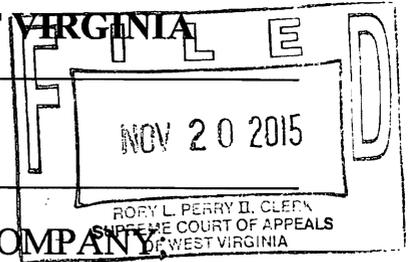


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 15-\_\_\_\_\_

STATE OF WEST VIRGINIA ex rel. FORD MOTOR COMPANY



Petitioner,

v.

The HONORABLE WARREN R. MCGRAW, Judge of the Circuit Court of Wyoming County; DANNY S. WELLMAN, Administrator of the Estate of Jarred S. Wellman, Deceased

Respondents.

PETITION FOR A WRIT OF PROHIBITION

On Petition for a Writ of Prohibition to the Circuit Court of Wyoming County, West Virginia (Civil Action No. 15-C-27)

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## QUESTIONS PRESENTED

1. Whether the Circuit Court erred in finding that Ford Motor Company (“Ford”) is “at home” in West Virginia as defined in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), and therefore subject to general personal jurisdiction in the State, even though Ford has no manufacturing plants, offices, or agents in West Virginia, and is independent from the dealers in the state that sell and service Ford vehicles.

2. Whether Ford is subject to specific personal jurisdiction in this case, where the plaintiff asserts design defect claims and the vehicle was designed, manufactured, and sold by Ford outside of West Virginia, and came into the state only through the actions of third parties.

## INTRODUCTION

The complaint in this case raises claims against Ford based on a motor vehicle accident in West Virginia involving a 2002 Ford Explorer. Ford moved to dismiss the case for lack of personal jurisdiction. In clear misapplication or disregard of settled law, the Circuit Court held that Ford is subject to general or “all purpose” jurisdiction in West Virginia, and is therefore subject in West Virginia courts to suits that have no connection whatsoever to any Ford activity in the State.

That ruling is demonstrably incorrect and requires this Court's intervention. The United States Supreme Court recently made clear in *Daimler* that a non-resident corporation is subject to general jurisdiction only where it is "at home," which ordinarily refers only to where it is incorporated (here, Delaware) or headquartered (here, Michigan). *Daimler* held that a corporation would be subject to general jurisdiction in another state only in an "exceptional case," such as where a company is forced by unusual, exigent circumstances to adopt an alternative "principal place of business" for a short time. Nothing of the sort is present here. Ford has no manufacturing plants or other offices in West Virginia, and the dealers that sell and service Ford vehicles in the state are independent entities. Treating Ford's ordinary business contacts with West Virginia as "exceptional" enough to justify general jurisdiction would render *Daimler* a dead letter.

When Ford asked the Circuit Court to make a record of its findings of fact and conclusions of law, the Circuit Court offered little to defend its ruling. Without discussing or even citing *Daimler*, the court characterized Ford's argument that it is not "at home" in West Virginia as the "ultimate absurdity," noting that Ford "is a global operation." *Daimler* makes clear, however, that corporations are not subject to general jurisdiction everywhere they conduct business, even large-scale business. The defendant in *Daimler* itself engaged in far more activity in California than Ford does in West Virginia, and yet the Court

dismissed that presence as nowhere near sufficient to warrant the extraordinary exercise of general jurisdiction.

Ford also is not subject to specific jurisdiction in West Virginia on the unique facts of this case. Specific jurisdiction by definition applies only where the plaintiffs' claims arise from the defendant's contacts with the State. Plaintiff cannot even make the threshold showing that Ford itself has conducted *any* activity in, or directed at, West Virginia. But even if he could, plaintiff simply cannot show that any such contact with West Virginia related to this vehicle or otherwise gave rise to this suit. The vehicle at issue here was manufactured in Kentucky, and initially sold to a Florida dealer, who in turn sold it to a consumer in Florida. The vehicle made its way into West Virginia only through the independent actions of third parties, and the Constitution does not permit a state to exercise jurisdiction over an out-of-state entity based on the "activity of another party or a third person." *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014) (quotations omitted). The fact that Wellman was injured in West Virginia does not, in itself, permit the state to exercise jurisdiction over an out-of-state defendant either—"injury to a forum resident is not . . . sufficient." *Id.* at 1125.

Both plaintiff and Ford have a strong interest in having the personal jurisdiction issue resolved now, before significant resources are expended on discovery and trial. For that very reason, this Court has made clear that a writ of

prohibition should issue where a circuit court is attempting to proceed without jurisdiction over the defendant. And the consequences of allowing the Circuit Court's order to stand will surely reach beyond this case. By the Circuit Court's logic, any corporation that conducts business throughout the country or world can be sued by anyone, on any claim, in West Virginia. Such a broad (and erroneous) approach to general jurisdiction not only tramples upon the due process rights of non-resident defendants, but will invite litigation in West Virginia courts in which the State has no cognizable interest. This Court has not yet addressed the proper application of the United States Supreme Court's most recent personal jurisdiction decisions. The Court should grant the writ of prohibition, clarify the proper approach to personal jurisdiction after *Daimler* and *Walden*, and order that Ford be dismissed from the suit.

