

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. _____

SOUTHWEST DISTRUBTING CO. d/b/a SWD URETHANE,

Petitioner,

-VS-

MONTANA NINETEENTH JUDICIAL DISTRICT COURT,
Lincoln County, The Honorable Matthew J. Cuffe, Presiding Judge,

Respondents.

**From the Montana Nineteenth Judicial District Court,
Lincoln County Cause No. DV 22-72
Hon. Matthew J. Cuffe Presiding**

PETITION FOR WRIT OF SUPERVISORY CONTROL

APPEARANCES:

Christopher T. Sweeney
Bobbi K. Owen
MOULTON BELLINGHAM PC
27 North 27th Street, Suite 1900
P. O. Box 2559
Billings, MT 59103-2559
406-248-7731
Christopher.Sweeney@moultonbellingham.com
Bobbi.Owen@moultonbellingham.com
Attorneys for Petitioner

Brad Condra
Milodragovich, Dale & Steinbrenner, PC
620 High Park Way, P.O. Box 4947
Missoula, MT 59806-4947
bcondra@bigskylawyers.com
Attorneys for Plaintiff

Todd Hammer
Marcel Quinn
Hammer, Quinn & Shaw PLLC
100 Financial Dr., Ste 100, P.O. Box 7310
Kalispell, MT 59904-0310
toddhammer@attorneymontana.com
marcelquinn@attorneymontana.com
Attorneys for Caribou Creek Log Homes, Inc.

Randall J. Colbert
Emma L. Mediak
Garlington, Lohn & Robinson, PLLP
350 Ryman Street, P.O. Box 7909
Missoula, MT 59807-7909
rjcolbert@garlington.com
elmediak@garlington.com
**Attorneys for North Idaho Insulation, LLC and
John L. Holdeman**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
BACKGROUND	2
I. UNDERLYING DISPUTE.....	2
II. SOUTHWEST.....	3
III. SOUTHWEST’S MOTION TO DISMISS UNDER MONT. R. CIV. P. 12(B)(2).	5
LEGAL STANDARD.....	6
ARGUMENT	8
I. SPECIFIC JURISDICTION DOES NOT EXIST UNDER MONT. R. CIV. P. 4(B)(1)(A) OR 4(B)(1)(B).....	8
A. Grizzly Sec. Armored Express, Inc. v. Armored Group, LLC, 2011 MT 128, Does Not Support Jurisdiction under Mont. R. Civ. P. 4(b)(1)(A).	10
B. The Ford Motor Company Precedents Do Not Support Jurisdiction Under Mont. R. Civ. P. 4(b)(1)(B).....	11
II. THE EXERCISE OF SPECIFIC PERSONAL JURISDICTION WOULD VIOLATE DUE PROCESS.	15
CONCLUSION	18

TABLE OF AUTHORITIES

Cases

<i>Bristol-Myers Squibb Co. v. Superior Court of California</i> , 582 U.S. 255 (2017)	9
<i>DeLeon v. BNSF Railway Company</i> , 2018 MT 219, 392 Mont. 446, 426 P.3d 1	15
<i>Encuentra v. Church & Dwight Co., Inc.</i> , 2024 U.S. Dist. LEXIS 533 (C.D. Cal. Jan. 2, 2024)	14
<i>Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.</i> , 2019 MT 115, 395 Mont. 478, 443 P.3d 407	7, 11, 12, 16
<i>Ford Motor Company v. Montana Eighth Judicial District Court</i> , 141 S.Ct. 1017 (2021) ...	11, 13
<i>Gateway Hosp. Grp. Inc. v. Phila. Indem. Ins. Co.</i> , 2020 MT 125, 400 Mont. 80, 464 P.3d 44	7
<i>Goodyear Dunlop Tires Operations, S. A. v. Brown</i> , 564 U. S. 915 (2011)	9
<i>Grizzly Sec. Armored Express, Inc. v. Armored Group, LLC</i> , 2011 MT 128, 360 Mont. 517, 255 P.3d 143	10, 11
<i>Groo v. State Eleventh Jud. Dist. Ct.</i> , 2023 MT 193, 413 Mont. 415, 537 P.3d 111	7, 16
<i>Mont. State Univ.-Bozeman v. Mont. First Judicial Dist. Court</i> , 2018 MT 220, 392 Mont. 458, 426 P.3d 541	7
<i>Tackett v. Duncan</i> , 2014 MT 253, 376 Mont. 348, 334 P.3d 920	7

