

APPENDIX

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APPENDIX A

OP 19-0099

IN THE SUPREME COURT OF THE
STATE OF MONTANA

2019 MT 115

FORD MOTOR COMPANY,

Petitioner,

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT,
ELIZABETH BEST,

Respondent.

Filed: May 21, 2019

ORIGINAL PROCEEDING:

Petition for Writ of Supervisory Control
In and For the County of Cascade,
Cause No. ADV-18-0247(b)
Honorable Elizabeth Best, Presiding Judge

COUNSEL OF RECORD:

For Petitioner:

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Decided: May 21, 2019

Filed:

/s/ Bowen Greenwood
Clerk

Justice Laurie McKinnon delivered the Opinion and Order of the Court.

¶1 Ford Motor Company (Ford) petitions this Court for a writ of supervisory control following an order of the Eighth Judicial District Court, Cascade County, in *Charles Lucero v. Ford Motor Company*, ADV-18-247(b), denying its motion to dismiss for lack of personal jurisdiction. We accept supervisory control, conclude Montana has specific personal jurisdiction over Ford in this case, and accordingly affirm the District Court's order. This Opinion and Order addresses the following issue:

Does Montana have specific personal jurisdiction over Ford regarding Lucero's design defect, failure to warn, and negligence claims when the vehicle accident occurred in

Montana but the vehicle was not designed, manufactured, or first sold by Ford in Montana?

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Markkaya Jean Gullett, a Montana resident, drove a 1996 Ford Explorer. Ford did not design or manufacture the Explorer in Montana. Ford assembled the Explorer in Kentucky and sold it for the first time to a dealer in Washington. Over ten years later, the Explorer was resold and registered in Montana. In 2015, as Gullett drove the Explorer on the interstate in Montana, one of the Explorer's tires suffered a tread/belt separation. The vehicle lost stability, rolled into a ditch, and came to rest upside down. Gullett died at the scene. Gullett's personal representative, Charles Lucero (Lucero), filed this suit against Ford in Montana state district court on behalf of Gullett and her heirs. The complaint alleges three claims against Ford: strict liability for design defect, strict liability for failure to warn, and negligence. Lucero seeks compensatory and punitive damages.

¶3 Defendant Ford moved to dismiss, arguing Montana does not have specific personal jurisdiction over Ford regarding Lucero's claims and specifically reasoning that there is no link between Ford's Montana contacts and Lucero's claims. The District Court disagreed and ultimately concluded it had specific personal jurisdiction over Ford.

¶4 Ford now asks this Court to exercise supervisory control over the District Court, conclude

no specific personal jurisdiction exists, and dismiss the case against Ford. Ford faults the District Court for resting its analysis on Ford's in-state contacts and the fact that Gullett was injured in Montana, arguing the court erred when it failed to identify a link between Ford's contacts with Montana and Lucero's claims. Lucero asserts the court's exercise of specific personal jurisdiction is appropriate in this case.

STANDARD OF REVIEW

¶5 This Court has supervisory control over Montana courts. Mont. Const. art. VII, § 2(2); *see also Great Falls Clinic LLP v. Mont. Eighth Judicial Dist. Court*, 2016 MT 245, ¶ 6, 385 Mont. 95, 381 P.3d 550. Supervisory control is an extraordinary remedy and we determine whether to use it on a case-by-case basis. M. R. App. P. 14(3). We may exercise supervisory control when “urgency . . . mak[es] the normal appeal process inadequate,” “the case involves purely legal questions,” and “[c]onstitutional issues of state-wide importance are involved.” M. R. App. P. 14(3)(b).

¶6 This Court reviews a personal jurisdiction ruling de novo. *Tackett v. Duncan*, 2014 MT 253, ¶ 16, 376 Mont. 348, 334 P.3d 920.

DISCUSSION

¶7 We accept Ford's petition for supervisory control to resolve the issue of whether a Montana state court may exercise specific personal jurisdiction over Ford regarding Lucero's design defect, failure to warn, and negligence claims. Urgency makes the normal appeal process inadequate in this case

involving personal jurisdiction, because the District Court must have power over the parties in a proceeding to afford adequate relief. The question is purely legal and of state-wide constitutional importance: Ford's due process rights are at issue and this decision will clarify when persons injured in Montana may appropriately file suit in Montana courts. We accordingly accept supervisory control and, for the following reasons, affirm the District Court's decision finding that Montana may exercise specific personal jurisdiction over Ford in this case.

¶8 Personal jurisdiction—a court's power over the parties in a proceeding—may be general (all-purpose) or specific (case-linked). *DeLeon v. BNSF Ry. Co.*, 2018 MT 219, ¶ 7, 392 Mont. 446, 426 P.3d 1. “General personal jurisdiction is premised upon the defendant's relationship to the forum state, while specific personal jurisdiction is premised upon the defendant's relationship to both the forum state and the particular cause of action.” *DeLeon*, ¶ 7. Ford is undisputedly not subject to general personal jurisdiction in Montana. *See BNSF Ry. Co. v. Tyrrell*, 581 U.S. ___, ___, 137 S. Ct. 1549, 1559 (2017). The question in this case, therefore, is whether Montana may exercise specific personal jurisdiction over Ford regarding Lucero's design defect, failure to warn, and negligence claims.

¶9 Specific personal jurisdiction exists when the suit itself “arises from the specific circumstances set forth in Montana's long-arm statute, M. R. Civ. P. 4(b)(1).” *Buckles v. Cont'l Res., Inc.*, 2017 MT 235, ¶ 15, 388 Mont. 517, 402 P.3d 1213. A Montana court's exercise of specific personal jurisdiction “depends on whether the defendant's ‘suit-related

conduct’ created a substantial connection with” Montana. *Tackett*, ¶ 19 (quoting *Walden v. Fiore*, 571 U.S. 277, 284, 134 S. Ct. 1115, 1121 (2014)). The defendant’s relationship with the forum and the litigation must relate to contact the defendant itself created with the forum. *Tackett*, ¶ 32. Accordingly, exercising specific personal jurisdiction over a defendant is only appropriate when both the defendant and the underlying controversy are appropriately affiliated with Montana. *Tackett*, ¶ 19 (citing *Daimler AG v. Bauman*, 571 U.S. 117, 133, 134 S. Ct. 746, 758 (2014) (stating that specific personal jurisdiction focuses on the “relationship among the defendant, the forum, and the litigation”)).

