

Recent Developments With Personal Jurisdiction in Aviation Accident Products Liability Litigation

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Cases arising from aviation accidents present unique jurisdictional challenges. To establish personal jurisdiction, one must show either general jurisdiction, that the defendant is at home in the forum such that it can be sued there for any claim, or specific jurisdiction, that the defendant has contacts with the forum and plaintiff's claims arise from or relate to those contacts.

Because of the nature of air travel, the location of an air crash will often have little relationship to a potential defendant, who may be at home or even have contacts with the origin or destination forum, but no connection to fortuitous location of the crash. This issue is amplified in cases involving products liability claims against an aviation manufacturer who often has no connection to where the aircraft crashed.

As a result, the foundational question of personal jurisdiction in an aviation accident products liability case often leaves a plaintiff with few options, especially when the manufacturer is a foreign entity headquartered and incorporated abroad and has no "home" in the United States.

Two recent cases from the United States Supreme Court, however, have expanded the scope of both general and specific jurisdiction to expand a plaintiff's options of favorable fora to

bring products liability claims against an aviation manufacturer.

The Registration Hook and General Jurisdiction: 'Mallory'

In 2014, the U.S. Supreme Court handed down *Daimler AG v. Bauman*, a landmark decision relating to general jurisdiction. 571 U.S. 117 (2014). In that case, the court held that to be subject to general jurisdiction a defendant's contacts with the forum must be so "continuous and systematic" to render it essentially "at home" in the jurisdiction. *Id.* at 139.

The import of *Daimler AG* in practice was that meeting the requirements for general jurisdiction is a high bar and is only likely to be found in the defendant's state of incorporation and the state where defendant maintains its principal place of business, except for the rare cases where the defendant's activities in a third state are so extensive that the defendant is at home in that location as well.

The Supreme Court's recent decision in *Mallory v. Norfolk Southern Railway Corp.* created an additional basis for general jurisdiction to those laid out in *Daimler AG*. 600 U.S. 122, 126 (2023).

In *Mallory*, the plaintiff worked for Norfolk Southern Railway in Ohio and later Virginia, which is the railway's headquarters and state of

incorporation. During his work, Robert Mallory alleged he was exposed to asbestos and other toxic chemicals which caused him to develop colon cancer. *Id.* Mallory sued Norfolk Southern Railway in Pennsylvania, where he had moved after leaving the company and where he lived when his cancer was diagnosed.

Plaintiff claimed that Norfolk Southern Railway was subject to general jurisdiction in Pennsylvania because it had registered to do business in the state and a Pennsylvania statute required any company registered to do business in the state to agree to appear in its courts on “any cause of action” against them. *Id.* at 127 (citing 15 Pa. Cons. Stat. §411(a)).

The Supreme Court agreed with the plaintiff. The court noted that “Pennsylvania law is explicit that ‘qualification as a foreign corporation’ shall permit state courts to ‘exercise general personal jurisdiction’ over a registered foreign corporation, just as they can over domestic corporations.” *Id.* (citing 42 Pa. Cons. Stat. §5301(a)(2)(i)).

The court found Norfolk Southern’s claim that it was not fair and reasonable to exercise general jurisdiction over it unfounded. In the court’s view, Norfolk Southern had availed itself of doing business in Pennsylvania by registering to do business there and had set up an office that it continuously maintained as required by Pennsylvania’s statute and knew doing so would subject it to general jurisdiction in Pennsylvania. *Id.* at 134-36. As a result, the court found Norfolk Southern subject to general jurisdiction in Pennsylvania courts.

In effect, the holding in *Mallory*, creates a way for a plaintiff to obtain jurisdiction over a defendant in a jurisdiction that is not its state of its incorporation or principal place of business for *any claim* simply because the defendant has registered to do business in that state, so long as the state has a statute or established caselaw that requires the defendant to submit to jurisdiction when registering to do business.

Given the difficulty of obtaining personal jurisdiction in many aviation products liability cases, this holding creates a powerful tool for practitioners who may otherwise have only been able to sue an aviation manufacturer in its home forum.

That said, this extension of general jurisdiction is limited to only states where the statute or caselaw requiring submission to jurisdiction is explicit. The list of states that clearly and explicitly require a company registered to do business to submit to personal jurisdiction in the state to date is small, including only Pennsylvania, Georgia, and Kansas. See *Mallory v. Norfolk Southern Railway Corp.*, 600 U.S. 122, 127 (2023) (PA); *Skyline Trucking, Inc. v. Freightliner Truck Center-companies*, 684 F. Supp. 3d 1128, 1138 (D. Kan. 2023) (KS); *Sloan v. Burist*, No. 2:22-CV-76, 2023 WL 7309476, at *6 (S.D. Ga. Nov. 6, 2023).

Many major aviation manufacturers, however, are registered to do business in these states, including Boeing, Airbus Helicopters, Textron Aviation, Rolls-Royce and Pratt & Whitney.

