

PRODUCT LIABILITY

The Newsletter of the Product Liability Defense Practice Group



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DON'T FORGET JURISDICTION AS A DEFENSE

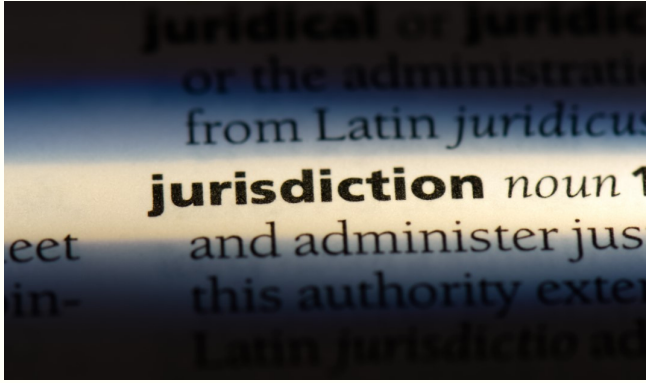
Written by: Gerald Swann & Miland Simpler – Ball, Ball, Matthews & Novak, P.A.

You are assigned a new products liability case. You immediately begin formulating your strategy and defenses. What is the product? What are the injuries? Is this a manufacturing or design defect? What was the intended use or purpose of the product? Was the product being used as it was intended? Had the product been altered or changed? Is the product a component or a finished completed product?

Invariably, you may overlook and don't ask yourself the question of where is my client located, where was the product manufactured or assembled? Does this court even have jurisdiction over my client?

Jurisdiction over a foreign defendant should always be the first and foremost investigation into a new case. In this day and age, many products or their components are manufactured by entities not doing business within the U.S. even though those products may certainly be intended to make their way into the stream of commerce of the United States and many times are a finished product of an American manufacturer. In 2017, the Alabama Supreme Court released the opinion in *Hinrichs v. General Motors of Canada, Ltd.*, 222 So. 3d 1114 which significantly strengthened the ability of a foreign manufacturer to not be subjected to an exercise of personal jurisdiction.

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HAVE STATE COURTS EXPANDED PERSONAL JURISDICTION TOO FAR?

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

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law.” Ford Motor Company believes both the Minnesota Supreme Court and the Montana Supreme Court violated the Fourteenth Amendment by ruling their state courts have personal jurisdiction over Ford in two product liability actions. This issue now is before the United States Supreme Court.[1]

The Bandemer Case (No. 19-369): In 2015, plaintiff Adam Bandemer, a Minnesota resident, was a passenger in a 1994 Ford Crown Victoria. He alleges the car’s passenger-side airbag did not deploy in a crash and that he suffered a severe brain injury as a result. He sued Ford, the vehicle’s driver, and the vehicle’s owner in Minnesota state court. Ford moved to dismiss the claims for lack of personal jurisdiction. The Crown Victoria was not designed, manufactured, or originally sold in Minnesota. It was first registered in Minnesota in 2011, seventeen years after it was manufactured, by its fourth owner. The Minnesota Supreme Court (Adam Bandemer v. Ford Motor Co., No. A17-1182 (Minn. July 31, 2019), 931 N.W.2d 744) affirmed the denial of Ford’s motion to dismiss for lack of personal jurisdiction.

[1] Arguments were scheduled for April of 2020, but have been rescheduled for October 7, 2020.

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CREATING USEFUL EXHIBITS AT DEPOSITIONS

Written by: Holly Polglase - Hermes, Netburn, O'Connor & Spearing, P.C.



In product liability cases, depositions often involve witnesses describing body positions, distances, measurements, angles, locations of marks or where they were standing at the time of the accident and other situations which are not easily described in words. A product liability defendant has the arduous task of determining exactly what happened in the accident even though it was not there at the time. Often we need to rely on the testimony of the plaintiff or percipient witnesses who are not trained in describing physical events. Biomechanical and accident reconstruction experts need precise information in order to do their work and if they have it, they can often determine that the accident could not have happened in the manner claimed or that the alleged defect was not the cause of the injury. Practitioners have a number of tools at their disposal to create useful exhibits during depositions that pinpoint exact details in a manner that is hard for the witness to change or refute later at trial. Making use of those tools and paying attention to the details of what an exhibit shows while it is being made will allow the questioner to create exhibits that not only give the experts the details they need to support their opinions but are also powerful story tellers at trial.

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