## STATEMENT OF THE CASE

### I. Plaintiff's Lawsuit

On February 5, 2015, plaintiff Danny S. Wellman filed a complaint against Ford and Ramey Automotive Group ("Ramey") in the Circuit Court of Wyoming County, West Virginia. The complaint alleged that Ford and Ramey are liable for the death of Jarred S. Wellman ("Wellman"), which occurred as a result of a March 4, 2013 automobile accident involving a 2002 Ford Explorer. Plaintiff avers that Wellman was ejected from the Explorer during a rollover "due to the

failure of the . . . driver’s side occupant restraint system,” and that Wellman suffered fatal injuries in the accident. Compl. ¶¶ 10-15, Appendix 11-12. The complaint states three causes of action against Ford: (a) strict liability, based on the “defective and unreasonably dangerous” condition of the vehicle “[a]t the time [it] left the control of Ford,” Compl. ¶ 43, Appendix 16; (b) negligence in the design and distribution of the vehicle, Compl. ¶¶ 68-69, Appendix 22; and (c) breach of warranty, Compl. ¶¶ 87-88, Appendix 27.

## **II. Wellman’s 2002 Ford Explorer**

Plaintiff alleges that the 2002 Ford Explorer Wellman was driving at the time of the accident was “defective and unreasonably dangerous” when manufactured and when it “left the control of Ford.” Compl. ¶ 43, Appendix 16. Ford did not design, manufacture, or sell the vehicle in West Virginia. Ford has no manufacturing plants in West Virginia. McDermott Aff. ¶ 7, Appendix 108. Instead, the vehicle was assembled in Louisville, Kentucky. McDermott Aff. ¶ 5, Appendix 108. Further, the vehicle did not “le[ave Ford’s] control” in West Virginia—Ford sold the vehicle to Sunrise Ford Company in Fort Pierce, Florida. *Id.* Sunrise then sold the vehicle to a Florida resident on January 21, 2002. *Id.* The vehicle did not enter West Virginia until 2009, when a different individual sold the vehicle to Ramey without Ford’s involvement. *See* Mem. in Supp. of Mot. to Dismiss, Ex. D, Appendix 111. Ramey later sold the vehicle to MacArthur Auto

Body & Repair Shop in Beckley, West Virginia, *see* Compl. ¶ 8, Appendix 11, which eventually sold the vehicle to Wellman, *see* Compl. ¶ 7, Appendix 11.

Ford was not involved with any of those sales after its initial transaction with Sunrise in Florida, because Ford's dealers are independent business entities. Indeed, upon being appointed by Ford, each dealership must agree to the standard provisions of the Ford Sales and Service Agreement, which expressly disavow "the relationship of principal and agent between the Company [Ford] and the Dealer" and clarify that "under no circumstances shall the Dealer be considered to be an agent of the company." McDermott Aff. ¶ 8, Appendix 108. The agreement further provides that a dealer cannot "create any obligation on behalf or in the name of the Company." McDermott Aff. ¶ 8, Appendix 109.

### **III. The Circuit Court's Denial Of Ford's Motion To Dismiss**

Ford timely removed the case to the United States District Court for the Southern District of West Virginia. The notice of removal reserved Ford's right to challenge the ability of any West Virginia court to exercise personal jurisdiction over Ford in this case, and Ford moved that court to dismiss the case for lack of personal jurisdiction. The federal court determined that it lacked subject matter jurisdiction over the action and remanded the suit to the Circuit Court without reaching the personal jurisdiction question.

In the Circuit Court, Ford again moved to dismiss the complaint for lack of personal jurisdiction. Ford argued that the Circuit Court could not exercise either specific or general jurisdiction over Ford under the federal Due Process Clause. The Circuit Court denied Ford's motion to dismiss and, after being asked to do so by Ford to facilitate this writ application, issued an opinion setting forth its reasoning.

The Circuit Court reasoned that Ford is "at home" and thus subject to general jurisdiction in West Virginia. The Circuit Court described the argument that Ford "does not do business in West Virginia to a sufficient degree to be 'at home' in West Virginia and be required to respond in our courts" as "the ultimate absurdity." Appendix 4. The court made only two factual findings pertinent to its general jurisdiction conclusion: (1) Ford "is a global operation," and (2) Ford's "emblem and logo" is "a globe of the world." *Id.*<sup>1</sup>

The Circuit Court also emphasized its concern that granting Ford's motion to dismiss would have "deprived the plaintiff of a forum to have the Plaintiff's case heard" and therefore violated Article 3, Sections 10 and 17 of the Constitution of West Virginia, which, per the Circuit Court, "inten[d] . . . to guarantee a right to have your case heard and decided by the plaintiff's peers." Appendix 3-4.

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<sup>1</sup> Both findings are irrelevant, as elaborated in this brief, but the second is also simply incorrect: Ford's logo is a blue oval, not a "globe of the world."

## SUMMARY OF ARGUMENT

Ford is entitled to a writ of prohibition to prevent the Circuit Court from proceeding in this case without jurisdiction. This Court has made clear that a writ of prohibition is available as a matter of right if a circuit court improperly denies a motion to dismiss for lack of personal jurisdiction. That is the case here.

