process requirement for specific personal jurisdiction is met, a court considers:

- (1) whether the defendant purposefully directed its activities at residents of the forum state,
- (2) whether the claim arises out of or relates to the defendant's activities with the forum state, and
- (3) whether assertion of personal jurisdiction is reasonable and fair.

*Sorna Corporation v. PACS–Exchange, LLC*, 2016 WL 6090718, at \*2 (D.Minn. 2016). In order to satisfy specific jurisdiction, a plaintiff does not need to show extensive, numerous contacts with the forum. In fact, “specific jurisdiction may arise from even a single contact with the forum.” *Marine Innovations Warranty Corp. v. American Marine Holdings, Inc.*, 2004 WL 234398, at \*3 (D.Minn. 2004).

Bandemer’s lawsuit is based on the design, marketing, and sale of a defective Ford vehicle. Ford has engaged in related activities in Minnesota on a continuous and systematic basis. For example, Ford admitted in its jurisdictional discovery responses that it sold approximately 2,100 Ford Crown Victoria vehicles in

Minnesota during the 1994 model year, the same model year that Bandemer alleges is defective in this lawsuit.<sup>11</sup> Ford admitted that from 2013-2015, it sold 200,000 vehicles in Minnesota.<sup>12</sup> Ford objected to providing an answer regarding its total sales in dollars in Minnesota during those years, but even assuming a conservative average value of \$10,000 per vehicle, Ford is responsible for at least \$2 billion in vehicles sales in Minnesota solely from 2013-2015.

As stated recently by the Minnesota Court of Appeals, “Flow of a manufacturer’s products into the forum...may bolster an affiliation germane to specific jurisdiction.” *Butler v. JLA Indus. Equipment, Inc.*, 845 N.W.2d 834, 840 (Minn.App. 2014). The “stream of commerce theory refers to the movement of goods from manufacturers through distributors to consumers.” *Id.*, citing *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S.Ct. 2780, 2788 (2011). In discussing the stream of commerce theory, the Minnesota Court of Appeals explained the position of the U.S. Supreme Court:

First, the stream-of-commerce theory is still a viable framework for analyzing whether a nonresident defendant may be subject to suit in a forum for tort claims relating to the use of its products by resident plaintiffs. A purposeful availment of the benefits and laws of a forum by a nonresident may be shown by the regular flow and course of sales of a nonresident defendant’s products in the forum. Second, a majority of the justices once again rejected Justice O’Connor’s approach to analyzing

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<sup>11</sup> See Bandemer Add., at Interrogatory No. 2.

<sup>12</sup> *Id.* at Interrogatory No. 1.

minimum contacts under the stream-of-commerce theory. Third, a forum may not exercise personal jurisdiction over a nonresident defendant without direct contacts with the forum when the evidence suggests that only one or a few isolated sales of defendant's product are made to the forum by a distributor. Fourth, mere foreseeability by the nonresident defendants that its products might end up in the forum is not enough to establish personal jurisdiction. And fifth, personal jurisdiction is only proper if maintaining the suit does not offend traditional notions of fairness and substantial justice.

*Butler*, 845 N.W.2d at 846.

*Butler* involved a jurisdictional complaint by SMI, an Israeli manufacturer of hydraulic hoses. SMI sold hoses to an Iowa corporation that used the hoses in a medical product which eventually found its way to a Minnesota hospital. SMI had "no written distribution contracts, agreements, or licensing arrangements with U.S. manufacturers or distributors." *Id.* at 838. However, the *Butler* court upheld specific jurisdiction based on the stream of commerce theory.