Rules

Mont. R. App. P. 14	6
Mont. R. Civ. P. 4	9, 11

INTRODUCTION

North Idaho Insulation, Inc. (“NII”), a Third-Party Plaintiff below, seeks to expand the scope of specific personal jurisdiction beyond constitutional limits, blurring the distinction between specific and general personal jurisdiction. Indeed, before the lower court, NII essentially argued that specific jurisdiction will exist in any case where a non-resident defendant has previously sold its product to Montana consumers, even if those sales are isolated and bear no relation to a plaintiff’s legal claims.

While Petitioner Southwest Distributing Co. (“Southwest”) filed a Motion to Dismiss under Mont. R. Civ. P. 12(b)(2), the district court was persuaded by NII’s flawed approach to personal jurisdiction analysis, mistakenly concluding that specific personal jurisdiction existed as to an Arizona corporation that: 1) has no offices in Montana, 2) has no employees in Montana, 3) does not directly address advertising into Montana, 4) did not sell any of its products to any party to this case, and 5) has only occasionally sold its products to Montana customers in the past.

Because the district court’s conclusion amounts to legal error and involves issues of constitutional importance, Southwest respectfully requests that the Court exercise supervisory control under Mont. R. App. P. 14(3).

BACKGROUND

I. UNDERLYING DISPUTE.

This suit stems from the alleged faulty construction of a log home in Lincoln County, Montana, by Defendants Caribou Creek Log Homes, Inc. (“Caribou Creek”) and North Idaho Insulation (“NII”).

Per Plaintiff Donald Fleming’s Complaint, “[o]n or about June 18, 2019, Plaintiff Fleming entered into a written agreement with Defendant Caribou Creek for construction of a residential structure on property in Troy, Montana.” (Ex. 1, Cmpl., ¶¶ 11-12). As general contractor, “Caribou Creek recommended the use of spray foam insulation in the residence,” and it enlisted subcontractor NII, an entity incorporated under the laws of Idaho and owned and operated by Defendant John Holdeman, an Idaho resident, to install the product. (*Id.*, ¶¶ 17-19).

According to Fleming, NII and/or Holdeman “installed polyurethane spray foam insulation on the project over an extended period of time.” (*Id.*, ¶ 22). These defendants allegedly “failed to comply with proper installation, mixing, or application practices and otherwise negligently performed the spray foam insulation work.” (*Id.*, ¶ 23). Around August 2020, Fleming observed “that the roof of the residence was experiencing significant structural deformation in areas where spray foam insulation had been installed.” (*Id.*, ¶ 26).

On May 6, 2022, Fleming sued Caribou Creek, Holdeman, and NII, asserting various tort, statutory, and contract-based claims. On August 10, 2022, NII filed its Answer. (Ex. 2, NII Answ.). Additionally, on August 17, it filed a Third-Party Complaint against Southwest, alleging that Southwest was the manufacturer of the subject spray foam, and claiming the product was sold in a “defective condition.” (Ex. 3., Th. P. Cmpl., ¶¶ 3, 8-10).

II. SOUTHWEST.

Southwest is an Arizona corporation engaged in “the business of manufacturing chemicals that, when correctly mixed together by contractors, form polyurethane spray foam insulation.” (Ex. 4, Mot. to Dis; Ex. 5, Brf. in Supp. at 4). The company is organized under the laws of Arizona and registered to do business in that state. (Ex. 5 at 4).

By contrast, it is not registered to do business in Montana, even as a foreign business. (*Id.*). Indeed, Southwest: 1) does not have a registered agent for service of process in Montana, 2) does not have offices in Montana, 3) does not have employees in Montana, 4) does not maintain a bank account in Montana, 5) does not pay taxes in Montana, and 6) does not direct any advertising specifically into Montana. (*Id.*).

Though Southwest manufactures chemicals that form spray foam insulation, it only occasionally sells chemicals directly to contractors for use in construction

projects. (*See id.*). Instead, it generally sells its product to third-party distributors who in turn “sell the chemicals to contractors for use in residential or commercial construction.” (*Id.*). From then on, Southwest is “no longer involved in further sales of the product.” (*Id.*). However, it does employ “five to six technicians [who can] assist contractors with questions or issues related to the chemicals.” (*Id.*).