¶10 We apply a two-step test to determine whether a Montana court may exercise personal jurisdiction over a nonresident defendant. *DeLeon*, ¶ 10 (citing *Milky Whey, Inc. v. Dairy Partners, LLC*, 2015 MT 18, ¶ 18, 378 Mont. 75, 342 P.3d 13; *Tackett*, ¶ 22). First, we determine whether personal jurisdiction exists under Montana’s long-arm statute, M. R. Civ. P. 4(b)(1). *Milky Whey*, ¶ 18. If the first step is satisfied, we then determine whether exercising personal jurisdiction is constitutional; that is, whether it conforms with “the traditional notions of fair play and substantial justice embodied in the due process clause.” *Cimmaron Corp. v. Smith*, 2003 MT 73, ¶ 10, 315 Mont. 1, 67 P.3d 258.

¶11 First, in considering whether specific personal jurisdiction exists under Montana’s long-arm statute, we turn to M. R. Civ. P. 4(b)(1) which provides, in pertinent part: “[A]ny person is subject to the jurisdiction of Montana courts as to any claim for

relief arising from . . . the commission of any act resulting in accrual within Montana of a tort action.” M. R. Civ. P. 4(b)(1)(B). In this case, Lucero’s claims for relief arise from Ford’s alleged actions of design defect, failing to warn, and negligence. Lucero alleges those actions resulted in the accrual of a tort action in Montana: Gullett was driving the Explorer in Montana when the accident occurred. Accordingly, we conclude Lucero’s claims for relief arise from Ford’s actions allegedly resulting in a tort action accruing within Montana. *See Bunch v. Lancair Int’l, Inc.*, 2009 MT 29, ¶ 40, 349 Mont. 144, 202 P.3d 784 (concluding the out-of-state defendant’s conduct fell under Montana’s long-arm statute because the alleged tort accrued in Montana).¹ Step

¹ Ford selectively quotes from our prior case law in *Tackett* and *Milky Whey* to support its contention that its conduct here does not satisfy subsection (b)(1)(B) of Montana’s long-arm statute. *See Tackett*, ¶ 31 (accrual turns “on where the events giving rise to the tort claims occurred, rather than where the plaintiffs allegedly experienced . . . their injuries”), ¶ 34 (“[N]o part of [the defendant’s] course of conduct forming the basis of [the plaintiff’s] claims occurred in Montana.”), ¶ 35 (“Mere injury to a forum resident is not a sufficient connection to the forum, however.”); *Milky Whey*, ¶ 24 (“[A] tort does not accrue in Montana when all acts giving rise to the claims occur in another state.”).

Those cases, however, are factually distinguishable—*Tackett* involved a monetary dispute where the only connection to Montana was a party’s transfer of funds from his Montana bank account, and *Milky Whey* involved a dispute over the delivery of a product where the product never physically entered Montana. *See Tackett*, ¶ 24; *Milky Whey*, ¶¶ 22-24. In this case, the tort undoubtedly accrued in Montana: the accident occurred while Gullett was driving on a Montana roadway. Lucero’s claims of design defect, failing to warn, and negligence against Ford, if proven, resulted in the accrual of a

one is satisfied; Ford's conduct falls under Montana's long-arm statute.

¶12 We next turn to the question of whether exercising personal jurisdiction over Ford is constitutional. A Montana court's exercise of personal jurisdiction over a defendant is limited by the Fourteenth Amendment's Due Process Clause. U.S. Const. amend. XIV. A defendant must have "certain minimum contacts [with Montana] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Tackett*, ¶ 18 (quoting *Walden*, 571 U.S. at 283, 134 S. Ct. at 1121 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945))). The concept protects a defendant from having to litigate in a distant forum and allows a defendant to reasonably anticipate where he may be haled into court. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980). The primary focus "is the defendant's relationship to the forum State." *Bristol-Myers Squibb Co. v. Superior Court of Cal., S.F. Cty.*, 582 U.S. ____, ____, 137 S. Ct. 1773, 1779 (2017). To determine if exercising personal jurisdiction over a defendant comports with due process, we consider whether: (1) the nonresident defendant purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws; (2) the plaintiff's claim arises out of or relates to the defendant's forum-related activities; and (3) the exercise of personal jurisdiction is reasonable.

tort in Montana and, accordingly, M. R. Civ. P. 4(b)(1)(B) is satisfied in this case.

Simmons v. State, 206 Mont. 264, 276, 670 P.2d 1372, 1378 (1983). Once the plaintiff demonstrates that the first element is satisfied—that the defendant ‘purposefully availed itself of the privilege of conducting activities in Montana—a presumption of reasonableness arises, which the defendant can overcome only by presenting a compelling case that jurisdiction would be unreasonable. *B.T. Metal Works v. United Die & Mfg. Co.*, 2004 MT 286, ¶ 34, 323 Mont. 308, 100 P.3d 127.

¶13 First, we consider whether Ford purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana’s laws. “A nonresident defendant purposefully avails itself of the benefits and protections of the laws of the forum state when it takes voluntary action designed to have an effect in the forum.” *B.T. Metal Works*, ¶ 35. On the other hand, “a defendant does not purposefully avail itself of the forum’s laws when its only contacts with the forum are random, fortuitous, attenuated, or due to the unilateral activity of a third party.” *B.T. Metal Works*, ¶ 35.

¶14 The stream-of-commerce theory explains that a defendant may purposefully avail itself of the privilege of conducting activities in the forum when it “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” *World-Wide Volkswagen*, 444 U.S. at 298, 100 S. Ct. at 567. The focus must remain on the defendant: “the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant’s conduct and connection with the forum

State are such that he should reasonably anticipate being haled into court there.” *World-Wide Volkswagen*, 444 U.S. at 297, 100 S. Ct. at 567.