The *Butler* court noted "a regular flow of sales of SMI's product to customers in Minnesota." *Id.* at 846. Concerning the necessary threshold for quantity of sales, the *Butler* court pointed out that "in *Rostad*, the supreme court only noted that On-Deck had 'sold thousands of its bat weights' in Minnesota." *Id.*, at 847, *citing Rostad v. On-Deck, Inc.*, 372 N.W.2d 717 (Minn. 1985). Under any analysis, Ford's sale of nearly \$2 billion in vehicles in the last few years constitutes a regular flow of significant sales. The court in *Butler* also wrote that:

We also note that there is “quite a bit more” contact between SMI and Minnesota than just the flow of SMI products into the state: SMI marketed to the entire United States (including Minnesota), knew that its product would be sold to Minnesota customers, did not limit the territory in which its product could be sold, and encouraged sales of its products throughout the United States.

*Id.* at 847. All of these facts can be said of Ford as well. Just as the court found in *Butler*, “[t]his is not a case where personal jurisdiction is based on the possibility that a nonresident defendant’s products might fortuitously end up in Minnesota; rather, the substantial flow and course of sales to customers in Minnesota indicates that [defendant] targeted Minnesota and purposefully availed itself of the benefits and protections of this state.” *Id.* at 848. As explained by the Supreme Court, a “defendant’s transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum.” *J. McIntyre Machinery, Ltd.*, 564 U.S. at 882. An intentional targeting of the forum “manifest[s] an intention to submit to the power of a sovereign.” *Id.*

Ford itself lost the same jurisdictional argument regarding the stream of commerce doctrine in December of 2016 in Oklahoma federal court. That case, *Tarver v. Ford*, also involved a vehicle that had been built and sold outside the forum which came to be owned by a forum resident. The Oklahoma court explained why the stream of commerce doctrine defeated Ford’s jurisdictional complaint:

Here, it is indisputable that Ford delivered its vehicles into the “stream of commerce” with the expectation that they

would be purchased by consumers in Oklahoma. The pivotal question is whether Ford engaged in any “additional conduct” such that it could be said to have purposefully availed itself of the privilege of conducting business in Oklahoma. The Court holds that Ford did engage in such activity under the test enunciated in *Asahi*. First, Ford designs and manufactures its vehicles for the U.S. market, which includes Oklahoma. Second, it is undisputed that Ford vehicles, including the F-150, are the subject of a nationwide advertising campaign and that Ford specifically advertises its vehicles on a continuous basis in Oklahoma. Moreover, Ford maintains numerous dealerships throughout Oklahoma; Ford, in conjunction with these dealerships, establishes channels for providing regular advice, service, and product information to Oklahoma customers.

*Tarver v. Ford Motor Company*, 2016 WL 7077045, at \*5 (W.D.Okla., Dec. 5, 2016). The federal court in *Tarver* also explained why it was not relevant that the plaintiff’s specific vehicle involved in the accident was not assembled or sold in the forum state:

The Court finds unavailing Ford's argument that personal jurisdiction does not exist because the subject vehicle was assembled in Kansas City, Missouri and later sold to an independent dealership in Indiana. The pivotal inquiry under the stream of commerce theory is whether a defendant has attempted to serve a market and expects its product to be used there. Irrespective of the state of assembly, Ford designs, manufactures, markets, and sells products specifically built for interstate travel, which includes Oklahoma. Ford manufactured and sold the subject vehicle with the reasonable expectation it would be used in Oklahoma and this action arises from the vehicle's use in Oklahoma.

*Id.* at \*5. The same result was also reached when the West Virginia Supreme Court decided against Ford on this issue in May of 2016. The court noted that “the focus in a stream of commerce or stream of commerce plus analysis is not the discrete individual sale, but, rather, the development of a market for products in a forum.” *State ex rel. Ford Motor Co. v. McGraw*, 788 S.E.2d 319, 343 (W.Va. 2016).

Ford’s objections were also rejected in August 2017 opinion from a Pennsylvania federal court which examined Ford’s targeting of the state. The court explained that under either the O’Connor or the Brennan standard, Ford is subject to specific jurisdiction under the same facts presented here:

Defendant argues that this Court does not have personal jurisdiction over it because the particular 2005 Ford Explorer at issue in this case was not purchased in Pennsylvania. This fact, however, is unimportant under *Pennzoil*. In *Pennzoil*, Colelli sold its product in Ohio and that product was eventually resold as part of another product to a company in Pennsylvania. Here, the particular vehicle was sold to a New York dealership, and eventually resold to a Pennsylvania resident. Although the claim must still relate to a defendant’s contacts with the forum state for a court to exercise personal jurisdiction over that defendant under a stream of commerce theory, the defendant does not have to put the product directly into the forum state...