Significantly, a search of Southwest’s records reveals that it has rarely sold its products directly to Montana customers in recent years. (*Id.*). Indeed, the company is able to search its records dating back to 2019 and, based on those records, it appears that Southwest “has sold to third-party distributors in Montana only 91 times[,]” and to Montana-based contractors “only 5 times.” (*Id.*). Likewise, Southwest “is able to search its records back to 2019 to determine how many times its technicians have assisted [customers] in Montana with respect to Southwest’s chemicals.” (*Id.*). On this point, Southwest can “find no record of its technician[s] assisting anyone in Montana with respect to its chemicals.” (*Id.*).

One distributor to which Southwest has historically sold chemicals is Insulation Distributors, Inc. (“Insulation Distributors”), a Minnesota corporation. (*Id.*). Though Insulation Distributors has over sixty locations, it only has one location in Montana, which is in Belgrade. (*Id.*).

Based on invoices produced by Caribou Creek, it appears that Insulation Distributors—not Southwest—sold NII the chemicals used to apply insulation to

Fleming's home. (*Id.* at 6). Thus, assuming it was Southwest's chemicals that were used for the insulation on Fleming's residence, Southwest "did not sell those chemicals [directly] to [Plaintiff], to Caribou Creek, or to NII." (*Id.*).

Instead, it appears that NII purchased the chemicals from Insulation Distributors, Insulation Distributors shipped the product from Minnesota, and NII "either picked [the product] up in Spokane or had [it] shipped from Spokane to Bonner's Ferry, Idaho[,] where both Caribou Creek and NII are based. (*Id.*).

III. SOUTHWEST'S MOTION TO DISMISS UNDER MONT. R. CIV. P. 12(B)(2).

On November 2, 2022, Southwest filed a Motion to Dismiss under Mont. R. Civ. P. 12(b)(2). (Ex. 4-5). Given its status as an Arizona corporation with limited connections to Montana, Southwest argued the lower court lacked both general and specific personal jurisdiction, and in any event, the exercise of personal jurisdiction would offend Due Process. (*Id.*).

NII in turn filed a Response, conceding that personal jurisdiction did not exist as to Southwest, but arguing that specific personal jurisdiction existed under Mont. R. Civ. P. 4(b)(1)(A) and 4(b)(1)(B). (Ex. 6, NII Resp. at 16). Southwest then filed its Reply, reiterating that specific personal jurisdiction did not exist under any prong of Montana's Long-Arm statute, including those cited by NII. (Ex. 7 SW Reply).

On November 21, 2023, the district court issued an order denying Southwest’s Motion to Dismiss. (Ex. 8, Dist. Ct. Order). Therein, the court concluded that—despite the absence of a causal connection or relationship between Southwest’s Montana contacts and the claims in this lawsuit—specific personal jurisdiction existed under Mont. R. Civ. P. 4(b)(1)(A) and 4(b)(1)(B). And likewise, the court concluded the exercise of personal jurisdiction would not violate Due Process.

Given the district court’s wrongful denial of its Motion to Dismiss, Southwest must now seek relief under Mont. R. App. P. 14(3).

LEGAL STANDARD

Article VII, Section 2(2) of the Montana Constitution grants this Court “general supervisory control over all other courts.” While regarded as an “extraordinary remedy,” Mont. R. App. P. 14(3) provides that supervisory control may be appropriate when: 1) “urgency or emergency factors exist making the normal appeal process inadequate,” 2) “when the case involves purely legal questions,” and 3) when at least one of the following circumstances exists:

- (a) The other court is proceeding under a mistake of law and is causing a gross injustice;
- (b) Constitutional issues of state-wide importance are involved;
- (c) The other court has granted or denied a motion for substitution of a judge in a criminal case.

Mont. R. App. P. 14(3) (emphasis added).