The Circuit Court's finding that Ford is subject to general, all-purpose jurisdiction in West Virginia contravenes directly controlling precedent from the United States Supreme Court. The *Daimler* case holds that a corporation will be subject to general jurisdiction in a place other than its state of incorporation or principal place of business only in an "exceptional case." And *Daimler* squarely holds that doing business in a State, and even engaging in "a substantial, continuous, and systematic course of business," is not sufficient. Though West Virginia residents use Ford products, the dealers that sell and service Ford vehicles in the State are independent entities. Ford itself has no plants, offices, or agents in the State. Treating Ford's ordinary business contacts with West Virginia as sufficient to trigger general jurisdiction is directly contrary to the rationale and holding of *Daimler*.

The Circuit Court did not address the separate question whether Ford is subject to specific jurisdiction in this case, but the answer is no, because plaintiff's claims do not arise from any activity Ford conducted in, or directed towards, West

Virginia. Plaintiff asserts jurisdiction on the ground that Ford manufactured products “with knowledge or reason to foresee that Ford vehicles would be shipped in interstate commerce and would reach the market of West Virginia.” Compl. ¶ 5, Appendix 10. But both this Court and the Fourth Circuit have held that showing that a defendant expected the product *could* eventually end up in West Virginia is not enough to establish personal jurisdiction. Instead, the defendant must specifically *intend* that the product be distributed within the state, and Plaintiff cannot make that showing here. The vehicle was manufactured in Kentucky, and initially sold to a Florida dealer, who in turn sold it to a consumer in Florida. The vehicle made its way into West Virginia only through the independent actions of third parties. Ford did nothing to direct the vehicle to West Virginia. The law is clear that a State may not exercise jurisdiction over an out-of-state entity based on the activity of third parties, and that is all that is present here.

This Court should grant the writ of prohibition and direct that Ford be dismissed from the suit for lack of personal jurisdiction.

#### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Oral argument is appropriate pursuant to Rule 18(a) of the West Virginia Rules of Appellate Procedure to aid in this Court’s consideration of the important legal issues raised by this case. Ford respectfully requests oral argument under

Rule 20, as this case involves matters of first impression regarding an issue of fundamental public importance. W. Va. R. App. P. 20(a)(1)-(2).

### STANDARD OF REVIEW

Under West Virginia Code § 53-1-1, “[t]he writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.” This Court has held repeatedly that “jurisdiction” has two elements: A court “must have jurisdiction of the subject matter and jurisdiction of the parties; both are necessary and the absence of either is fatal to its jurisdiction.” Syl. Pt. 4, *State ex rel. Dale v. Stucky*, 232 W. Va. 299, 301, 752 S.E.2d 330, 332 (2012) (quoting Syl. Pt. 3, *Blankenship v. Estep*, 201 W. Va. 261, 262, 496 S.E.2d 211, 212 (1997)); *see also W. Va. Secondary Sch. Activities Comm’n v. Wagner*, 143 W. Va. 508, 521, 102 S.E.2d 901, 910 (1958) (“A court which has jurisdiction of the subject matter of litigation exceeds its legitimate powers when it undertakes to hear and determine the cause without jurisdiction of the parties.”); Syl. Pt. 2, *State ex rel. State Rd. Comm’n v. Taylor*, 151 W. Va. 535, 153 S.E.2d 531 (1967) (indicating that the writ is discretionary only if “a court has jurisdiction of the subject matter in controversy *and of the parties*” (emphasis added)).

Thus, as this Court has previously held, “[w]here a court lacks jurisdiction over a nonresident defendant, prohibition is the appropriate remedy to prevent further prosecution of the suit.” *Pries v. Watt*, 186 W. Va. 49, 53, 410 S.E.2d 285, 289 (1991) (granting writ of prohibition in the same procedural posture as this case, to correct erroneous denial of motion to dismiss for lack of personal jurisdiction); *see also Wagner*, 143 W. Va. at 520-21, 102 S.E.2d at 909-10 (granting writ of prohibition upon determination that “the circuit court does not have jurisdiction of the necessary parties to the suit”).<sup>2</sup> And where “a court is attempting to proceed in a cause without jurisdiction, prohibition will issue as a matter of right ‘regardless of the existence of other remedies.’” *State ex rel. Farber v. Mazzone*, 213 W. Va. 661, 665, 584 S.E.2d 517, 521 (2003) (quoting Syl. Pt. 10, *Jennings v. McDougle*, 83 W. Va. 186, 195, 98 S.E. 162, 166 (1919)); *State ex rel. Valley Distribs., Inc. v. Oakley*, 153 W. Va. 94, 99, 168 S.E.2d 532, 535 (1969) (“The writ lies as a matter of right whenever the inferior court . . . has

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<sup>2</sup> *See State ex rel. Bell Atl.-W. Va., Inc. v. Ranson*, 201 W. Va. 402, 497 S.E.2d 755 (1997) (addressing the merits of writ of prohibition challenging denial of motion to dismiss for lack of personal jurisdiction); *Norfolk S. Ry. Co. v. Maynard*, 190 W. Va. 113, 120, 437 S.E.2d 277, 284 (1993) (suggesting, in challenge to denial of motion to dismiss for lack of personal jurisdiction, that “a writ of prohibition is the traditional remedy to challenge the actions of a trial court when that court acts without jurisdiction”).