With respect to the stream of commerce analysis advocated by Justice O’Connor, Plaintiff has pleaded that Defendant advertises its products in Pennsylvania, and that Defendant trains and certifies mechanics to repair its products in Pennsylvania. Thus, Defendant’s placement of the 2005 Ford Explorer into the stream of commerce was accompanied by “advertising in the forum State, [and]

establishing channels for providing regular advice to customers in the forum State.” *Asahi Metal Indus. Co.*, 480 U.S. at 112. With respect to Justice Brennan's test, Plaintiff has pleaded that Defendant benefits from the sale of its products in Pennsylvania. Further, Plaintiff alleges that Defendant derives a benefit from Pennsylvanians using Ford brand vehicles in Pennsylvania, regardless of where they were originally purchased.

*Antonini v. Ford Motor Company*, 2017 WL 3633287, at \*6 (M.D.Pa. 2017). The same facts are present in this case. Ford purposefully directed vehicle sales at Minnesota and surrounding areas, and it intended that vehicles would reach the Minnesota market, where it would provide channels for service and advice. Moreover, Ford collected data from these Minnesota drivers which it then used in its design process. It was reasonable for Ford to expect vehicles to be used in Minnesota because it intentionally targeted the state, and this lawsuit arises from the use of a vehicle in the state.

## **II. Bandemer’s Claims Arise out of or Relate to Ford’s Minnesota Marketing Activities.**

In August of 2016, this Court decided *Rilley v. MoneyMutual*, which discussed the application of specific jurisdiction with respect to advertising products in Minnesota. In *Rilley*, trial courts were instructed to examine the record for “purposeful direction of litigation-related conduct at Minnesota.” *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 332 (Minn. 2016). This Court emphasized that the conduct need not “give rise” to the cause of action. Independent conduct in

Minnesota can create specific jurisdiction so long as it is “related” to the type of conduct giving rise to a plaintiff’s lawsuit. *Id.* A claim “relates to” a defendant’s forum conduct if it has a “connect[ion] with” that conduct. *Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 319 (1945).

In *Rilley*, the plaintiffs alleged that the defendant had contacts with Minnesota in the form of Google advertisements, but the defendant argued those contacts were irrelevant because none of the plaintiffs “actually performed a Google search.” *Id.* at 336. This Court explained that the defendant’s argument “misconstrues the relatedness prong, under which the contacts must be *related* to the plaintiff’s cause of action *or* have given rise to it.” *Id.* at 336 (emphasis in original). In *Rilley*, the Google advertisements were “sufficiently related to the cause of action because they were a means by which [defendant] solicited Minnesotans to apply for the allegedly illegal loans.” *Id.* at 337. It did not matter that the advertisements did not give rise to the plaintiff’s lawsuit, and that the plaintiff never even saw those advertisements. The advertisements showed “a purposeful avilment of the Minnesota forum, [which] should have caused [defendant] to reasonably anticipate being haled into court in Minnesota” with regard to the sale of its product. *Id.* at 333.

Accordingly, the trial court could exercise specific jurisdiction if it found evidence that Ford’s “advertising campaign specifically targeted Minnesota.” *Id.* at 335. Nationwide advertisements and marketing efforts may suffice if there is

evidence that the “advertisements were directed at or tailored for any Minnesota markets.” *Id.* Moreover, “it is not necessary to rule out the targeting of other forums, in addition to Minnesota, in order to establish Minnesota’s personal jurisdiction over a particular defendant.” *Id.*