Generally speaking, “judicial economy and the avoidance of unnecessary procedural complication” have been cited as appropriate reasons to issue a writ of supervisory control. *Mont. State Univ.-Bozeman v. Mont. First Judicial Dist. Court*, 2018 MT 220, ¶ 18, 392 Mont. 458, 426 P.3d 541. Indeed, supervisory control may be necessary to “avoid substantial injustice in the form of undue cost, delay, [and the like.]” *Id.*

Consistent with these principles, the Court has exercised supervisory control in writs involving personal jurisdiction. *See Groo v. State Eleventh Jud. Dist. Ct.*, 2023 MT 193, 413 Mont. 415, 537 P.3d 111; *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, 2019 MT 115, 395 Mont. 478, 443 P.3d 407. Indeed, in the personal jurisdiction context, “urgency can [often] render the appeal process inadequate[,]” as the “District Court must have power over the parties in a proceeding to afford adequate relief.” *Gateway Hosp. Grp. Inc. v. Phila. Indem. Ins. Co.*, 2020 MT 125, ¶ 4, 400 Mont. 80, 464 P.3d 44.

Further, district court determinations on personal jurisdiction involve questions that are “purely legal and of state-wide constitutional importance.” *Ford*, ¶ 7. Under any circumstance, the Court reviews a personal jurisdiction ruling *de novo*. *Tackett v. Duncan*, 2014 MT 253, ¶ 16, 376 Mont. 348, 334 P.3d 920.

ARGUMENT

The district court’s denial of Southwest’s Motion to Dismiss—a decision that forces Southwest to engage in costly discovery, otherwise participate in lower court proceedings, and ultimately, defend itself in a potential trial—renders supervisory control appropriate. A small Arizona business with limited connections to Montana should not be compelled to litigate through judgment before appealing to this Court.

For reasons outlined more fully below, the district court ran afoul of constitutional requirements and committed legal error when it concluded: 1) that Southwest was subject to specific personal jurisdiction under Montana’s Long-Arm Statute, and specifically, Mont. R. Civ. P. 4(b)(1)(A) and 4(b)(1)(B), and 2) that the exercise of jurisdiction would not offend Due Process. Accordingly, supervisory control is appropriate.

I. SPECIFIC JURISDICTION DOES NOT EXIST UNDER MONT. R. CIV. P. 4(B)(1)(A) OR 4(B)(1)(B).

Looking first to the lower court’s conclusion that specific jurisdiction existed under Rule 4, before a court can exercise this variety of jurisdiction at all, it must conclude one of the case-specific circumstances set forth in Mont. R. Civ. P. 4(b)(1)(A)-(G) is present.

In relevant part, Rule 4(b)(1) provides that the exercise of jurisdiction is appropriate as to any person for claims *arising from*: “(A) the transaction of any

business within Montana or (B) the commission of any act resulting in accrual within Montana of a tort action.” Mont. R. Civ. P. 4(b)(1)(A)-(B).

Consistent with the language of Rule 4(b)(1), specific jurisdiction is “case-linked.” *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. 255, 262 (2017). While general personal jurisdiction allows courts to “hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different State[,]” with specific jurisdiction, there must be “an affiliation between the forum and the underlying controversy.” *Id.* (quoting *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U. S. 915, 919 (2011)) (emphasis added).

Here, in a best-case scenario for NII, it is possible that Southwest, an Arizona corporation that is not even registered to do business in Montana and has only occasionally sold its products to Montana customers, manufactured chemicals out-of-state, sold those chemicals to a Minnesota-based distributor, and that distributor in turn sold and shipped the chemicals to an Idaho-based contractor for pickup in Washington. With respect to the actual product at issue, there is no evidence that Southwest sold the product in Montana or played any role in either transporting the product into Montana or installing the spray foam in Fleming’s home. Further, its technicians did not assist NII with mixing or applying any chemicals used to insulate the home.

Given these facts, NII cannot credibly argue that Southwest's activities in the state prompted the claims at issue or that Southwest's out-of-state activities even relate to the claims at issue. This should have prompted the lower court to conclude that specific personal jurisdiction did not exist under any prong of Mont. R. Civ. P. 4(b)(1), but for reasons that are not entirely clear, it wrongfully held that jurisdiction existed under Mont. R. Civ. P. 4(b)(1)(A) and 4(b)(1)(B).

A. *Grizzly Sec. Armored Express, Inc. v. Armored Group, LLC*, 2011 MT 128, *Does Not Support Jurisdiction under Mont. R. Civ. P. 4(b)(1)(A)*.