not jurisdiction [and] it matters not if the aggrieved party has some other remedy . . .”).<sup>3</sup>

Plaintiff bears the burden of establishing this Court’s personal jurisdiction over Ford. *State ex rel. Bell Atl.-W. Va., Inc. v. Ranson*, 201 W. Va. 402, 414, 497 S.E.2d 755, 767 (1997). Plaintiff must make “a prima facie showing that jurisdiction exists.” *Lane v. Boston Sci. Corp.*, 198 W. Va. 447, 452, 481 S.E.2d 753, 758 (1996). This Court “must view the allegations in the pleadings in the light most favorable to the plaintiff,” “except insofar as controverted by the defendant’s affidavit[s].” *Id.* (quotation and emphasis omitted). Where, as here, the relevant facts are undisputed, this Court reviews a circuit court’s determination that it has personal jurisdiction over a defendant de novo. *See Bowers v. Wurzburg*, 202 W. Va. 43, 47, 501 S.E.2d 479, 483 (1998). This Court has at times indicated that the absence of jurisdiction must be “clearly shown” to warrant a writ of prohibition. *Norfolk S. Ry. Co. v. Maynard*, 190 W. Va. 113, 120, 437

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<sup>3</sup> This Court has made clear that even non-jurisdictional issues that are similar to personal jurisdiction in their importance to the efficient administration of justice, and to defendants and the courts, specifically venue and forum non conveniens, are properly resolved on writs of prohibition. *See State ex rel. Mylan, Inc. v. Zakaib*, 227 W. Va. 641, 645, 713 S.E.2d 356, 360 (2011) (“this Court has previously held that a writ of prohibition is an appropriate remedy ‘to resolve the issue of where venue for a civil action lies,’ because ‘the issue of venue [has] the potential of placing a litigant at an unwarranted disadvantage in a pending action and [] relief by appeal would be inadequate” (quoting *State ex rel. Huffman v. Stephens*, 206 W. Va. 501, 503, 526 S.E.2d 23, 25 (1999)) (alterations in original)).

S.E.2d 277, 284 (1993); *but see Pries*, 186 W. Va. at 53, 418 S.E.2d at 289 (granting writ for lack of personal jurisdiction without mentioning any heightened burden). But the Circuit Court’s holding here must be reversed under any standard of review.

## ARGUMENT

To establish personal jurisdiction, plaintiff must show that “the defendant’s actions satisfy [West Virginia’s] personal jurisdiction statutes” and that applying those statutes would be consistent with “federal due process.” *Nezan v. Aries Techs., Inc.*, 226 W. Va. 631, 637, 704 S.E.2d 631, 637 (2010). In West Virginia, those two inquires collapse into one, “[b]ecause the West Virginia long-arm statute is coextensive with the full reach of due process.” *In re Celotex Corp. v. Rapid Am. Corp.*, 124 F.3d 619, 627-28 (4th Cir. 1997); *see Leslie Equip. Co. v. Wood Res. Co.*, 224 W. Va. 530, 534 n.14, 687 S.E.2d 109, 115 n.14 (2009).<sup>4</sup> As explained below, plaintiff cannot carry his burden: the Court cannot exercise personal jurisdiction over Ford in this case consistent with the Constitution.

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<sup>4</sup> To the extent the inquiries may differ, the specific jurisdiction analysis below would apply equally under W. Va. Code § 56-3-33, which requires that a plaintiff demonstrate the existence of one of seven types of contacts, such as “[t]ransacting any business in this State” or “[c]ontracting to supply services or things in this State,” and *also* make clear that “only a cause of action arising from or growing out of” those West Virginia contacts “may be asserted against” the defendant. W. Va. Code § 56-3-33(a)-(b). As explained below, Ford has no qualifying contacts with West Virginia, and to the extent it might, plaintiff’s claims do not arise out of those contacts.

## **I. Ford Is Not Subject To General Jurisdiction In West Virginia.**

The United States Supreme Court's recent decision in *Daimler* makes clear that Ford is not subject to general jurisdiction in West Virginia. The critical question in assessing general jurisdiction is whether the defendant's "'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State.'" *Daimler*, 134 S. Ct. at 761 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011)) (alteration in original). The consequences of finding general jurisdiction are stark—a defendant will be subject to suit in that state for any and all claims, including claims that do not implicate the defendant's activities there. *Id.* at 754. As a result, "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction." *Id.* at 760. For a corporation, the "paradig[m] . . . bases for jurisdiction" are "the place of incorporation and principal place of business," because they are "unique," "easily ascertainable," and "afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims." *Id.* (quotations omitted) (alteration in original). As noted above, Ford was incorporated in Delaware, and its principal place of business is Michigan, so West Virginia does not qualify as a "paradigm" site for jurisdiction.

Nor is there any other basis for asserting general jurisdiction over Ford.