Ford’s discovery responses also show that it directed a substantial amount of its advertising effort directed specifically at Minnesota. Ford admitted that it sends “direct mail to consumers related to various Ford products and/or services, which may reach the Minnesota market.”<sup>13</sup> The Supreme Court held in *Rilley* that while the relevance of e-mails to jurisdiction is questionable, “[m]ail and telephone communications sent by the defendant into the forum may count toward the minimum contacts that support jurisdiction.” *Id.* at 330. Unlike e-mail, the sender of direct mail will “know the geographic destination of the message.” *Id.* In jurisdictional discovery, Bandemer asked how many pieces of mail that Ford sent to Minnesota residents from 2010 to the present, but Ford objected and refused to provide an answer.<sup>14</sup> Nonetheless, it is reasonable to assume that Ford has been marketing by mail to thousands if not millions of Minnesota residents. There is no requirement that advertisements reference a specifically designated vehicle model,

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<sup>13</sup> See Bandemer Add., at Request for Admission No. 1.

<sup>14</sup> *Id.* at Interrogatory No. 28.

so long as the advertisements solicited Minnesotans to purchase the vehicles being sold by Ford.

Ford also tailors its marketing specifically for the Minnesota market. Ford admits that it “provide[s] some creative content” for regional advertisements which are directed to Minnesota.<sup>15</sup> This targeting even extends into vehicle design. Ford admitted that it designed and built the “Northland Edition” F-150 as a regional product specifically directed at Minnesota, Iowa, Wisconsin, Nebraska, and the Dakotas.<sup>16</sup> Ford also conducts extensive marketing and public relations efforts directed specifically into Minnesota. Ford conducted its “Ford Experience Tour” in Minnesota in 2016.<sup>17</sup> Ford admitted that it sponsored “Ford Driving Skills for Life Free National Teen Driver Training Camp” in Minnesota.<sup>18</sup> Ford engaged in marketing efforts in a partnership with the Minnesota Vikings football team, including licensing the 1966 Ford Mustang to build a model car for the Minnesota Vikings.<sup>19</sup> Between 2000 and the present, Ford also engaged in marketing through sponsorship of athletic and racing events in Minnesota.<sup>20</sup> All of these activities are designed to induce Minnesotans to purchase Ford vehicles based on their alleged

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<sup>15</sup> *Id.* at Interrogatory No. 17.

<sup>16</sup> *Id.* at Request for Admission No. 42.

<sup>17</sup> *Id.* at Request for Admission No. 6.

<sup>18</sup> *Id.* at Request for Admission No. 10.

<sup>19</sup> *Id.* at Request for Admission No. 7.

<sup>20</sup> *Id.* at Request for Admission No. 33.

safety and quality. These activities are similar to those examined by the 8<sup>th</sup> Circuit in *Myers*:

Casino Queen targets Missouri residents specifically with marketing campaigns, including the use of direct mailing to Missouri residents. Additionally, Casino Queen operates a shuttle service to move Missouri residents to and from the casino and occupies a special section of Busch Stadium in St. Louis, Missouri known as the “Casino Queen Party Porch.”

*Myers v. Casino Queen, Inc.*, 689 F.3d 904, 913 (8th Cir. 2012).

In response, Ford’s appeal argues that its advertising and marketing activities have no similar link to Bandemer’s cause of action. In August of 2017, the United States District Court for the Middle District of Pennsylvania rejected the notion “that [Ford’s] marketing activities are not related closely enough to Plaintiff’s claim to satisfy the second personal jurisdiction prong.” *Antonini*, 2017 WL 3633287 at \*3.

The court explained that:

[T]he connection is “intimate enough to keep the quid pro quo proportional and personal jurisdiction reasonably foreseeable.” *O’Connor*, 496 F.3d at 323. Defendant directly and heavily advertised in Pennsylvania over a number of years and in a variety of mediums. The purpose of this in-state activity was to entice Pennsylvanians to buy and drive Ford brand vehicles, new or used. Defendant did this, in part, by advertising the safety of its vehicles. In this way, Defendant benefited from the laws of Pennsylvania by using the state as a platform to increase the number of Pennsylvanians purchasing and driving Ford brand vehicles.