¶15 Justice O’Connor, writing for a plurality of four in *Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 112, 107 S. Ct. 1026, 1032 (1987) (plurality), introduced what is now known as the “stream of commerce plus” theory: placing a product into the stream of commerce, without more, does not demonstrate purposeful availment. Instead, a defendant must engage in some “additional conduct” establishing its “intent or purpose to serve the market in the forum State, [such as] designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.” *Asahi*, 480 U.S. at 112, 107 S. Ct. at 1032.² A similarly-

² Justice Brennan, also writing for four justices in *Asahi*, rejected the stream of commerce plus approach, instead supporting a less-demanding test: a defendant participating in “the regular and anticipated flow of products from manufacture to distribution to retail sale” is properly subject to jurisdiction so long as the defendant is “aware that the final product is being marketed in the forum State.” *Asahi*, 480 U.S. at 117, 107 S. Ct. at 1034 (Brennan, J., concurring in part and concurring in judgment). Justice Stevens, joined by two justices, stated that, instead of considering the defendant’s awareness that a component could find its way into the forum state, the court should evaluate “the volume, the value, and the hazardous character” of the defendant’s product to determine purposeful availment. *Asahi*, 480 U.S. at 122, 107 S. Ct. at 1037 (Stevens, J., concurring in part and concurring in judgment).

divided Court revisited the stream of commerce theory in *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882-85, 131 S. Ct. 2780, 2788-90 (2011) (plurality), where Justice Kennedy, writing for a plurality, adopted Justice O'Connor's stream of commerce plus approach. According to the stream of commerce plus theory, a defendant's mere awareness that its product may enter the forum state is not enough to demonstrate purposeful availment; the defendant must also engage in some additional conduct establishing its intent or purpose to serve the forum state's market. *Asahi*, 480 U.S. at 112, 107 S. Ct. at 1032.

¶16 We leaned towards Justice O'Conner's "stream of commerce plus" theory in *Bunch v. Lancair Int'l, Inc.*, when we reasoned that a defendant must do more than place a product into the stream of commerce in order to purposefully avail itself of the privilege of conducting activities in Montana. *Bunch*, ¶¶ 24, 28, 30, 55 (quoting *Asahi*, 480 U.S. at 112, 107 S. Ct. at 1032, for the proposition that "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State").

¶17 Applying the more stringent "stream of commerce plus" theory, we conclude Ford purposefully availed itself of the privilege of conducting activities in Montana. Ford delivers its vehicles and parts into the stream of commerce with the expectation that Montana consumers will purchase them. Further, Ford engages in additional conduct establishing its intent to serve the market in Montana. Ford advertises in Montana, is registered to do business in Montana, and operates subsidiary

companies in Montana. Ford has thirty-six dealerships in Montana. Ford also has employees in Montana. It sells automobiles, specifically Ford Explorers—the kind of vehicle at issue in this case—and parts in Montana. Ford also provides automotive services in Montana, including certified repair, replacement, and recall services. Ford’s conduct clearly establishes channels that permit it to provide regular assistance and advice to customers in Montana; Ford serves the market in Montana and expects consumers to drive its automobiles in Montana. Ford’s conduct satisfies the more-stringent stream of commerce plus theory, and we accordingly find it purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana’s laws.

¶18 Second, we consider whether Lucero’s claims arise out of or relate to Ford’s forum-related activities. The Supreme Court recently clarified the mandatory nature of this prong. Due process requires a connection between a defendant’s in-state actions and a plaintiff’s claim: “the suit must arise out of or relate to the defendant’s contacts with the forum.” *Bristol-Myers*, 582 U.S. at ____, 137 S. Ct. at 1780 (internal quotations and alterations omitted). Ford argues that, because it did not design or manufacture the Explorer at issue in Montana and because Ford first sold the Explorer outside of Montana, Lucero’s claims do not arise out of or relate to any of Ford’s Montana activities. Ford’s position is supported by courts in other jurisdictions finding no specific personal jurisdiction in similar factual scenarios because of a lack of connection between the plaintiffs’ claims and the defendants’ in-state

contacts.³ Lucero counters, urging us to find the second due-process consideration satisfied because the claims relate to Ford’s in-state activities. Lucero’s position is also supported by courts in other jurisdictions finding due process satisfied in similar factual scenarios as long as a defendant has some other connection to the forum state and could have reasonably foreseen its product being used there.⁴

³ See, e.g., *Sullivan v. Ford Motor Co.*, No. 16-cv-03505-JST, 2016 WL 6520174, at *3 (N.D. Cal. 2016) (finding no specific personal jurisdiction over Ford in California where the plaintiff was injured in California but Ford manufactured and first sold the vehicle outside of the state because there was “every reason to think that [plaintiff’s] injury would have occurred regardless of Ford’s contacts with California”); *Erwin v. Ford Motor Co.*, No. 8:16-cv-01322-T-24 AEP, 2016 WL 7655398, at *7 (M.D. Fla. 2016) (finding no specific personal jurisdiction over Ford in Florida where the accident occurred in Florida but where Ford first sold the vehicle outside of the state because the plaintiff’s injuries would have occurred regardless of whether or not Ford had contacts with Florida); *Pitts v. Ford Motor Co.*, 127 F. Supp. 3d 676, 686 (S.D. Miss. 2015) (finding no specific personal jurisdiction over Ford in Mississippi where the plaintiffs purchased their vehicle in Texas and crashed in Mississippi because there was no “meaningful connection” between the claims and Ford’s Mississippi contacts).

⁴ See, e.g., *Bandemer v. Ford Motor Co.*, 913 N.W.2d 710, 716-17 (Minn. Ct. App. 2018) (concluding plaintiff’s injury was connected to Ford’s Minnesota contacts because Ford initiated contacts with Minnesota and actively sought out business through marketing in the state—Ford “should have reasonably anticipated being haled into court in Minnesota”); *Semperit Technische Produkte Gesellschaft M.B.H. v. Hennessy*, 508 S.W.3d 569, 583-84 (Tex. Ct. App. 2016) (concluding there was a sufficient nexus between the plaintiff’s claims and Texas because the defendant was engaged in the business of selling the product in Texas—the fact that the particular product at issue went through a distributor in another state was

For the following reasons, we agree with Lucero and conclude the second prong is satisfied here: Lucero's claims relate to Ford's Montana activities.

