

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 24-0061

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

Petitioner,

v.

MONTANA NINETEENTH JUDICIAL DISTRICT COURT, LINCOLN
COUNTY, HON. MATTHEW J. CUFFE, Presiding Judge,

Respondent.

**DEFENDANT NORTH IDAHO INSULATION, LLC'S RESPONSE TO
SWD URETHANE'S PETITION FOR WRIT OF SUPERVISORY
CONTROL**

On Appeal from the Nineteenth Judicial District Court,
Lincoln County, Montana
Cause No. DV-2022-0000072
Honorable Matthew J. Cuffe

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I. STATEMENT OF ISSUES

Whether the District Court correctly determined personal jurisdiction exists over SWD for its defective product which allegedly damaged a Montana residence?

II. STATEMENT OF THE CASE

Donald Fleming (“Fleming”) sued North Idaho Insulation (“NII”) over alleged defects to his Montana residence caused by spray-foam insulation. App’x Pet. Writ, Jan. 31, 2024 (“App’x”), Ex. 1: Compl., May 9, 2022. NII filed a Third-Party Complaint against Southwest Distributing Co. dba SWD Urethane (“SWD”), the manufacturer of the QuikShield 118XC spray-foam. NII seeks indemnification from SWD for SWD’s defective product if NII is found to be liable to Fleming. App’x, Ex. 3: Third-Party Comp., Aug. 17, 2022.

SWD filed a Motion to Dismiss for lack of personal jurisdiction, asserting no personal jurisdiction exists because NII purchased the QuikShield 118XC from IDI Distributors in Washington as opposed to from SWD in Montana. App’x, Ex. 5: SDC’s BIS Mot. Dismiss, Nov. 2, 2022. SWD admits that it sold an undisclosed amount of its products to Montana contractors and distributors at least 96 times between 2019 and November 2022. App’x, Ex. 5 at 5. SWD does not dispute that its distributor, IDI Distributors, sold 28 barrels QuikShield 118XC directly to a contractor in Columbia Falls, Montana. Tab 3: G&G P.O.s 1-2, Oct. 3, 2019-Aug.

14, 2020 (Dkt. 18, Ex. 2). SWD also does not dispute that it engaged in nationwide advertising of QuikShield 118XC before removing QuikShield 118XC from the marketplace. Tab 2: *The Best Spray Foam Insulation* (Dkt. 18, Ex. 1) (IDI's website advertising SWD products); Tab 4: *Superior Insulation Products 4* (Dkt. 18, Ex. 3) (SWD's website); Tab 5: NII's Resp. Disc. Req., Nov. 8, 2022 (Dkt. 18, Ex. 4); Tab 6: SPFA, *About* (Dkt. 18, Ex. 5); Tab 7: SPFA, *Member types* (Dkt. 18, Ex. 6); Tab 8: *SprayFoam 2022 5* (Dkt. 18, Ex. 7); Tab 9: *SprayFoam 2023 5* (Dkt. 18, Ex. 8); Tab 10: *SprayFoam 3* (Dkt. 18, Ex. 9); Tab 11: *ICAA 2020 8* (Dkt. 18, Ex. 10); Tab 12: *ICAA, 2021 ICAA* (Dkt. 18, Ex. 11); Tab 13: *ICAA, 2022 ICAA* (Dkt. 18, Ex. 12); Tab 14: *ICAA, Insulation Contractors Report* (Dkt. 18, Ex. 13); Tab 15: SWD, Facebook 12 (Dkt. 18, Ex. 14); Tab 16: *Home Page* (Dkt. 18, Ex. 16); Tab 17: *Tips for Cold Weather* (Dkt. 18, Ex. 16); Tab 18: *Application: Winter Adjustments* (Dkt. 18, Ex. 17); Tab 19: *Application: Winter Adjustments* (Dkt. 18, Ex. 18); Tab 20: SWD(@SWD_Urethane), Twitter 2 (Dkt. 18, Ex. 19).

NII argued that specific personal jurisdiction exists under Montana's long-arm statute because SWD conducts business in Montana and because SWD's actions resulted in the accrual of a tort in Montana. NII further argues that the exercise of personal jurisdiction over SWD comports with the Due Process Clause of the Fourteenth Amendment under the circumstances present here.

The District Court denied SWD’s Motion to Dismiss. App’x, Ex. 8: Op. Ord., Nov. 21, 2023 (Dkt. 34). SWD petitioned the Court for supervisory control asserting the District Court incorrectly found personal jurisdiction exists over SWD. Pet. Writ 1, Jan. 31, 2024 (“Pet. Writ”).