Regarding Mont. R. Civ. P. 4(b)(1)(B), a rule that focuses on claims arising from an out-of-state defendant's transaction of business in Montana, the lower court primarily cited *Grizzly Sec. Armored Express, Inc. v. Armored Group, LLC*, 2011 MT 128, 360 Mont. 517, 255 P.3d 143 to suggest jurisdiction was present. (Ex. 8 at 5). However, it failed to recognize that precedent is of limited use, as the claims in *Grizzly* were prompted by an out-of-state corporation's direct contacts and business relations with a Montana corporation, which is not the case here.

Indeed, that case involved claims by Grizzly, a Montana-based security contractor, against TAG, a Phoenix-based distributor for following TAG's sale of vehicles to Grizzly. *Id.*, ¶¶ 5-10. While TAG contended it did not subject itself to personal jurisdiction in Montana merely by entering a contract with Grizzly for the sale of vehicles, the Montana Supreme Court rejected TAG's arguments on this

point. *Id.*, ¶ 19. However, the Court’s conclusion hinged in large part on the fact that Grizzly’s claims bore a direct relation to TAG’s contacts in the forum.

As noted by the Court, “TAG’s trucks did not end up in Montana as a result of Grizzly’s unilateral action.” *Id.*, ¶ 35. Instead, “TAG negotiated numerous contracts with Grizzly for armored vehicles that Grizzly used in its Montana business.” *Id.* “Grizzly’s claim arose out of TAG’s business activity in Montana.” *Id.* (emphasis added).

By contrast, Southwest did not negotiate contracts with a Montana customer or engage in any conduct in the forum related to the claims at issue. Put simply, *Grizzly* is clearly distinguishable from this case, and it does not support the lower court’s conclusion that jurisdiction exists under Mont. R. Civ. P. 4(b)(1). This Court should appropriately exercise supervisory control on this point.

B. *The Ford Motor Company Precedents Do Not Support Jurisdiction Under Mont. R. Civ. P. 4(b)(1)(B).*

Similarly, as to Mont. R. Civ. P. 4(b)(1)(B), which focuses on claims arising from the “the commission of any act resulting in accrual [of a Montana tort action],” the district court relied on this Court’s opinion in *Ford*, 2019 MT 115—and the United States Supreme Court’s corresponding opinion in *Ford Motor Company v. Montana Eighth Judicial District Court*, 141 S.Ct. 1017 (2021)—to conclude that

jurisdiction was present here. (Ex. 8 at 6). However, those citations are again misplaced.

Ford stemmed from a fatal automobile accident on an interstate in Montana. Markkaya Gullett, a Montana resident, was driving a 1996 Ford Explorer in 2015 when “one of the Explorer’s tires suffered a tread/belt suspension,” resulting in Gullett’s death, and the Personal Representative filed suit against Ford. *Ford*, ¶ 2.

Ford did not design or manufacture the Explorer in Montana[,]” and the Explorer did not reach Gullett until it was resold and registered in Montana several years later. *Id.* Though Ford filed a Motion to Dismiss under Rule 12(b)(2), the district court denied the motion, and on appeal, the Montana Supreme Court affirmed, concluding that specific jurisdiction was present under Mont. R. Civ. P. 4(b)(1)(B). *Id.*, ¶ 11.

In doing so, the Court held that Rule 4 does not require plaintiffs to establish a causal link between their injuries and a defendant’s forum-related activities. *See* ¶¶ 21-23. As to Ford, the Court held it was sufficient that a “nex[us] exist[ed] between Gullett’s use of the Explorer and Ford’s in-state activity.” *Id.*, ¶ 23. More specifically, because Ford is a global auto manufacturer that specifically “advertises, sells and services vehicles in Montana” Gullett’s claims “related to” Ford’s activities in the forum. *Id.*

The Montana Supreme Court's conclusion was subsequently affirmed by the US Supreme Court. And like the Montana Supreme Court, the US Supreme Court also spent time discussing the "arises from or related to" requirement associated with specific personal jurisdiction, suggesting the requirement was met given Ford's presence as a "global" auto company which "extensively promoted, sold, and serviced [vehicles] in Montana." *Ford*, 141 S.Ct. at 1032.

Here, the district court concluded that NII's inability to demonstrate a causal link between Southwest's activities in the forum and the claims at issue in this lawsuit was not dispositive for purposes of personal jurisdiction. Instead, citing *Ford*, the district court concluded that jurisdiction could still exist, as Southwest has at least some evidence of sales to Montana customers in the past, as well as marketing efforts in cold-weather regions like Montana, and in this case, "the tortious act alleged to have occurred-damage to Fleming's home"-occurred in Montana. (Ex. 8 at 6).