¶19 In a products liability action where the defendant purposefully availed itself of the privilege of doing business in Montana based on the stream of commerce plus theory, the question of whether the plaintiff's claims arise out of or relate to the defendant's forum-related activities presents a challenging legal inquiry. The defendant's out-of-state conduct—placing the product into the stream of commerce—technically led to the plaintiff's in-state use of the product and resulting claim. In that sense, the defendant's forum-related activities did not directly result in the plaintiff's use of the product

immaterial to the analysis); *Thomas v. Ford Motor Co.*, 289 F. Supp. 3d 941, 948 (E.D. Wis. 2017) (finding a connection between the plaintiffs' claims because Ford could have reasonably foreseen that it would be subject to suit in Wisconsin based on its willingness to serve and sell to Wisconsin consumers, its pervasive marketing platforms, and its accrual of benefits from Wisconsin consumers buying its products); *Antonini v. Ford Motor Co.*, 2017 U.S. Dist. LEXIS 135247, *8-9 (M.D. Penn. 2017) (holding that, because plaintiff testified that she would not have purchased the vehicle had she not seen Ford's advertisements touting the safety of Ford's vehicles, Ford established a reasonably foreseeable connection with Pennsylvania by enticing Pennsylvanians to buy and drive Ford vehicles); *Tarver v. Ford Motor Co.*, 2016 U.S. Dist. LEXIS 167363, *15-16 (W.D. Okla. 2016) (finding a nexus between plaintiffs' claims and Oklahoma because Ford's contacts with Oklahoma—advertising, maintaining dealerships, and providing regular service and product information to Oklahoma consumers through its dealerships—combined with the fact that Ford manufacturers products specifically meant for interstate travel, established a sufficient connection).

in that forum. However, due process does not require a direct connection; it only requires that the plaintiff's claims "arise out of" or "relate to" the defendant's forum-related activities. Therefore, we must determine when the plaintiff's claims "arise out of" or "relate to" the defendant's Montana-related activities when the defendant purposefully availed itself of the privilege of conducting activities in Montana based on the stream of commerce plus theory.

¶20 "[I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but *arises from* the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise *has there been the source of injury . . .*" *World-Wide Volkswagen*, 444 U.S. at 298, 100 S. Ct. at 567 (emphasis added); *see also Walden*, 571 U.S. at 290, 134 S. Ct. at 1125 ("[A]n injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State."). Where a plaintiff alleges a nonresident defendant, acting outside of the forum, placed a product into the stream of commerce that ultimately caused harm in the forum, the "[f]low of a manufacturer's products into the forum . . . may bolster an affiliation germane to *specific jurisdiction*." *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927, 131 S. Ct. 2846, 2855 (2011). Therefore, when the defendant purposefully avails itself of the privilege of conducting activities in a specific forum by placing a product into the stream of commerce, the plaintiff's

claims will relate to the defendant's forum-related activities as long as the connection between the defendant's in-state conduct and the plaintiff's claim is sufficient enough to not offend due process.

¶21 At its core, due process is concerned with fairness and reasonableness: Is it fair and reasonable to ask an out-of-state defendant to defend a specific lawsuit in Montana? Companies build vehicles specifically for interstate travel. Irrespective of where a company initially designed, manufactured, or first sold a vehicle, it is fair to say that a company designing, manufacturing, and selling vehicles can reasonably foresee (even expect) its vehicles to cross state lines. When a company engages in the design, manufacture, and distribution of products specifically designed for interstate travel, it is both fair and reasonable to require the company to defend a lawsuit in a state where the product caused injury as long as the company has otherwise purposefully availed itself of the privilege of doing business in that state and if a nexus exists between the product and the defendant's in-state activity. Where a company first designed, manufactured, or sold a vehicle is immaterial to the personal jurisdiction inquiry, and focusing on those limited factors would unduly restrict courts of this state from exercising specific personal jurisdiction that comports with due process over nonresident defendants in cases such as this one.

¶22 Accordingly, we now hold that if a defendant's actions resulted in the accrual of a tort action in Montana (that is, if M. R. Civ. P. 4(b)(1)(B) is satisfied), and if the defendant purposefully availed itself of the privilege of conducting activities in

Montana under the stream of commerce plus theory, the plaintiff's claims "relate to" the defendant's forum-related activities if a nexus exists between the product and the defendant's in-state activity and if the defendant could have reasonably foreseen its product being used in Montana. In this case, M. R. Civ. P. 4(b)(1)(B) is satisfied and Ford purposefully availed itself of the privilege of conducting activities in Montana under the stream of commerce plus theory. Therefore, Lucero's claims "relate to" Ford's Montana activities if a nexus exists between the Explorer and Ford's Montana activities and if Ford could have reasonably foreseen the Explorer being used in Montana.

¶23 A nexus exists between Gullett's use of the Explorer and Ford's in-state activity. Ford advertises, sells, and services vehicles in Montana. Ford makes it convenient for Montana residents to drive Ford vehicles by offering maintenance, repair, and recall services in Montana. Gullett's use of the Explorer in Montana is tied to Ford's activities of selling, maintaining, and repairing vehicles in Montana. Further, Ford could have reasonably foreseen the Explorer—a product specifically built to travel—being used in Montana. We accordingly conclude that Lucero's claims "relate to" Ford's Montana activities.

¶24 Ford cites recent Supreme Court opinions *Bristol-Myers* and *Walden*, reasoning they support its argument that Lucero's claims do not arise out of or relate to its forum-related activities because it did not design, manufacture, or first sell the Explorer in Montana. Those cases, however, do not limit the

specific personal jurisdiction analysis in the way Ford argues.

