

## In Case of First Impression, District of New Jersey Judge Establishes Framework to Determine Whether Parent-Subsidiary Relationship Confers Personal Jurisdiction

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District Judge Kevin McNulty of the District of New Jersey recently granted in part and denied in part a motion to dismiss for lack of personal jurisdiction. Judge McNulty's detailed opinion provides critical guidance on how New Jersey courts will analyze whether jurisdiction premised on a parent-subsidiary relationship exists.

*Rickman v. BMW of North America LLC*, Civil Action No. 18-4363 (KM) (JBC), concerns a putative state-law consumer protection and fraud class action brought by consumers of BMW diesel vehicles based on alleged misrepresentations regarding the vehicles' emissions. Plaintiffs sued BMW AG (the automobile manufacturer, based in Germany), BMW of North America ("BMW NA") (the American distributor, based in New Jersey), Robert Bosch LLC ("Bosch LLC") (the developer of technologies used in the vehicles that were allegedly used to game emissions testing, based in Michigan), and Robert Bosch GmbH ("Bosch GmbH") (Bosch LLC's parent, based in Germany). The foreign defendants, BMW AG and Bosch GmbH, moved to dismiss the claims against them for lack of personal jurisdiction in New Jersey. The Court denied the motion as to BMW AG and granted it with respect to Bosch GmbH.

The Court focused its analysis on specific jurisdiction because Plaintiffs did not assert that there was general jurisdiction over either German-based moving party. The Court noted that it has specific jurisdiction when the defendant has "sufficient contacts with the forum" and plaintiff's claims "arise out of or relate to" those contacts. *Rickman*, slip op. at 7. To apply those principles, the Third Circuit utilizes a three-part test, requiring the plaintiff to show that (1) the defendant purposefully availed itself of the forum, (2) the claims arise out of or relate to at least one of the defendant's activities, and (3) exercising personal jurisdiction comports with fair play and substantial justice.

**Element One: Purposeful Availment.** Concerning the first element, the District Court acknowledged that BMW AG had no New Jersey presence but considered whether BMW AG's relationship with its subsidiary, BMW NA (based in New Jersey), constituted "purposeful availment" given the Court's admitted personal jurisdiction over BMW NA. The Court noted that there is "no clear approach" to determining if a non-resident corporation is subject to jurisdiction based on its subsidiary or distributor, comparing *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 781 (3d Cir. 2018) (if subsidiary is agent of parent corporation or parent corporation otherwise controls subsidiary, then personal jurisdiction extends to parent based on subsidiary), with *Daimler AG v. Bauman*, 571 U.S. 117, 135-37 (2014) (even if subsidiary is "at home" in forum, parent is not automatically subject to *general* jurisdiction there). Nevertheless, *Daimler* left the door open to corporate relationships extending *specific* jurisdiction to corporate

parents, and other courts have permitted the use of corporate relationships to show that the parent purposely availed itself of a forum.

On this note, Plaintiffs argued that BMW AG's use of BMW NA as its "gateway" to the United States and specifically New Jersey, after BMW AG developed the product and some of its marketing, was sufficient to constitute purposeful availment. The District Court, reviewing a number of cases, agreed, observing that BMW NA was established by BMW AG to serve the American market and functions as its sole conduit to do so. Although BMW AG argued that it did not direct BMW NA's operations, the Court construed factual disputes *prior to any discovery* in Plaintiffs' favor and therefore found that BMW AG had a significant relationship with BMW NA. Thus, it determined that "purposeful availment" was present.

In contrast, as to Bosch GmbH, the Court found that it stood on a "different footing." *Rickman*, slip op. at 11. Bosch GmbH's subsidiary, Bosch LLC, was located in Michigan and not New Jersey. Thus, Bosch GmbH's management and control over Bosch LLC would not have been exercised in New Jersey. Plaintiffs also argued that Bosch GmbH worked directly with BMW NA (and thus "in New Jersey") to further its scheme, but the Court determined there was nothing in the record to support such a finding and that efforts to more generally target the United States market were not enough to demonstrate deliberate targeting of New Jersey in particular. Finally, Plaintiffs asserted a "conspiracy" theory of personal jurisdiction against Bosch GmbH, but the Court determined that such a theory had not previously been adopted by any court and that it would not be consistent with federal due process, as jurisdiction must be assessed as to each individual defendant. Thus, it dismissed Bosch GmbH for lack of personal jurisdiction.

**Element Two: Claims "Arise Out of or Relate to" Contacts with Forum.** The Court then proceeded to review whether Plaintiffs' claims against BMW AG "arise out of or relate to" its contacts to New Jersey, as identified above. The Supreme Court had not previously provided precise elaboration of that test, but the Third Circuit in *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 320 (3d Cir. 2007), had instructed that this required "causation," with the level of causation depending on the claim. However, the Supreme Court, in *Ford v. Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021), recently rejected a "causation" test, noting "some relationship will support jurisdiction without a causal showing," but it made that statement without further elaboration. The District Court noted that no other Third Circuit court had yet addressed whether *Ford* modified the Third Circuit's causation standards, making this a matter of first impression.

Thus, reviewing the prior guidance, Judge McNulty observed that, because the Third Circuit had held that causation is a *minimum* requirement for this prong but the Supreme Court later held that causation is not required, the two standards could not be reconciled and the later Supreme Court holding controlled.

Applying that Supreme Court standard, the Court noted that the BMW advertising campaign, which allegedly falsely presented the cars as low-emission vehicles, was developed by BMW NA in New Jersey *with supervision and input from BMW AG*, and that New Jersey purchasers were subsequently injured there after viewing the materials and purchasing the cars. Although BMW AG argued that Plaintiffs could not tie specific action by it – that is, that it developed a particular misleading statement – to their purchase of the car, the Court observed that such a

requirement would be too stringent. Instead, BMW AG's development of the general concepts of the marketing campaign, even if BMW NA refined them and was ultimately responsible for the final marketing decisions, was enough to meet the second prong, at least at the pre-discovery stage. Thus, the Court found that Plaintiffs had sufficiently alleged facts that satisfied the second prong of the personal jurisdiction test.

**Element Three: Fair Play and Substantial Justice.** Finally, the Court reviewed whether exercising jurisdiction over BMW AG comported with "fair play and substantial justice," and determined that it did.

Thus, having determined that all three elements of the personal jurisdiction test were satisfied, Judge McNulty denied the motion to dismiss BMW AG for lack of personal jurisdiction, but *without prejudice to renew the motion after jurisdictional discovery was completed.*

A copy of the Court's opinion is attached below.