Thus, the Court of Appeals' opinion was correctly decided because Ford's marketing activities in Minnesota are sufficient to make the exercise of jurisdiction reasonably foreseeable.

### **III. Bandemer's Claims Arise out of or Relate to Ford's Collection of Data from Minnesota Vehicles and Consumers.**

In jurisdictional discovery, Ford admitted that it gathers data about its vehicle performance and service events in Minnesota, and that information is used by Ford as it creates designs for its vehicles.<sup>21</sup> All eighty-four Minnesota Ford dealerships collect and contribute information to the systems which have variously been known as FMC360, FORDSTAR, OASIS, and CQIS.<sup>22</sup> These interactive databases collect a wealth of information concerning Ford vehicles which arrive at Ford service departments. Ford admitted that its Critical Concern Review Group (CCRG) determines whether design and manufacturing issues raise a safety concern based upon information collected by Ford's databases, which includes vehicle data gathered from Minnesota dealerships through Ford's Global Common Quality Indiciary System (CQIS).<sup>23</sup>

Ford claims that the information collected and ultimately utilized in the design of Bandemer's vehicle is no different than the unrelated in-state research that the

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<sup>21</sup> See Bandemer Add., at Request for Admission No. 37.

<sup>22</sup> *Id.* at Request for Admission No. 2; Interrogatory No. 18, 19, 21.

<sup>23</sup> *Id.* at Request for Admission No. 38.

U.S. Supreme Court held could not establish specific jurisdiction in *Bristol-Myers*. Yet unlike here, the research in *Bristol-Myers* had no relationship to the product’s design or the allegations of the suit. The *Bristol-Myers* court could not find jurisdiction based on “research in California on matters unrelated to Plavix.” *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1776, 198 L. Ed. 2d 395 (2017). Instead, “[w]hat is needed is a connection between the forum and the specific claims at issue.” *Id.*

Here, the information collected from Minnesota is directly relevant to Bandemer’s design defect claim. There is no dispute that Ford collected and analyzed data from Minnesota drivers when designing the subject Crown Victoria. The collection and analysis of this data was part of Ford’s efforts at post-market surveillance of their products in an effort to ensure Ford understands, detects, and corrects unreasonably dangerous designs. Bandemer alleges that Ford failed in this undertaking, and as a result, it designed and marketed a defective product which injured him. Even Ford’s brief admits that “Ford’s design center collects some performance data” and that the design center “considers vehicle performance in the field to inform its overall design decisions.”<sup>24</sup> As such, Bandemer’s claim arises from conduct undertaken in Minnesota.

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<sup>24</sup> See Ford’s Brief at 23.

With respect to post-market surveillance and service, Ford also conducts an enormous amount of related activities in Minnesota. Ford sends recall notices related to safety defects into Minnesota, targeted towards Minnesota drivers.<sup>25</sup> Ford also sends technical service bulletins related to Ford products into Minnesota.<sup>26</sup> In addition, Ford admitted that it provides training and certifications for Ford dealership technicians, personnel or mechanics, including those in Minnesota, which includes how to properly collect performance data.<sup>27</sup> Here, the activities and research conducted by Ford and its representatives in Minnesota has a direct connection to the strict liability and negligent design claims asserted by Bandemer.

#### **IV. The Supreme Court’s Decision in *Bristol-Myers* Supports the Decision of the Court of Appeals.**

The finding of no jurisdiction in *Bristol-Myers* confirms the propriety of jurisdiction in this case, because the facts of *Bristol-Myers* are starkly different than the facts here. *Bristol-Myers* involved 592 residents from 33 states other than California who filed suit in California over the allegedly defective medication, Plavix. “The nonresident plaintiffs did not allege that they obtained Plavix through California physicians or from any other California source; nor did they claim that they were injured by Plavix or were treated for their injuries in California.” *Bristol-*

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<sup>25</sup> See Bandemer Add., at Request for Admission No. 35.

<sup>26</sup> *Id.* at Request for Admission No. 36.