The district court's conclusion is mistaken. While the Montana Supreme Court and US Supreme Court rejected Ford's argument that specific jurisdiction would always require a causal link between the non-resident defendant's forum activities and a plaintiff's claims, the claims at issue "related to" Ford's activities given its generally pervasive presence in the state. As a global company with multiple dealerships and employees nationwide and in Montana, Ford could

reasonably anticipate suit in Montana stemming from the malfunction of one of its vehicles in the state, even if designed and sold elsewhere.

By stark contrast, Southwest is plainly not Ford Motor Company, nor is its presence in Montana remotely similar. Southwest is not a global company with nationwide advertising efforts and employees in every state. Regarding Montana in particular, Southwest is not registered to do business in this state, has no offices in the state, has no employees in the state, and Montana customers have only accounted for a small fraction of its business in recent years. Put simply, Southwest's connections with Montana are not strong enough to find specific personal jurisdiction in the absence of a more direct link between Southwest's activities in the forum and the claims at issue in this lawsuit.

Indeed, this is particularly true when considering that recent interpretive case law has recognized logical limitations on *Ford's* application, noting that “a stronger showing of purposeful contacts with the forum state [necessarily] ‘will permit a lesser showing’ of relatedness to the litigation.” *Encuentra v. Church & Dwight Co., Inc.*, 2024 U.S. Dist. LEXIS 533, at *8 (C.D. Cal. Jan. 2, 2024) (granting Motion to Dismiss where plaintiff brought products liability claims against three defendants, including manufacturer of allegedly defective hair removal lotion, and manufacturer provided evidence that it “did not design, manufacture, label, or distribute the

product at issue in California or within the United States” and Church & Dwight did not sell product directly to the plaintiff) (emphasis added).

Given Southwest’s presence as an Arizona corporation with limited connections to Montana, a stronger showing of relatedness is required here than in *Ford*. Any other conclusion would effectively subject small, out-of-state businesses to the jurisdiction of Montana courts whenever a plaintiff can produce some evidence of isolated sales to Montana consumers by those businesses, even if those sales bear no relation to a plaintiff’s claims. Such a conclusion would not only effectively expand the scope of specific jurisdiction but also blur the distinction between general and specific jurisdiction. For these reasons, the Court should exercise supervisory control in this case.

II. THE EXERCISE OF SPECIFIC PERSONAL JURISDICTION WOULD VIOLATE DUE PROCESS.

Further, supervisory control is also appropriate because the exercise of specific personal jurisdiction would offend Due Process.

As the Court knows well, even where specific personal jurisdiction exists under Mont. R. Civ. P. 4(b)(1), courts must still consider whether the exercise of jurisdiction would offend Due Process. *DeLeon v. BNSF Railway Company*, 2018 MT 219, ¶ 10, 392 Mont. 446, 426 P.3d 1, ¶ 10 (quoting *Tackett*, ¶ 18).

This requires courts to 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.” *Ford*, ¶ 18.

As to the first prong, this Court has emphasized a defendant must have “tak[en] voluntary action designed to have an effect in Montana.” *Groo v. State Eleventh Jud. Dist. Ct.*, 2023 MT 193, ¶ 43, 413 Mont. 415, 537 P.3d 111. And significantly, the Montana Supreme Court has emphasized the importance of the second prong, noting that a plaintiff’s claims must arise out of or relate to the defendant’s forum-related activities. *Ford*, ¶ 18 (emphasis added).

If the first two prongs are met, a court presumes the exercise of jurisdiction would be reasonable. *Id.*, ¶ 28. However, a non-resident defendant can overcome the presumption by showing that jurisdiction would be unreasonable based on factors 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.

Ford, ¶ 29.

Here, the district court essentially analyzed Due Process through the lens of the third prong, citing the seven factors enumerated above. (Ex. 8 at 7-8). On this point, it is worth underscoring these seven factors are not the only components of Due Process analysis.

As noted above, Due Process first requires a showing of purposeful availment, and namely, that the defendant took voluntary actions designed to have an effect in the forum.