¶25 In *Bristol-Myers*, plaintiffs filed a products liability action against Bristol-Myers in California state court, alleging they were injured by the pharmaceutical company's drug Plavix. *Bristol-Myers*, 582 U.S. at ____, 137 S. Ct. at 1778. Over 600 plaintiffs participated in the action: 86 plaintiffs alleged Plavix injured them in California, while 592 plaintiffs alleged Plavix injured them in other states. *Bristol-Myers*, 582 U.S. at ____, 137 S. Ct. at 1778. Bristol-Myers challenged the California court's jurisdiction over the claims arising from the out-of-state injuries. Notably, the court's jurisdiction over the claims arising from the in-state injuries was not at issue. The Supreme Court ultimately held the California state court could not exercise specific personal jurisdiction over the claims arising from out-of-state injuries because the plaintiffs bringing those claims "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Bristol-Myers*, 582 U.S. at ____, 137 S. Ct. at 1781. This case is distinguishable. Gullett was injured while driving the Explorer in Montana. Therefore, while Bristol-Myers did not have sufficient California contacts regarding the claims arising from out-of-state injuries, the Court's holding from *Bristol-Myers* does not impact our analysis regarding whether Lucero's claims relate to Ford's Montana contacts because Gullett was injured while driving the Explorer in Montana.

¶26 In *Walden*, a police officer seized a large sum of cash from airline passengers at an airport in

Georgia, believing the cash was connected to drug-related activity. *Walden*, 571 U.S. at 279, 134 S. Ct. at 1119. The passengers filed suit in Nevada. The Supreme Court ultimately held the officer was not subject to personal jurisdiction in Nevada because he lacked any connection to the state. The Court recognized that in order for personal jurisdiction to comport with due process, the “defendant’s suit-related conduct must create a substantial connection with the forum State” and the “relationship must arise out of contacts that the ‘defendant himself’ creates with the forum State.” *Walden*, 571 U.S. at 284, 134 S. Ct. at 1121-22 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2184 (1985)). “[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Walden*, 571 U.S. at 285, 134 S. Ct. at 1122. The Court reiterated that the specific personal jurisdiction analysis must focus on the “relationship among the defendant, the forum, and the litigation.” *Walden*, 571 U.S. at 291, 134 S. Ct. at 1126.

¶27 This case presents a much different factual scenario. Unlike in *Walden*, where the plaintiffs were the only connection between the defendant and the forum state, here, Gullett is by no means the only connection between Ford and Montana. Rather, Ford’s own actions link its Montana contacts to Lucero’s claims. Ford markets, sells, and services vehicles in Montana, demonstrating a willingness to sell to and serve Montana customers like Gullett, who was injured while driving an Explorer in

Montana. Focusing on the relationship between the defendant (Ford), the forum (Montana), and the litigation (Lucero's design defect, failure to warn, and negligence claims arising from a vehicle accident that occurred in Montana), we conclude Lucero's claims relate to Ford's in-state activities.

¶28 Third in our due process analysis, we consider whether the exercise of personal jurisdiction is reasonable. After finding that a defendant purposefully availed itself of the privilege of conducting activities, we presume that the exercise of personal jurisdiction is reasonable. A defendant can only overcome that presumption by presenting a compelling case that exercising jurisdiction would be unreasonable. *B.T. Metal Works*, ¶ 34. Because we found that Ford purposefully availed itself of conducting activities in Montana under the stream of commerce plus theory, we presume that exercising personal jurisdiction is reasonable unless Ford can overcome that presumption by presenting a compelling case that jurisdiction would be unreasonable.

¶29 The reasonableness analysis generally depends on an examination of factors that illustrate the concept of fundamental fairness, such as: (1) the extent of the defendant's purposeful interjection into Montana; (2) the burden on the defendant of defending in Montana; (3) the extent of conflict with the sovereignty of the defendant's state; (4) Montana's interest in adjudicating the dispute; (5) the most efficient resolution of the controversy; (6) the importance of Montana to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Simmons Oil*

Corp. v. Holly Corp., 244 Mont. 75, 87-88, 796 P.2d 189, 196-97 (1990); *see also World-Wide Volkswagen*, 444 U.S. at 292, 100 S. Ct. at 564-65.

¶30 Applying those factors to this case, we conclude Ford has failed to present a compelling case that exercising jurisdiction over it would be unreasonable: (1) Ford's purposeful interjections into Montana are extensive; (2) Ford did not represent that it is burdened by defending in Montana; (3) Ford did not point out any conflicts between Montana and its home states; (4) Montana has a strong interest in adjudicating the dispute, considering the fact that the accident involved a Montana resident and occurred on Montana roadways; (5) the controversy may be efficiently resolved in Montana, as it was the place of the accident; (6) Montana's court system is important to Lucero's interest in convenient and effective relief; and (7) while alternative forums exist where Ford would be subject to general personal jurisdiction, those forums are less convenient considering the fact that the accident occurred in Montana. Ford has failed to overcome our presumption that exercising jurisdiction is reasonable. The third due process factor is satisfied.

CONCLUSION

¶31 We accept Ford's petition for supervisory control. This case regarding personal jurisdiction presents urgent factors making the normal appeal process inadequate. The issue presented is purely legal and of state-wide constitutional importance. We agree with the District Court's determination that a Montana court may exercise specific personal

jurisdiction over Ford regarding Lucero's design defect, failure to warn, and negligence claims.

IT IS THEREFORE ORDERED Ford's Petition for a Writ of Supervisory Control is GRANTED and the District Court's order denying Ford's motion to dismiss for lack of personal jurisdiction is AFFIRMED.

The Clerk is directed to forward a copy of this Opinion and Order to all counsel of record in the Eighth Judicial District Court Cause No. ADV-18-247(b), and to the Honorable Elizabeth Best, presiding District Judge.

/s/
Justice

We concur:

/s/
Chief Justice

/s/

/s/

/s/

/s/

/s/
Justices

APPENDIX B

MONTANA EIGHTH JUDICIAL DISTRICT
COURT, CASCADE COUNTY

Cause No. ADV-18-0247(b)

CHARLES S. LUCERO, as Personal Representative of
the Estate of Markkaya Jean Gullett, on Behalf of
the Heirs and Estate of Markkaya Jean Gullett,
Plaintiff,

vs.

FORD MOTOR COMPANY, a Delaware corporation;
THE GOODYEAR TIRE & RUBBER COMPANY, an Ohio
corporation; THE KELLY-SPRINGFIELD TIRE CORPORATION,
a Maryland corporation; LLOYD'S TIRE SERVICE, a
Washington corporation; TIRES PLUS, INC., a Montana
corporation; and DOES 1 through 10,
Defendants.