<sup>27</sup> *Id.* at Request for Admission No. 34.

*Myers Squibb Co.*, 137 S. Ct. at 1778-1789. The plaintiffs were unable to allege any events in California excepting some market research completely unrelated to the design or sale of Pravix. On these facts, the Supreme Court determined that the California court lacked specific jurisdiction over the nonresident plaintiffs' claims.

In doing so, the *Bristol-Myers* opinion confirmed that an activity “or an occurrence that takes place in the forum” is a sufficient affiliation or relation between the forum and the suit to justify specific jurisdiction. *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1776. This confirmation of jurisdiction premised on an occurrence that takes place in the forum reaffirmed the Supreme Court's earlier rationale that the first step in exercising specific jurisdiction is connecting the forum with the “episode-in suit” (*e.g.*, the accident caused by the product failure in a strict liability claim):

*International Shoe's* momentous departure from *Pennoyer's* rigidly territorial focus, we have noted, unleashed a rapid expansion of tribunals' ability to hear claims against out-of-state defendants when the episode-in-suit occurred in the forum or the defendant purposefully availed itself of the forum.... First, a court is to determine whether the connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction. Then, in a second step, the court is to consider several additional factors to assess the reasonableness of entertaining the case.

*Daimler AG v. Bauman*, 134 S. Ct. 746, 755, 762 (2014); *see also Goodyear Dunlop Tires Ops. v. Brown*, 131 S.Ct. 2846, 2851 (2011) (for product liability claims, “the episode-in-suit, the bus accident, occurred in France” notwithstanding the fact that

“the tire alleged to have caused the accident was manufactured and sold” in Turkey). This line of cases from *Goodyear Dunlop* to *Daimler AG* and culminating with *Bristol-Myers* confirms the district court properly exercised jurisdiction when the episode-in-suit (*e.g.*, the underlying product failure and injuries) took place in Minnesota, and when there are activities by Ford in and directed toward the forum which are related to those in the lawsuit.

Finally, the *Bristol-Myers* court reaffirmed the use of the broad “arise out of or relate to” language under the stream-of-commerce analysis, and used even broader language by premising jurisdiction on a mere “affiliation” between the forum and the suit. *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781 (“In other words, there must be “an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation”). Thus, *Bristol-Myers* does nothing to undermine the long-settled jurisdictional principles.

#### **V. The Exercise of Jurisdiction is Reasonable and Fair.**

In the final step of a jurisdictional analysis, the court must examine the situation as a whole and determine “whether assertion of personal jurisdiction is reasonable and fair.” *Sorna Corporation v. PACS-Exchange, LLC*, 2016 WL 6090718, at \*2 (D.Minn. 2016). Here, the Court must look to traditional notions of fair play and justice. Ford has conducted extensive sales throughout Minnesota

through eighty-four active dealerships<sup>28</sup> and numerous former dealerships. As noted above, Ford is responsible for over \$2 billion in vehicles sales in Minnesota solely from 2013-2015. It does not offend fair play and justice for Ford to appear in Minnesota on the basis of the forum-related activities described above in light of its massive general presence in Minnesota, especially when those activities were intended to convince Minnesotans of the quality and safety of Ford vehicles. Moreover, Ford has been sued eighty-seven times for product liability in Minnesota state or federal courts since 2000,<sup>29</sup> and Ford has sought affirmative relief as plaintiff in a Minnesota lawsuit on two occasions in recent years.<sup>30</sup>

The reasonableness component of due process should also consider “the interest of the state providing a forum” and “the convenience of the parties.” *Rilley*, 884 N.W.2d at 328. In this case, Minnesota has several strong interests in hearing the case. First, Minnesota has an interest protecting the safety and rights of its resident Plaintiff. *See, e.g., Myers v. Casino Queen, Inc.*, 689 F.3d 904, 913 (8th Cir. 2012) (“Factor four also weighs in favor of exercising jurisdiction because Myers was injured inside Missouri, giving Missouri an interest in providing a forum.”). In addition, Minnesota also has a general interest in regulating the safety of its

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<sup>28</sup> *Id.* at Interrogatory No. 5.