As a result, a plaintiff injured in a crash in another state could sue these companies in one of these states rather than the corporation’s home forum, even if the state has no other connection the case. A plaintiff is likely to be subject to removal to Federal Court and then would likely have to contend with a motion to change venue pursuant to 18 U.S.C. §1404 or a motion to dismiss pursuant to *forum non conveniens* if they have absolutely no connection to the forum. If, however, a plaintiff can keep their case in state court, those remedies are less likely to be as effective and they may be able to stay in the favorable forum.

In applying *Mallory*, courts around the country have consistently held that it does not extend general jurisdiction to those states where statute does not explicitly state that registration to do business confers jurisdiction or where registration to do business did not already confer jurisdiction through caselaw before the *Daimler AG*

decision. See, e.g., *Pace v. Cirrus Design Corp.*, 93 F.4th 879, 899 (5th Cir. 2024); *Madsen v. Sidwell Air Freight*, No. 1:23-CV-0008-JNP, 2024 WL 1160204, at *9 (D. Utah Mar. 18, 2024); *Sahm v. Avow Corp.*, 705 F. Supp. 3d 925, 933 (E.D. Mo. 2023); *Lumen Techs. Serv. Grp., LLC v. CEC Grp., LLC*, 691 F. Supp. 3d 1282, 1291 (D. Colo. 2023); *Rosenwald v. Kimberly Clark Corp.*, No. 3:22-CV-04993-LB, 2023 WL 5211625, at *6 (N.D. Cal. Aug. 14, 2023).

There are also some jurisdictions, like Connecticut, where the statutes are less cut and dried. Connecticut's statute states that by registering to do business and appointing an agent for service of process an entity "shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state" on any cause of action arising from, amongst other things, "the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers." Conn. Gen. Stat. Ann. §33-929(f).

Prior to *Mallory*, this statute was viewed as a basis for jurisdiction, but a plaintiff still had to separately satisfy due process requirements, which meant showing that the defendant was "at home" in the jurisdiction under *Daimler AG* or that there was sufficient contacts from which the claim arose to create specific jurisdiction, effectively taking the teeth out of the statute. See *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 630 (2d Cir. 2016).

Since *Mallory*, however, Connecticut courts have recognized that submission to jurisdiction by registration alone satisfies due process. See *State v. Exxon Mobil Corp.*, No. HHDCV206132568S, 2024 WL 3580377, at *9, 14-15 (Conn. Super. Ct. July 23, 2024). As a result, Connecticut's statute now

provides a powerful tool to exercise jurisdiction over aircraft and component part manufactures to Connecticut residents in aviation accident cases, given the state's generous damages law and favorable products liability law.

A plaintiff seeking to bring a claim against an aviation manufacturer, especially foreign manufactures, must be mindful of the possible *fora* available for suit opened by *Mallory* and should consult an attorney knowledgeable regarding the states that allow registration to create personal jurisdiction and the circumstances when it can be exercised according to the state's laws.

'Relating to...' Specific Jurisdiction: 'Ford'

The Supreme Court's recent decision in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, has expanded the limited scope of specific jurisdiction on aviation products liability cases, but a plaintiff must know what facts to marshal to best present their case for jurisdiction at issue.

To show specific jurisdiction, one must show a that a defendant had contacts with the forum and the plaintiff's claims "arise from or relate to" those contacts. Prior to the holding in *Ford*, this was interpreted to meant that a plaintiff must show that the defendant's contacts with the forum are the "but-for" cause of his or her claim. See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

In products liability cases, this meant that the aircraft or component part manufacturer typically would have had to sell the product into the forum state, which was uncommon in the aviation context where aircraft and component parts travel widely from where they are sold and are resold many times.

In *Ford*, however, the Supreme Court, clarified that the specific jurisdiction required that plaintiff's claim either "arise from or relate to" defendant's contacts. As a result, a plaintiff's claim didn't always have to arise directly from a defendant's contacts with the forum in an automobile products liability case so long as the

contacts are sufficiently “related to” the manufacturer’s efforts to target, service and support its products in the market of the forum when its product caused injury of a resident inside the forum. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 365, 141 S. Ct. 1017, 1028, 209 L. Ed. 2d 225 (2021).

Ford involved wrongful death claims brought in Montana and Minnesota against Ford alleging defective design of its vehicles that caused deadly accidents in each decedent’s home state. *Id.* at 356. Ford had not sold or maintained the vehicles in the decedent’s home states as would usually be required to show the contacts from which the claims arose necessary to create specific jurisdiction. *Id.*

The Supreme Court, however, found specific jurisdiction because Ford’s contacts with the states “related to” plaintiffs’ claims, even if they did not directly arise from them. *Id.* at 368. In both Minnesota and Montana Ford purposefully availed itself of the ability to serve the market, including advertising, maintaining a network of dealership, maintaining a network of authorized maintainers, and sending replacement parts into the states for the very models of car at issue in the suits. *Id.* at 365-67.

In the wake of *Ford*, the question was: given that most aviation manufacturers lack the ubiquity of Ford in American life, how would courts apply the *Ford* holding in aviation products liability cases. In the years since, application has varied depending both on the court doing the jurisdictional analysis and the facts used to support the claim of jurisdiction.