*Daimler* holds that a corporation may be subject to general jurisdiction in a state

other than its state of incorporation or principal place of business only in an “exceptional case.” *Id.* at 761 n.19. And *Daimler* further holds that a corporation is *not* “at home” in a state merely because it conducts “a substantial, continuous, and systematic course of business” there. *Id.* at 761-62. Put otherwise, “home” does not mean anywhere the company conducts business, even large amounts of business: “A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, ‘at home’ would be synonymous with ‘doing business’ tests.” *Id.* at 762 n.20. It is thus “incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or the principal place of business.” *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014).

*Daimler* cites *Perkins v. Benguet Consolidated Mining Co.*, 342 U. S. 437 (1952), to exemplify the kind of “exceptional case” that could establish general jurisdiction in a state other than the two paradigm states. *Daimler*, 134 S. Ct. at 761 n.19. In *Perkins*, the management of a company incorporated in the Philippines was forced during World War II to transfer management activities to Ohio, which became “the corporation’s principal, if temporary, place of business.” *Daimler*, 134 S. Ct. at 756. Ohio thus could exercise general jurisdiction over the company during that period, because Ohio was a temporary “surrogate” for the company’s normal principal place of business. *Id.* at 756 & n.8.

This case is nothing like *Perkins*. Plaintiff does not and cannot allege that any of Ford’s central offices, headquarters, or decision-makers are located, temporarily or otherwise, in West Virginia. Nor does he allege that Ford’s activities in West Virginia come anywhere close to its activities in Michigan, Ford’s true and only “principal place of business.”

Plaintiff cannot even point to a presence similar to the contacts Daimler’s subsidiary, MBUSA, had with California in the *Daimler* case. 134 S. Ct. at 760. MBUSA had “multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine.” *Id.* at 752. The Supreme Court dismissed those California contacts as “slim” and nowhere near sufficient to subject Daimler to general jurisdiction. *Id.* at 760.

Ford’s contacts with West Virginia here are even slimmer. Ford does not engage in *any* relevant business activity in West Virginia—Ford has *zero* plants in West Virginia, *McDermott Aff.* ¶ 7, Appendix 108, and it is independent from the dealers in the state that sell and service Ford vehicles, which expressly disavow any agency relationship with Ford, *McDermott Aff.* ¶ 8, Appendix 108-09. Those arrangements must be respected for purposes of the jurisdictional analysis, as *Daimler* instructs that out-of-state defendants must be able “to structure their primary conduct with some minimum assurance as to where that conduct will and

will not render them liable to suit.” 134 S. Ct. at 762 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985)).

The Circuit Court did not make any contrary findings of fact. The court’s only stated basis for holding Ford subject to general jurisdiction in West Virginia was that Ford is “a global operation.” Appendix 3. But under *Daimler*, the fact that Ford does business around the world is precisely why it is *not* “at home” in this particular state and hence subject to general jurisdiction here: “A corporation that operates in many places can scarcely be deemed at home in all of them.” 134 S. Ct. at 762 n.20; *see also id.* at 773 (Sotomayor, J., concurring in the judgment) (under Court’s rule, even “a large corporation that owns property, employs workers, and does billions of dollars’ worth of business in the State will not be” subject to general jurisdiction in a state if “the corporation has similar contacts elsewhere”).

The Circuit Court also asserted that granting Ford’s motion to dismiss would violate Article 3, Sections 10 and 17 of the West Virginia State Constitution, because plaintiff would be “deprived . . . of a forum to have [his] case heard.” Appendix 3-4. The Supreme Court rejected a similar argument in *Goodyear*. There, the North Carolina Court of Appeals had invoked the State’s “interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained.” 131 S. Ct. at 2857 n.5 (quotation omitted). “But general

jurisdiction,” the Supreme Court explained, “has never been based on the *plaintiff’s* relationship to the forum.” *Id.* (quotation and alterations omitted) (emphasis added). “Due Process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties.” *Walden*, 134 S. Ct. at 1122.

In any event, the Circuit Court’s premise—that granting Ford’s motion would have “deprived the Plaintiff of a forum to have [his] case heard,” Appendix 3—is incorrect. Ford is subject to general jurisdiction in Michigan and Delaware, and can be sued in those states on any claim. But Ford is *not* subject to general jurisdiction in West Virginia. The Circuit Court’s contrary conclusion cannot stand.

## **II. Ford Is Not Subject To Specific Jurisdiction In West Virginia For The Conduct Alleged In This Case.**

Plaintiff likewise cannot establish specific jurisdiction over Ford in this case because he cannot show, as he must, that his claims arise from any activity that Ford itself has purposely directed into the state. Because the Circuit Court did not address the specific jurisdiction question, this Court could remand the case for consideration of that issue. But the issue can and should be resolved as a matter of law on the existing record, and thus in the interests of efficiency and to avoid a waste of resources, this Court should address the issue and hold that Ford is not subject to specific jurisdiction in this case.