<sup>29</sup> *Id.* at Request for Admission No. 13.

<sup>30</sup> *Id.* at Request for Admission No. 12; 13.

roadways. Finally, Minnesota has an interest in protecting the rights of Defendants Eric Hanson and Greg Hanson, both residents of Minnesota.

In terms of “the convenience of the parties,” Minnesota is the only convenient forum for all parties. As the site of the accident, it is the location of a substantial amount of the evidence and testimony. Indeed, a lawsuit outside of Minnesota would almost certainly be attacked by Ford on the grounds of *forum non-conveniens*. In addition, case law is clear that the place of injury is a factor to be considered in the relatedness analysis. “Where, as here, a manufacturer sells its product to a national distributor, knowing the product will be used in all states, it does not violate due process to require the manufacturer to defend a products liability suit in that state where the accident occurs.” *Sells v. Int'l Harvester Co.*, 513 F.2d 762, 763 (5th Cir. 1975). Moreover, Ford “does not present any arguments or evidence that litigating the [ ] claims in Minnesota would be inconvenient.” *Rilley*, 884 N.W.2d at 338. Finally, the convenience of the in-state Hanson Defendants heavily favors Minnesota.

This Court should also consider the practical consequences of Ford’s jurisdictional argument. Ford’s position is that it may only be sued at its headquarters in Dearborn, Michigan, or in its state of incorporation in Delaware, even for an accident that occurred on a Minnesota roadway. This policy would enact a substantial penalty on Minnesota residents who are injured in their home state by

Ford products, but lack the resources required to bring an out-of-state lawsuit. Moreover, these plaintiffs would be unable to prosecute their claims against Minnesota co-defendants in a Michigan or Delaware court. In the instant case, the Hanson Defendants are not amenable to jurisdiction outside Minnesota. Ford's position would require Bandemer to bring two concurrent lawsuits. In each case, the Defendants would blame the absent party, and Bandemer would face a substantial risk of conflicting verdicts.

Therefore, all the relevant interests weigh in favor of the exercise of jurisdiction, including (1) Ford's enjoyment of the benefits of doing business in Minnesota; (2) Ford's placement of the defective vehicle into the stream of commerce; (3) Ford's ability to anticipate being haled into a Minnesota court to answer for its defective products which have injured or killed Minnesota residents in wrecks that occur in Minnesota; (4) the minimal burden placed on Ford in litigating in Minnesota, relative to litigating in other jurisdictions; (5) Minnesota's substantial interest in providing a convenient forum for the parties; (6) Minnesota's substantial interest in protecting its residents from defective products which cause them injury or death; (7) Plaintiff's substantial interest in obtaining relief without being forced to litigate in another state; and (8) the interstate judicial system's interest in obtaining efficient resolution of controversies.

Under the totality of circumstances, it is eminently reasonable for Ford to appear in Minnesota to defend a product liability claim. In such a case as this, “a strong showing on the reasonableness factors may serve to fortify a borderline showing of minimum-contacts factors.” *Rilley* at 328, *citing Burger King*, 471 U.S. at 477 (“These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.”). Yet in this case, Ford’s related contacts with Minnesota are vast. Ford’s “contacts with the state are more than ‘random,’ ‘fortuitous,’ or ‘attenuated,’ and was such that [it] could reasonably anticipate being haled into court in Minnesota.” *Marine Innovations Warranty Corp. v. American Marine Holdings, Inc.*, 2004 WL 234398, at \*3 (D.Minn. 2004).

## **VI. The Court in *Rilley* Correctly Construed Longstanding Jurisdictional Principles.**

In 1984, the Supreme Court culminated 100 years of jurisdictional teachings in *Helicopteros*, explaining that specific jurisdiction is fair when “a controversy is related to or arises out of a defendant’s contacts with the forum.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). In construing that standard, courts have accepted the text at face value, holding that activities in the forum need not be the direct cause of the plaintiffs’ injuries, but merely relate to the events of the lawsuit.