The key issue that has emerged in aviation cases applying *Ford* is whether the analysis of the defendant’s contacts with the forum to target sales in the market and support its products in the market must focus only on the product at issue or whether contacts relating to other products from the same manufacturer may be considered.

Reviewing three different cases involving the same defendant, Textron Aviation Inc., the manufacturer of several aircraft brands, most notably Cessna aircraft, illustrates how differing approaches to this issue influence the outcome of a court’s jurisdictional analysis under *Ford*.

In *LNS Enterprises LLC v. Cont’l Motors, Inc.*, the Ninth Circuit gave a strict construction to application to language in *Ford* requiring that the defendant’s contacts relate to the same model product. In *LNS Enterprises*, a plaintiff sued Textron Aviation arising from the crash of its Columbia brand aircraft in Arizona because Textron Aviation was the owner of the Columbia brand after purchasing the company. 22 F.4th 852, 856-57 (9th Cir. 2022).

Plaintiff argued that jurisdiction under *Ford* was appropriate because Textron Aviation maintained an authorized service center in Arizona. *Id.* at 864. The Ninth Circuit rejected this argument because there was no allegation nor evidence that the single service center, which was an authorized Cessna service center, serviced Columbia brand piston-powered aircraft like the one that crashed as opposed to Cessna business jet aircraft. *Id.*

By contrast, in *Downing v. Losvar*, the Court of Appeals of Washington State took an expansive view of the relevant contacts in a *Ford* analysis involving Textron Aviation. 21 Wash. App. 2d 635, 507 P.3d 894, 900, review denied sub nom. *Downing v. Textron Aviation, Inc.*, 200 Wash. 2d 1004, 516 P.3d 384 (2022).

Downing arose from the crash of a Cessna T182T piston-powered aircraft in Washington state that killed a Washington state resident. *Id.* at 642. Plaintiff argued that the court should exercise jurisdiction over Textron Aviation under *Ford* because its website advertised is global service network, including mobile service units that would travel to a customer’s location to perform work, as well as seven Cessna authorized service centers in Washington State. *Id.* at 647-50.

Textron Aviation responded that the court should only consider a “product specific test” limited to only contacts relating to the T182T model only. *Id.* at 660. It argued that it only markets and services Cessna business jet aircraft in Washington state, and not smaller piston-engine aircraft like the T182T. *Id.* at 662.

The court rejected that test noting that Textron Aviation’s promotional materials “boast[ed] of availability of excellent service at the location of the customer’s plane” without reference to the type of aircraft and it presented no evidence that its sales and service activities related only to its jet aircraft. *Id.*

Other courts are finding a middle road between the “same model only” rule adopted in *LNS Enterprises*, and the “any model” rule adopted in *Downing*. A recent decision from the Connecticut Superior Court in *Conn. Light & Power Co. v. Interstate Aviation, Inc.*, involved a dispute over the scope of jurisdictional discovery, but required the court to determine the scope of the contacts relevant under a *Ford* analysis to determine the discovery Textron Aviation had to produce. Superior Court, Judicial District of Hartford, Complex Litigation Docket, Docket No.: X07-CV-23-6177276-S, at p. 3 (April 30, 2024) (available at <https://civillinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=27395304>).

The decision arose in a group of six consolidated cases arising from the crash of a Cessna Citation 560 XLS+ business jet that occurred when the pilots attempted to take off with the parking brake engaged. Plaintiffs in all the cases alleged that the aircraft had been defectively designed, in part because it failed to include a warning light or message that notified pilots that the parking brake was engaged prior to takeoff. Textron Aviation had moved to dismiss all cases for lack of personal jurisdiction and the court had ordered jurisdictional discovery.

Plaintiffs’ jurisdictional discovery requests sought Textron Aviation’s contacts with Connecticut, including maintenance by Textron Aviation mobile service units, relating to the subject aircraft and all other Cessna Citation 500 series aircraft that similarly lacked a warning light or message when the parking brake was engaged, citing to multiple similar accidents caused by a pilot leaving the parking brake engaged in these similar Cessna Citation model aircraft. *Id.* at pp. 3, 7.

Defendants objected that requests seeking information relating to other aircraft were overbroad since only discovery relating to the “same product” was relevant in a *Ford* personal jurisdiction analysis. *Id.* The court rejected this position holding that «evidence of the same alleged defect in other products sold by the defendant in the forum state serves as sufficient case-linkage to establish personal jurisdiction» under *Ford*. *Id.* (citing *Green v. United Steel Corp., LLC*, No. X07-HHD-CV-22-6158732-S, 2023 WL 4577154, at *5 (Conn. Super. Ct. July 14, 2023)).

There is no question that Supreme Court’s holdings in *Mallory* and *Ford* have expanded the *fora* available to a plaintiff bringing an aviation products liability suit. That said, state and lower federal courts are still in the process of working out precisely how far the expansion of personal jurisdiction will reach.

In many aviation products liability cases a plaintiff will now have new places where they can bring suit, but practitioners must also know how to best leverage the existing law to obtain the most favorable forum for their client, which requires a detailed understanding of the differences in how the *Mallory* and *Ford* holdings have been applied by courts in different jurisdictions.

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