# **PRODUCT LIABILITY**

The Newsletter of the Product Liability Defense Practice Group



## SHOULD WE CAP CONTINGENCY FEES?

Written by: Jack C. Henning - Dillingham & Murphy, LLP

There is another effort in California to limit contingency fees and a companion effort to require pre-suit settlement discussions. On October 3, 2021, the Civil Justice Association of California (CJAC) submitted two statewide ballot initiative proposals to the California Attorney General for the November 2022 ballot. The Attorney General now will issue titles and summaries of the initiatives. This will allow the CJAC to begin the process of trying to collect the necessary voter signatures by April 2022. The number of signatures must be equal to at least 5% of the total votes cast for the office of California Governor at the last gubernatorial election, which means CJAC will need approximately 686,000 signatures.

CJAC is an association "dedicated solely to improving California's civil liability system, in the legislature, the regulatory area, and the courts." It is a non-profit group that represents corporate/business interests. The CJAC website (https://www.cjac.org) has interesting information regarding not only the two ballot initiative proposals, but also regarding reforms needed concerning ADA, asbestos, and Lemon Law litigation. The two proposed ballot initiatives are the "Pre-Lawsuit Notice and Opportunity to Settle Act" and the "Consumer Legal Fee Protection Act."

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# RECENT DEVELOPMENTS IN PERSONAL JURISDICTION IN PRODUCT LIABILITY ACTIONS

Written by: M. Jansen Voss - Christian & Small, LLP

Personal jurisdiction issues frequently arise in product liability actions. The following is a common scenario: A resident of Alabama alleges she was injured in Alabama by a product sold in Mississippi, manufactured in Georgia by a company with its principal place of business in North Carolina. The question arises: In what state, or states, can the Plaintiff file suit against the North Carolina based product manufacturer? That question starts with the well-known United States Supreme Court's opinion in International Shoe Co. v. Washington, 326 U. S. 310 (1945) and ends with the Court's recent opinion in Ford Motor Co. v. Bandemer, 140 S. Ct. 916 (2020)

Fundamentally, a court may enter a valid judgment against an out-of-state product manufacturer only if the court has personal jurisdiction over the product manufacturer. The Fourteenth Amendment's Due Process Clause limits a state court's ability to exercise jurisdiction and enter a binding judgment. In International Shoe Co. v. Washington,—a case fundamental to an understanding of personal jurisdiction—the United States Supreme Court held that a court's authority to exercise personal jurisdiction depends on the defendant having "contacts" with the jurisdiction such that "the maintenance of the suit" is "reasonable, in the context of our federal system of government," and "does not offend traditional notions of fair play and substantial justice." 326 U. S. 310, 316-317 (1945). In subsequent decisions, the Court focused on the nature and extent of "the defendant's relationship to the forum State." Bristol-Myers Squibb Co. v. Superior Court, 137 S. Ct. 1773, 1770 (2017). That focus led to the Court's recognition of two categories of personal jurisdiction: general jurisdiction and specific jurisdiction. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U. S. 915 (2011).

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## PRODUCT LIABILITY DEFENSE IMPLICATIONS IN FORD MOTOR COMPANY V. MONTANA EIGHTH JUDICIAL DISTRICT COURT, ET AL.

Written by: Thomas Paschos - Thomas Paschos & Associates, P.C.



In product liability lawsuits, when can specific jurisdiction allow a plaintiff to file a product liability claim in that plaintiff's home state even when the company does not have any clear contacts within that state? This is a question that is critical for companies producing products to understand since the answer can affect how and where a company must defend against defective product claims. The U.S. Supreme Court recently considered this question in Ford Motor Co. v. Montana Eighth Judicial District Court (Decided 3-25-2021), and the court ruled unanimously in an 8-0 decision. In the case, the court considered whether the connection between the plaintiff's claims and the company's activities in the forum States was close enough to support specific jurisdiction, and the court determined that those connections were close enough.

This case is likely to have significant implications for companies that must defend against product liability lawsuits in New Jersey and Pennsylvania.