**ORDER DENYING DEFENDANT FORD
MOTOR COMPANY'S MOTION TO DISMISS
AND DEFENDANTS FORD MOTOR COMPANY
AND TIRES PLUS'S MOTION FOR CHANGE
OF VENUE**

Defendant Ford Motor Company (Ford) moved to dismiss the Complaint of Plaintiff Charles Lucero (Lucero) on the basis of lack of personal jurisdiction. Alternatively, it moves to change venue from Cascade County to either Missoula or Mineral County. (Docs. 3 and 4). Defendant Tires Plus, Inc. (Tires Plus) joined the venue motion, arguing that venue is proper in either Mineral or Sanders

Counties. (Doc. 19). Defendant Goodyear Tire & Rubber Company (Goodyear) takes no position. Defendant Lloyd's Tire Service (Lloyd) has not been served.

Charles Lucero (Lucero) is the personal representative of the estate of Markkaya Gullett (Gullett). He filed a complaint alleging strict liability in tort against Ford for design defects and failure to warn, negligence, and punitive damages. As to Ford, at least in part, he contends that Ford's design was defective in that it did not address a safe response to "detreading" of tires, which occurred in this case. He alleges strict liability against Goodyear, Kelly-Springfield, and Lloyd's, and negligence against Lloyd's and Tire's Plus. (Doc. 1).

Gullett died in Montana, of injuries she suffered in a one vehicle rollover crash on May 22, 2015, in Mineral County. She was driving a 1996 Ford Explorer, manufactured by Ford, a Delaware corporation with its principal place of business in Dearborn, Michigan. Ford sells cars and trucks in all 50 states through dealerships by delivering them into the stream of commerce. The Complaint alleges that Ford knew some of its vehicles, including identical vehicles to the vehicle in this case, would be purchased in Montana and used by Montanans.

The specific vehicle involved in this case was not, however, sold in Montana. It was assembled in Kentucky, and sold by Ford to a dealership in Washington, which sold it to an Oregon resident. It was then ultimately purchased in 2007 and brought to Montana. In 2009, Gullett's mother bought it and licensed it in Montana. Ford is registered to do

business in Montana, has 36 dealerships in Montana, and operates subsidiary companies in Montana. On October 5, 2009, after the vehicle was licensed and registered in Montana, Ford issued a “Safety Recall” for the vehicle involved. It provided recall services in Montana, including certified repair and replacement. Gullett’s heirs and survivors were Montana residents when she died.

ANALYSIS

I. Jurisdiction.

The Court is required to apply a two-part test to determine whether Montana has personal jurisdiction over a nonresident defendant. *Buckles v. Cont'l Res., Inc.*, 2017 MT 235, ¶11, 388 Mont. 517, 402 P.3d 1213 (citation omitted). First, the Court is to apply Rule 4 (b)(1), Mont.R.Civ.P., to determine if it has personal jurisdiction. Second, it must determine whether exercise of personal jurisdiction “comports with traditional notions of fair play and substantial justice” required by the Due Process Clause. *BNSF Ry. V. Tyrrell*, 137 S.Ct. 1549, 198 L.Ed. 2d 36 (2017), Fourteenth Amendment, U.S. Const. A nonresident defendant must have “certain minimum contacts with [Montana] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Tyrrell*.

Personal jurisdiction can be general or specific.

A. General Personal Jurisdiction

In *Tyrrell*, two non-resident plaintiffs sued nonresident BNSF in a FELA case. The U.S.

Supreme Court held that the, “*Due Process Clause* does not permit a State to hale an out-of-state corporation before its courts when the corporation is not ‘at home’ in the State and the episode-in-suit-occurred elsewhere.” *Tyrrell*, 137 S.Ct. at 1554, 198 L.Ed. 2d at 42. (emphasis in original). The focus of the Court, pursuant to *Tyrrell*, is not solely the defendant’s in-state contacts, but rather “an appraisal of a corporation’s activities in their entirety.” *Id. at n. 20*. Business within the forum state is not enough, alone, to support general personal jurisdiction.

The Plaintiff here concedes that the Court cannot find general jurisdiction. The Court now turns to specific jurisdiction.

B. Specific Personal Jurisdiction

A Montana court can exercise personal jurisdiction over an out-of-state defendant when the cause of action meets the requirements of Montana’s long-arm statute, Rule 4(b)(1), Mont.R.Civ.P. *Buckles*, ¶15 (citations omitted). Rule 4(b)(1), Mont.R.Civ.P., provides that, “any person is subject to [Montana personal jurisdiction] as to any claim for relief arising from the doing. . . . of any of the following acts:

- (A) The transaction of any business within Montana;
- (B) The commission of any act resulting in accrual within Montana of a tort action;

- (C) The ownership, use, or possession of any property, or of any interest, therein situated within Montana. . . .

Specific personal jurisdiction relies on the defendant's relationship with the forum state, and whether its "suit-related conduct" with Montana created a substantial connection to the State. *Id.* (citation omitted). A defendant's relationship with Montana and the case "must arise out of contact that the 'defendant *himself* created with the forum.'" *Id.*

The Court must consider the following factors to decide whether a defendant is subject to Montana's specific personal jurisdiction:

- 1) Whether the defendant did some act or consummate some transaction with the State or perform an act purposefully availing itself of conducting activities in the State, thus invoking its law;
- 2) Whether the claim arises out of the defendant's forum-related activities;
- 3) Whether exercise of jurisdiction is reasonable.

Id. (citations omitted). If the Court finds that a nonresident defendant failed to engage in any of the enumerated activities contained in the long-arm jurisdiction in Rule 4(B)(1), Mont.R.Civ.P., it must decline jurisdiction. If the defendant has engaged in any of the activities, the Court must analyze due process by determining whether the suit arises out of or relates to its activities in Montana. *Id.* (citations omitted).