Two years ago in *Rilley*, this Court properly applied that standard, holding that jurisdiction is fair when a defendant conducts activities in Minnesota and “the litigation “arises out of or relate[s] to” those activities. *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 328 (Minn. 2016), *cert. denied*, 137 S. Ct. 1331 (2017), *quoting Burger King*, 471 U.S. at 472. Ford now asks this Court to reconsider *Rilley* and eliminate the phrase “relates to” from its jurisdictional standard.

In terms of authority, Ford can only point to an idiosyncratic opinion from the Third Circuit in 2007 which required a “direct causal connection.” *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 323 (3d Cir. 2007). However, the Third Circuit’s opinion in *O'Connor* was immediately criticized and remains an outlier. *See* Jonathan P. Diffley, *Spa-cific Jurisdiction: A Massage in Barbados Perpetuates Improper Analysis of Personal Jurisdiction in U.S. Courts*, 58 CATH. U. L. REV. 305, 329 (2008) (“The *O'Connor* approach overemphasized the issue of causation, making it the threshold factor in the relatedness requirement inquiry.”). Here in the Midwest, courts have remained faithful to the language of *Helicopteros*, and they have declined to follow the Third Circuit. For example, the Eighth Circuit examined this issue a few years after *O'Connor*, and it rejected a casual standard. Judge Bye wrote as follows:

We have not restricted the relationship between a defendant’s contacts and the cause of action to a proximate cause standard. Rather, we have said specific jurisdiction is warranted when the defendant purposely directs its

activities at the forum state and the litigation “result[s] from injuries ... relating to [the defendant’s] activities [in the forum state.]” We have also emphasized the need to consider “the totality of the circumstances in deciding whether personal jurisdiction exists.” This stance is consistent with other circuits which have focused on the need to adopt a flexible approach when construing the “relate to” aspect of the Supreme Court’s standard.

*Myers v. Casino Queen, Inc.*, 689 F.3d 904, 912–13 (8th Cir. 2012), quoting *Steinbuch v. Cutler*, 518 F.3d 580, 586 (8th Cir. 2008); *K–V Pharm. Co. v. J. Uriach & CIA, S.A.*, 648 F.3d 588, 592–93 (8th Cir. 2011).

In urging a radical change to this Court’s approach to jurisdiction, Ford bases much of its argument on a purposefully distorted reading of *Bristol-Myers*. Ford hopes to portray *Bristol-Myers* as a re-framing of the law on specific jurisdiction, going so far as to claim it “undermines” the “arising from or relating to” language in *Helicopteros*.<sup>31</sup> However, the Supreme Court plainly stated in *Bristol-Myers*: “Our settled principles regarding specific jurisdiction control this case.” *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1776. The Court repeatedly used the “arise out of or relate to” language, and it did not endorse a direct casual standard. The nearly four decades of Supreme Court jurisprudence regarding specific jurisdiction remains undisturbed by *Bristol-Myers*, which cannot be read as an obituary for *Helicopteros*. This Court’s

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<sup>31</sup> See Ford’s Brief at 34.

opinion in *Rilley* was correctly decided, recognizing that jurisdiction is fair when a plaintiff's suit is related to a defendant's in-state conduct.

### CONCLUSION

The trial court properly exercised specific jurisdiction. Ford targeted Minnesotans, manifesting its intention to submit to Minnesota courts. Bandemer's claims arise out of or relate to the Ford's Minnesota activities, including its marketing efforts and its design research carried out in the state. The Court of Appeals' review of the trial court was consistent with longstanding jurisdictional principles as recently reaffirmed in *Bristol-Myers*. Because the exercise of jurisdiction over Ford is reasonable and fair, Bandemer prays that this Court affirm the decision of the Court of Appeals and remand this case to the trial court for further proceedings.

Dated: September 24, 2018

Respectfully Submitted,

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**CERTIFICATE OF DOCUMENT LENGTH**

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