To establish specific jurisdiction, a plaintiff must first show that the defendant “purposefully avail[ed] himself of the privilege of conducting activities within the forum state.” *Nezan*, 226 W. Va. at 639, 704 S.E.2d at 639 (quoting *Pries*, 186 W. Va. at 51, 410 S.E.2d at 287). Plaintiff initially alleges that Ford engages “in the solicitation of activities in West Virginia” to promote the sale of its vehicles, Compl. ¶ 5, Appendix 10. But Ford does not have any manufacturing plants in the state. *McDermott Aff.* ¶ 7, Appendix 108. Nor does Ford have any other offices or agents in West Virginia. As explained above, Ford’s dealers in the state are independent business entities that cannot create any obligations binding on Ford. *McDermott Aff.* ¶ 8, Appendix 108-09; *see Justice Family Farms LLC v. Guess Irrigation Co.*, 2012 WL 775063, at \*5 (S.D. W. Va. Mar. 8, 2012) (no specific jurisdiction where defendant had “no agent, office, or property in West Virginia”).<sup>5</sup> Likewise, Ford itself does not engage in distribution or servicing of Ford vehicles in West Virginia—those activities are also conducted exclusively by independent dealers, none of whom is a corporate affiliate of Ford. *McDermott Aff.* ¶ 8, Appendix 108-09. Nor does Ford itself target advertising at the State of

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<sup>5</sup> *See Bowers v. Wurzburg*, 202 W. Va. at 49 n.11, 501 S.E.2d at 485 n.11 (“we give substantial weight to federal cases” because “the West Virginia Rules of Civil Procedure are practically identical to the Federal Rules”).

West Virginia.<sup>6</sup> Ford’s own activities in the state therefore cannot give rise to specific jurisdiction. All but conceding the point, plaintiff instead attempts to establish jurisdiction based on the fact that Ford places its products “into the West Virginia stream of commerce for ultimate users.” Compl. ¶ 5, Appendix 10; *see id.* at 11 (Ford had “knowledge or reason to foresee that Ford vehicles would be shipped in interstate commerce and would reach the market of West Virginia users or consumers”). But this Court rejected this “stream of commerce” theory in *Griffith v. ConAgra Brands, Inc.*, 229 W. Va. 190, 728 S.E.2d 74 (2012). In *Griffith*, the Court expressly held that the Due Process Clause’s “purposeful direction” requirement could not be satisfied merely by “plac[ing] a product into the stream of commerce,” except in rare circumstances not present here. *Id.* at 199-200, 728 S.E.2d at 83-84 (quotation omitted).<sup>7</sup> The Fourth Circuit has also

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<sup>6</sup> Ford itself directs advertising and other marketing through nationally based television, print, and online media. Finnegan Aff. ¶ 3, Appendix 122. Advertising purposefully directed into particular states, including West Virginia, is directed by one of 37 Ford Dealer Advertising Funds (FDAFs). Finnegan Aff. ¶ 4, Appendix 122. “FDAFs are run by boards composed of representatives from independently-owned and operated Ford dealerships, not by Ford employees.” *Id.* “While Ford may provide some creative content for the FDAFs’ use, FDAFs decide which advertisements to run in their particular region.” *Id.* Indeed, West Virginia’s motor vehicle dealer-franchise law prohibits Ford from forcing dealers, through the FDAFs, to “[u]nreasonably participate monetarily in any advertising campaign or contest.” W. Va. Code §17A-6A-10(1)(c).

<sup>7</sup> *Griffith* addressed a prior case indicating that a pure “stream of commerce” theory, without more, could suffice to support personal jurisdiction, explaining that the case was limited to its facts, which involved a foreign corporation whose sole

rejected the theory. In *Celotex*, the plaintiff attempted to ground jurisdiction on the fact that the defendant’s “asbestos containing products [would] reach[] West Virginia in the normal stream of commerce.” 124 F.3d at 629 (quotations omitted). Relying on “dispositive” prior precedent, the court held that the stream of commerce theory was inconsistent with core constitutional values: ““To permit a state to assert jurisdiction over any person in the country whose product is sold in the state simply because a person must expect that to happen destroys the notion of individual sovereignties inherent in our system of federalism.”” *Id.* (emphasis omitted) (quoting *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 945 (4th Cir. 1994)). The stream of commerce theory, the court continued, ““would subject defendants to judgment in locations based on the activity of third persons and not the deliberate conduct of the defendant.”” *Id.* (quoting *Lesnick*, 35 F.3d at 945). Thus, the plaintiff could not establish personal jurisdiction by alleging only “the entry of [the defendant’s] products into the stream of commerce with the expectation that they would be purchased in West Virginia.” *Id.* Instead, the court

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American distributor was a “wholly owned subsidiary” and merely a “shell corporation.” 229 W. Va. at 199, 700 S.E.2d at 83 (discussing *Hill v. Showa Denko, K.K.*, 188 W.Va. 654, 425 S.E.2d 609 (1992)). *Griffith* held that due process was not satisfied on any “stream of commerce” theory because the defendant there “was not a shell corporation created solely for tax avoidance purposes.” *Id.*

explained, a plaintiff must identify “some activity *purposely* directed *at* the forum state” by the defendant. *Id.* (emphasis added).