Here, Southwest is an Arizona corporation that is not even registered to do business in Montana. While it has occasionally sold products to Montana distributors in the past, these sales are isolated at best. And in this case specifically, while there is some possibility that Southwest manufactured chemicals used to insulate Fleming's home, those chemicals were not sold in Montana but instead to a distributor in Washington state. At best, Southwest sold chemicals to a Minnesota-based distributor that in turn sold chemicals to an Idaho-based contractor for pickup in Washington. Given these facts, Southwest clearly did not voluntarily take actions designed to have an effect in Montana. Based on this alone, the district court should have concluded the exercise of jurisdiction would offend constitutional requirements, and it erred in not doing so.

Further, even if the first prong was somehow satisfied, this would not obviate the need to satisfy the second prong of Due Process analysis, with this Court emphasizing the mandatory nature of that requirement. And for the reasons already outlined herein, there was simply no evidence to suggest that the claims at issue arose out of or related to Southwest's limited Montana activities, meaning the second prong was also not met.

And finally, even if the Court found the first two prongs were satisfied, the district court clearly erred in holding that Southwest could not overcome the presumption of reasonableness it afforded NII. While some factors articulated in *Ford* are likely neutral in this case, based on the facts outlined above, it is clear that:

- 1) Southwest has only occasionally transacted business with Montana customers,
- 2) the burden imposed on Southwest in travelling thousands of miles to defend this lawsuit would be great, and
- 3) Montana does not have a great interest in adjudicating a dispute between NII, an Idaho corporation, and Southwest, an Arizona corporation.

This all should have led the district court to conclude the exercise of jurisdiction would be unreasonable in this case. Because the district court did not do so, supervisory control is appropriate.

CONCLUSION

As outlined herein, the district court committed legal error and offended constitutional requirements when it determined that specific personal jurisdiction

existed under Mont. R. Civ. P. 4(b)(1)(A) and 4(b)(1)(B), and that the exercise of jurisdiction comported with Due Process. Because the district court accepted NII's invitation to expand the scope of specific personal jurisdiction beyond constitutional limits, this Court must now exercise supervisory control.

RESPECTFULLY SUBMITTED this 31st day of January, 2024.

MOULTON BELLINGHAM PC

By: /s/ Bobbi K. Owen
Christopher T. Sweeney
Bobbi K. Owen
27 North 27th Street, Suite 1900
P. O. Box 2559
Billings, Montana 59103-2559

ATTORNEYS *FOR THIRD PARTY*
DEFENDANT SOUTHWEST CO. d/b/a
SWD Urethane

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced, with left, right, top, and bottom margins of one inch; and that the word count calculated by Microsoft Word is 3,990 words, excluding the Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Service, and Index of Exhibits.

/s/ *Bobbi K. Owen*

CERTIFICATE OF SERVICE

I, Bobbi K. Owen, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 01-31-2024:

Christopher Thayne Sweeney (Attorney)
P O Box 2559
Billings MT 59103
Representing: Southwest Distributing CO.d/b/a SWD Urethane
Service Method: eService

Philip Bradford Condra (Attorney)
PO Box 4947
Missoula MT 59806
Representing: Donald T. Fleming
Service Method: eService

Marcel A. Quinn (Attorney)
Hammer, Quinn & Shaw PLLC
PO Box 7310
100 Financial Drive
Suite 100
Kalispell MT 59904-0370
Representing: Caribou Creek Log Homes, INC
Service Method: eService

Todd A. Hammer (Attorney)
PO Box 7310
Kalispell MT 59901
Representing: Caribou Creek Log Homes, INC
Service Method: eService

Emma Laughlin Mediak (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: North Idaho Insulation, LLC, John L. Holdeman
Service Method: eService

Randall J. Colbert (Attorney)
Garlington, Lohn & Robinson, PLLP

P.O. Box 7909
Missoula MT 59807
Representing: North Idaho Insulation, LLC, John L. Holdeman
Service Method: eService

Montana 19th Judicial District Court Lincoln Cty (Respondent)
512 California Ave
Libby MT 59923
Representing: Self-Represented
Service Method: Conventional

Matthew Cuffe (Respondent)
512 California Ave
Libby MT 59923
Representing: Self-Represented
Service Method: Conventional

Electronically signed by Lindsey Weber on behalf of Bobbi K. Owen
Dated: 01-31-2024