The Court has specific personal jurisdiction under Montana's long-arm statute if a defendant business conducts "substantial" business activity in Montana. *Bunch v. Lancair Int'l, Inc.*, 2009 MT 29, ¶18, 349 Mont. 144, 202 P.3d 784. In *Great Plains Crop Management, Inc. v. Tryco Mfg. Co.*, 554 F. Supp. at 1027 (D.C. Mont. 1983), the U.S. District Court found specific jurisdiction where a nonresident defendant advertised in a national magazine to which Montana residents had access, mailed a brochure to a Montana resident, sold farm equipment to a Montana resident over the phone, arranged to ship goods to Montana and solicited sales from a Montana business.

In *Lancair*, the Montana Supreme Court found no personal jurisdiction where the subject matter of the case was an Oregon airplane crash of a plane manufactured in Oregon. Although the defendant had registered to do business in Montana, it had not delivered products or advertised in Montana, and only 14 of its planes were registered here. See also, *Grizzly Sec. Armored Exp., Inc. v. Armored Grp., LLC*, 2011 MT 128, 360 Mont. 517, 255 P.3d 143 (specific jurisdiction even though defendant did not solicit business or sell products in Montana, and sales to plaintiff was not a significant part of business because advertising reached Montana, website showed business conducted throughout U.S., and defendant's servicing of vehicles in this state. Jurisdiction did not offend due process based on substantial, continual and systematic activities in the state).

Here, Ford's contacts with Montana are many.

- 1) Ford committed multiple acts demonstrating that it availed itself of conducting activities in Montana and invoked Montana law. Ford sells cars and trucks in all 50 states through dealerships by delivering them into the stream of commerce. Ford are purchased in Montana and used by Montanans. Ford engaged in substantial business in Montana. Ford is registered to do business in Montana, has 36 dealerships in Montana, and operates subsidiary companies in Montana. On October 5, 2009, after the vehicle in this case was licensed and registered in Montana, Ford issued a “Safety Recall” for that vehicle. Ford provided recall services in Montana, including certified repair and replacement.
- 2) The claim must arise out of the defendant’s forum-related activities. This element is mandatory. *Bristol-Myers Squibb Co. v. Sup. Ct. Cal.*, 137 S.Ct. 1773, 198 L.Ed. 2d 395 (2017). The crash, and Gullett’s death, occurred in Montana, in a wrecked Ford vehicle. The tort accrued in Montana, because damages were sustained here. Ford does business selling and repairing its vehicles in Montana. It sells the kind of vehicle involved in this case in Montana. It advertises in Montana. It sells Ford parts in Montana. Its subsidiary, Ford Motor Credit, has contracts with dealerships in Montana to provide lines of credit, and with Montana consumers to provide credit to enable purchases of Ford vehicles. As in *Grizzly Security*, and unlike *Tyrrell*, here, Ford solicits business, sells

products in Montana, advertises in Montana, and services its vehicles in Montana. The Plaintiff alleges that Ford's design of the vehicle involved the Montana wreck was defective, and caused the crash. Ford's contacts with Montana, as set forth in the Complaint, relate to the controversy at issue.

- 3) Exercise of jurisdiction must be reasonable. It is fair and reasonable under the facts here for this Court to exercise jurisdiction. Witnesses live here. The heirs live here.

Applying the plain language of Rule 4(b)(1), Mont.R.Civ.P., Ford transacts business within Montana, allegedly committed acts or omissions resulting in accrual within Montana of a tort action, and it owns, uses, or possesses property or interests in property within Montana. Under these facts, Rule 4(b)(1), Mont.R.Civ.P., applies, and Montana has specific personal jurisdiction of Ford. Taking all of the well-pled allegations in the Complaint as true, Ford has not persuaded the Court that it lacks specific personal jurisdiction over Ford.

Ford argues that the Court may not consider whether it placed the product in nationwide stream of commerce, and that the Court should focus on the fact that it did not sell the specific vehicle in this case in Montana. Under the "stream of commerce," theory a court has jurisdiction over an out-of-state corporation when it "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

In *Asahi Metal Industry Co. v. Superior Court of California, Solano County*, 480 U.S. 102, 107 S.Ct. 1026 (1987), Justice O'Connor and three other justices ratified the "stream of commerce plus" theory, holding that while simply placing a product into the stream of commerce is not enough to establish minimum contacts, but that "additional conduct" which shows "intent or purpose to serve the market in the forum State" is enough. Justice Brennan and three other justices endorsed a less rigorous test, supporting a finding of jurisdiction where a defendant participated in "the regular and anticipated flow of products from manufacture to distribution to retail sale" if the defendant knows the final product will be marketed in the forum state. *Id.* Under either of these tests, the Court has specific personal jurisdiction over Ford.

However, Ford counters that under *Bristol-Myers Squibb*, (*supra*), the Court does not have jurisdiction in this case because it has an insufficient affiliation with Montana, and its general connections are not enough. In *Bristol-Myers Squibb*, the U.S. Supreme Court found inadequate connections with California where claims were brought by nonresident plaintiffs in a mass products case concerning injuries caused by the drug Plavix because Plavix was not prescribed in California, the plaintiffs did not purchase or ingest it there, and were not injured there. Likewise, *Walden v. Fiore*, 571 U.S. 277, 134 S.Ct. 1115, 188 L.Ed. 2d 12 (2014), found no personal jurisdiction where a Georgia law enforcement officer searched airline passengers for the DEA in Georgia, who then sued in Nevada. *Walden* is inapposite--- it

did not involve a corporation doing business in every state.

One of the critical facts in *Bristol-Myers Squibb* was that the nonresident plaintiffs neither ingested the drug nor were injured by it in California. *Bristol-Myers Squibb* at 1781. Here, in contrast, the vehicle at issue was driven in Montana, the wreck, which Plaintiff contends was caused by the design defect regarding responsiveness to detreading, occurred in Montana, and the injury occurred in Montana. Ford sells, services, and markets its vehicles in Montana. It finances those vehicles in Montana. It sold vehicles identical to the vehicle involved in this case, with the same design, in Montana. The facts in this case align with the requirement set forth by Justice Alito in *Bristol-Myers Squibb*: “What is needed-. . . is a connection between the forum and the specific claims at issue.” *Id.*

The facts here are unlike those in *Walden v. Fiore*, where the plaintiffs sued an out-of-state defendant in Nevada for a search in Georgia before the plane took off heading for Nevada, and the harm did not occur in Nevada. That the plaintiffs were Nevada residents was irrelevant to the analysis. Here, it is undisputed that Gullett was a resident of Montana, who was killed in Montana, as the result of an alleged design defect caused by Ford. This occurrence in Montana accrued in Montana, and has importance to Montana citizens, to whom Ford marketed vehicles with the very same design.