That fundamental rule—that specific jurisdiction cannot lie merely because a defendant places a product into the stream of commerce with the expectation that it could be used by a consumer in the forum state—has been endorsed in many cases. *See, e.g., J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) (plurality opinion) (“The defendant’s transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.”); *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 392 (4th Cir. 2012) (explaining that jurisdiction is improper “where a defendant has merely placed a product into the stream of commerce foreseeing that it might ultimately reach the forum state”); *Bridgeport Music, Inc. v. Still N The Water Publ’g*, 327 F.3d 472, 479–480 (6th Cir. 2003) (“placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State” (quotation omitted)); *Lesnick*, 35 F.3d at 945; *Boit v. Gar-Tec Prods. Inc.*, 967 F.2d 671, 683 (1st Cir. 1992); *Falkirk Mining Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 376 (8th Cir. 1990).<sup>8</sup> Because plaintiff

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<sup>8</sup> Some courts disagree and hold that placing a product in the stream of commerce suffices to establish specific jurisdiction where the product eventually appears, *see, e.g., Ainsworth v. Moffett Eng’g Ltd.*, 716 F.3d 174 (5th Cir. 2013),

cannot identify any activity “purposely directed at” West Virginia, his stream of commerce theory must be rejected.

Further, even if some of the West Virginia activity plaintiff has identified were conducted by Ford (and not independent dealers), plaintiff also cannot show that his claims “arose out of or resulting from [those] forum-related activities,” as is required for any claim to specific jurisdiction. *See Grove v. Maheswaran*, 201 W. Va. 502, 507, 498 S.E.2d 485, 490 (1997); *see also Lane*, 198 W. Va. at 457 n.13, 481 S.E.2d at 763 n.13 (plaintiff must show that “causes of action . . . arose from or grew out of” defendant’s state contacts). Put otherwise, specific jurisdiction is “case-linked” jurisdiction, *Goodyear*, 131 S. Ct. at 2851, which arises when the plaintiff’s case is directly linked to the defendant’s contacts with the state, *see Walden*, 134 S. Ct. at 1121. Critically, contacts “between the plaintiff (or third parties) and the forum State” are not relevant to the specific jurisdiction inquiry. *Id.* at 1122. Rather, the inquiry focuses on the defendant’s conduct, and if “the defendant’s suit-related conduct” does not create “a substantial connection with the forum State,” specific jurisdiction is inappropriate. *Id.* at 1221; *see*

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but only the majority rule described in the text comports with the requirements of due process.

*Goodyear*, 131 S. Ct. at 2853 (specific jurisdiction lies only where corporation’s in-state activity “gave rise to the episode-in-suit” (emphasis in original)).<sup>9</sup>

Ford’s “suit-related conduct” bears no connection whatsoever to West Virginia. Plaintiff’s claims turn on the allegation that the vehicle was “defective and unreasonably dangerous” when manufactured and when it “left the control of Ford.” Compl. ¶ 43, Appendix 16. But the vehicle at issue here was manufactured in Kentucky and was initially sold to a dealer in Florida, who in turn sold it to a Florida resident. McDermott Aff. ¶ 5, Appendix 108. The vehicle entered West Virginia only in 2009, when Ramey purchased it in a used condition without Ford’s involvement. None of Ford’s asserted activities in West Virginia forms any part of plaintiff’s claims, much less “an important part of” them. *Tire Eng’g & Distrib., LLC v. Shandong Linglong Rubber Co.*, 682 F.3d 292, 303 (4th Cir. 2012).

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<sup>9</sup> This requirement, essential as it is to specific jurisdiction, applies equally when a plaintiff seeks to proceed on a “stream of commerce” theory. *See Seifert v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 273 (5th Cir. 2006) (“Once a product has reached the end of the stream and is purchased, a consumer’s unilateral decision to take a product to a distant state, without more, is insufficient to confer personal jurisdiction over the manufacturer or distributor.”); *Irvin v. S. Snow Mfg.*, 517 Fed. App’x 229, 231-32 (5th Cir. 2013) (no specific jurisdiction on “stream-of-commerce jurisdictional theory,” because although defendant targeted *some* snowball machines to Mississippi residents, product *at issue* was sold “to a Louisiana customer” and then “unilaterally transported . . . into Mississippi”).

To see clearly why this is so, suppose that none of Ford’s alleged West Virginia-based activities plaintiff identifies had ever occurred—the substance of plaintiff’s claim would not be affected in any way, because his claim has nothing to do with anything Ford did in West Virginia. The claim is instead based on an allegedly flawed design made outside the state, for a vehicle manufactured outside the state, which left Ford’s possession and control outside the state when it was purchased by an entity that resided outside the state. Put otherwise, this case is no different than if plaintiff had purchased this used vehicle in Florida, drove into West Virginia, and crashed. Indeed, that example is this case, except that here *additional third parties* intervened between Ford’s sale of the vehicle and its arrival in West Virginia. Ford’s connection with this vehicle ended in Florida, and nothing Ford did in or directed to West Virginia contributed in any way to this dispute or forms any part of plaintiff’s claims.

Instead, the vehicle made its way into West Virginia only through the actions of third parties. But “contacts between . . . third parties[] and the forum State” provide no basis for specific jurisdiction. *Walden*, 134 S. Ct. at 1122. The fact that Wellman’s injury occurred in West Virginia is likewise insufficient, because “injury to a forum resident is not a sufficient connection to the forum.” *Id.* at 1125; see *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) (“[The] unilateral activity of another party or a third person is not an

appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.”). Plaintiff simply cannot show that the suit “arise[s] out of or relate[s] to the defendant’s contacts with the forum.” *Helicopteros*, 466 U.S. at 414 n.8.

Because Plaintiff’s purchase, and his subsequent injuries, do not arise in any way from conduct Ford committed within West Virginia or directed purposely toward the state, the Due Process Clause prohibits the exercise of personal jurisdiction over Ford.

A federal court recently endorsed these principles in holding, on materially identical facts, that Ford could not be sued in Mississippi for alleged design defects in a vehicle that was manufactured outside that state and initially sold by Ford to a dealer in Texas. *Pitts v. Ford Motor Co.*, 2015 WL 5256838 (S.D. Miss. Aug. 26, 2015). The *Pitts* court, noting that Ford did not have a “manufacturing plant in the State of Mississippi” and at most “does business” in the state, concluded that Ford was not “at home” in Mississippi for purposes of general jurisdiction under *Daimler*. *Id.* at \*1, 4-5. Turning to specific jurisdiction, the court reasoned that any contacts Ford had with Mississippi lacked the requisite “nexus” to the plaintiff’s claims. *Id.* at \*6-7. Ford had sold the vehicle “to a Texas dealership, which in turn sold the automobile in Texas to” the plaintiff, who “unilaterally transported the automobile to Biloxi,” where the accident occurred. *Id.* at \*7. The

uncontested fact that Ford sold *other vehicles* to dealerships “in Mississippi, without more,” was “insufficient to find that Plaintiffs’ claims ‘relate to’ such sales.” *Id.* at \*8. At bottom, the only connection between the Ford vehicle and Mississippi was “[p]laintiff’s unilateral activity” which “cannot support a finding that specific jurisdiction is proper over a foreign defendant.” *Id.* (citing *Walden*, 134 S. Ct. at 1122).

*Pitts* cannot be distinguished from this case. Just as in *Pitts*, the vehicle plaintiff claims was defective was manufactured in another state, initially sold by Ford to a dealer in another state, and came into the forum state only through the unilateral actions of third parties outside Ford’s control. This Court should follow the persuasive and thorough analysis in *Pitts* and order that Ford be dismissed from the case for lack of personal jurisdiction.<sup>10</sup>

## CONCLUSION

For the foregoing reasons, this Court should grant the writ of prohibition and direct that Ford be dismissed from this case for lack of personal jurisdiction.

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<sup>10</sup> Although other courts have recently denied motions to dismiss for lack of personal jurisdiction filed by Ford in other product defect cases, *see, e.g., Chiavaras v. Ford Motor Co.*, No. DDV-14-814 (Mont. D. Ct. July 10, 2015), Appendix 124-26, *Pitts*’s analysis is more persuasive.

Respectfully Submitted

**STATE OF WEST VIRGINIA ex rel. FORD  
MOTOR COMPANY**

**BY: FLAHERTY SENSABAUGH BONASSO  
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**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

STATE OF WEST VIRGINIA ex rel. FORD MOTOR COMPANY,

Petitioner,

v.

Appeal No.: 15-\_\_\_\_\_

The HONORABLE WARREN R. MCGRAW, Judge of the Circuit Court of Wyoming County; DANNY S. WELLMAN, Administrator of the Estate of Jarred S. Wellman, Deceased

,

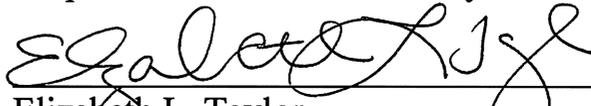
Respondents.

**VERIFICATION**

STATE OF West Virginia.

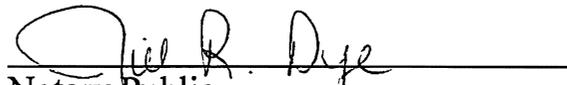
COUNTY OF Kanawha, to wit:

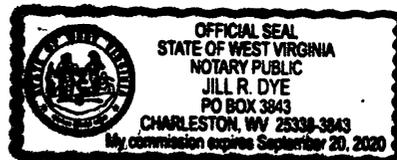
The undersigned, after being first duly sworn, states that the information contained in the foregoing Petition for Writ of Prohibition is true, except insofar as it is stated to be based upon information and belief. To the extent that any information is based upon information provided to me or on my behalf, it is believed to be true.

  
Elizabeth L. Taylor

Taken, subscribed, and sworn to before the undersigned authority, this 20 day of November, 2015.

My commission expires: 9-20-2020

  
Notary Public



**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

STATE OF WEST VIRGINIA ex rel. FORD MOTOR COMPANY;

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The HONORABLE WARREN R. MCGRAW, Judge of the Circuit Court of Wyoming County; DANNY S. WELLMAN, Administrator of the Estate of Jarred S. Wellman, Deceased

Respondents.

**CERTIFICATE OF SERVICE**

I, Elizabeth L. Taylor, counsel for Petitioner, do hereby certify that **PETITIONERS' PETITION FOR WRIT OF PROHIBITION** was served on the 20th day of November, 2015 via first class U.S. mail, postage prepaid, to the following counsel of record:

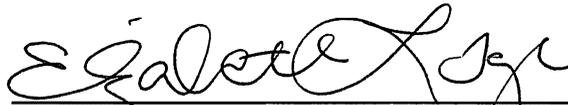
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