Bristol-Myers Squibb is consistent with prior jurisdictional precedent. In *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174 (1985), cited

in *Walden*, the Court has “upheld the assertion of jurisdiction over defendants who have purposefully ‘reach[ed] out beyond’ their State and into another by, for example, entering a contractual relationship that ‘envisioned continuing and wide-reaching contacts’ in the forum state.” *Walden* at 285; *Burger King* at 479. *Walden* repeated that “physical entry into the State---either by the defendant in person or through an agent, goods, mail or some other means---is certainly a relevant contact.” (citations omitted). *Walden*, *Id.* Here, Ford cannot deny that it has physically entered the State through its agent dealers, through marketing of its goods (vehicles) and through its subsidiary’s financing relationship.

Many of the cases cited by Ford are unhelpful with respect to a specific personal jurisdiction analysis because they relate to general jurisdiction, which the Plaintiff concedes does not exist. The Court concludes, as have other courts on similar facts, that Ford has the requisite “minimal contacts” with Montana that are a prerequisite to jurisdiction. Ford’s conduct has connected it to Montana in a meaningful way.¹ The occurrence and the injury

¹ See, *Daimler AG v. Bauman*, 571 U.S.117, 134 S.Ct. 746, 754, n. 5 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S.Ct. 2846, 2849 (2011); *World-Wide Volkswagen* (supra), 444. U.S. 286, 297-298; *TV Azteca v. Ruiz*, 490 S.W. 3d 29, 54 (Tex. 2016), cert denied, 137 S.Ct. 2290 (2017); *Griffin v. Ford Motor Co.*, A-17-CA-00442-SS, 2017 WL 3841890, at *2-4 (W.D. Tex, Sept. 1, 2017); *Bandemer v. Ford Motor Co.*, 915 NW 2d 710, A17-1182, 2018 WL 1902453 (Minn. Ct. App., April 23, 2018); *Thomas v. Ford Motor Co.*, 289 F.Supp. 3d 941, 946 (E.D. Wis 2017); *Antonini v. Ford Motor Co.*, 3:16-CV-2021, 2017 WL 3633287 at *6 (M.D. Pa. Aug. 23,

occurred in Montana. Accordingly, Ford's motion to dismiss based on lack of jurisdiction is DENIED.

II. Venue.

Ford also argues that Cascade County is not the proper venue for this case, and that it should be tried in either Missoula County (its registered place of business in Montana) or in Mineral County, where the wreck occurred. Tires Plus joins Ford in this motion, but argues for Mineral County or Sanders County (where many witnesses reside). (Doc. 19). Tires Plus argues that Lucero is only a "nominal" plaintiff and that, therefore, his residence should not be considered. Tires Plus cites cases which stand for the general proposition that personal representatives bring claims on behalf of heirs but offers no authority for the argument that the personal representative's residence is not a proper statutory factor.

Charles Lucero is the personal representative of the decedent's estate and is the named Plaintiff. He is a resident of Cascade County. Section 25-2-122, MCA provides that the proper place for trial where the defendant is an out-of-state corporation in a tort action is:

- (a) The county in which the tort was committed;
- (b) *The county in which the plaintiff resides;*
- (c) The county in which the corporation's resident agent is located, as required by law (emphasis supplied).

2017); *Tarver v. Ford Motor Co.*, CIV-16-548-D, 2017 WL 3527710 (W.D. Okla., August 16, 2017).

Venue may be proper in more than one county. §25-2-115, MCA. Under the plain language of §25-1-122, MCA, Lucero properly filed suit in Cascade County, his county of residence. The Montana Supreme Court stated in *Weiss v. State*, 219 Mont. 447, 450, 712 P.2d 1315, 1317 (1986), that, pursuant to §25-2-117, MCA, where there are two or more defendants, the “proper place of trial for any defendant is proper for all defendants.” A motion to change venue under §25-2-117, MCA is only proper if the complaint was filed in a county that “is a proper place of trial for none of the defendants.” *Farmers Union Ass’n v. Paquin*, 2009 MT 305, ¶12, 352 Mont. 390, 217 P.3d 74.

Defendants suggest that Lucero, the personal representative, is not actually the real party in interest, and that the analysis of Montana’s venue statutes must be based on the place of residence of the deceased. This is not the law. Under *Hern v. Safeco Ins. Co. of Illinois*, 2005 MT 301, ¶¶32-35, 329 Mont. 347, 356, 125 P.3d 597, Lucero is the proper plaintiff. (citing, §27-1-501, MCA, for the rule that a cause of action for survival may be maintained by the decedent’s “representatives or successors in interest.”) Likewise, §27-1-513, MCA, makes the personal representative the proper party to maintain a wrongful death action. Rule 17, Mont.R.Civ.P., explicitly designates executors and administrators real parties in interest. Rule 25, Mont.R.Civ.P., provides that a court may substitute a representative as a party for a party who dies. Without a doubt, Lucero is a proper plaintiff, in whose county of residence venue is proper.

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Based on a plain reading of the venue statutes, Cascade County is a proper venue. Defendants' motions to change venue are DENIED.

ORDER

For the reasons set forth above,

- 1) Ford's Motion to Dismiss is DENIED; and
- 2) Ford's and Tires Plus's Motions to Change Venue are DENIED.

DATED this 10th day of October, 2018.

/s/ Elizabeth A. Best
Elizabeth A. Best
District Court Judge

cc: Dennis P. Conner/Keith D. Marr
Daniel P. Buckley
Marcia Davenport/Ian McIntosh
Vaughn A. Crawford
Stephen M. Johnson/Eric Biehl
David M. Strauss
Roger T. Witt/Andrew T. Newcomer