III. STATEMENT OF FACTS

A. The Product Defect Claim Against SWD for Damage to Fleming’s Montana Residence

NII routinely installs spray-foam insulation in north-eastern Washington, northern Idaho, and north-western Montana. Tab 21: Aff. Holdeman ¶3, Nov. 16, 2022 (Dkt. 19). NII has purchased spray-foam insulation from distributors in Spokane, Washington; Shelby, Montana; and Belgrade, Montana. Tab 21 at ¶4. NII purchased the QuikShield 118XC it used in the Fleming’s residence from IDI Distributors in Spokane, Washington. Tab 22: Invoice 6000559023 (Dkt. 19, Ex. 2).

B. SWD’s Sale, Support, and Advertising of Spray-Foam Insulation in Montana.

SWD sells its spray-foam products in Montana and advertises its products, (including QuikShield 118XC until it stopped sales), in nationwide advertising designed to reach Montana consumers. SWD sells its spray-foam in Montana directly to consumers and through distributors, including the Belgrade, Montana

location of IDI Distributors. App’x, Ex. 5, Ex. A: Aff. Barriere ¶¶11, 19-20, Nov. 2, 2022; Tab 2.

SWD’s Chief Financial Officer, Mark Barriere asserts that “it appears” that SWD “only” sold to distributors in Montana “91 times” between 2019 and November 2022. App’x, Ex. 5, Ex. A at ¶15. Mr. Barriere further admits that SWD sold directly to contractors in Montana “5 times” between 2019 and November 2022. *Id.* at ¶16. Notably, Mr. Barriere fails to offer any details regarding the volume of each of these 96 sales.

Additionally, SWD’s distributor, IDI Distributors, sold four shipments totaling 160 barrels of SWD’s product directly to a contractor in Columbia Falls, Montana between October 3, 2019 and August 14, 2020. These direct shipments included 28 barrels of QuikShield 118XC. Tab 3 at 1-2.

Before it stopped selling QuikShield 118XC, SWD advertised it as “the most efficient extreme cold weather closed-cell spray foam insulation on the market”. Tab 15 at 12; *see also* Tab 20 at 2.

SWD advertised in a nationwide spray-foam group’s quarterly magazine that spans all 50 states and in a 2019 installation guide distributed by the same group. Tab 7; Tab 8 at 5; Tab 9 at 5; Tab 10 at 3.

SWD also advertised its QuikSheild 118XC—the subject insulation—at a 2020 convention and trade show that it sponsored:

SWD

At SWD Urethane, we understand spray foam is not a one size fits all product, which is why we invest heavily in state-of-the-art Research and Development to produce industry leading products in every performance category. QUIKSHIELD® products have been engineered to be the highest quality in the market and deliver contractors the most profitable solutions: QUIKSHIELD® 104EZ (No-Mix) is leading the industry of no mix products with excellent adhesion and low VOCs. It is safe to be installed without an ignition barrier in unvented attics; QUIKSHIELD® 106 (Open-Cell) is easy to use, provides exceptional yield, and delivers consistent results under almost any condition; QUIKSHIELD® 108YM, the "Yield Monster", has an Ultra-Low Density of 0.36-0.4 pcf, delivering more yield than traditional half pound foam; QUIKSHIELD® 112XC is a commercial-grade closed-cell spray foam ideal for both residential and commercial construction. Meeting all common residential and commercial specifications, QUIKSHIELD® 112XC is designed to be used in extreme job site conditions; QUIKSHIELD® 118 is the first Ultra-Efficient closed-cell, spray foam on the market today. It is specially formulated to increase job site efficiency, decrease labor and overhead costs, reduce jobsite risk, and deliver the lowest cost installed; QUIKSHIELD® 118XC is a cold-weather, closed-cell spray foam formulated for application in temperatures as low as -5F. The low viscosity allows applicators to use lower temperature without cracking, popping, or shrinking foam.

Tab 11 at 8.

SWD employs technicians to help contractors with questions or issues related to its chemicals. App'x, Ex. 5, Ex. A at ¶14; Tab 4 at 4. Nowhere on SWD's website does it limit the availability of its product to certain states or advise that its product is not available in Montana or is not suitable for use in Montana.

SWD has also posted multiple YouTube videos directly targeted at installers applying their foam in cold-weather states, such as Montana. Tabs 17-19.

IV. STATEMENT OF STANDARD OF REVIEW

"[A] writ of supervisory control is not to be used as a means to circumvent the appeal process. Only in the most extenuating circumstances will such a writ be granted." *State v. Mont. First Jud Dist. Ct.*, OP 23-0311, 2023 Mont. LEXIS 592, at *4 (Mont. June 6, 2023) (citation omitted). "The burden of persuasion is on the petitioner to convince this Court to issue a writ." *Innovative Contr., LLC v. Mont.*

Twentieth Jud. Dist. Ct., 411 Mont. 393 (2023) (citation omitted).

V. SUMMARY OF ARGUMENT

The District Court properly found that a Montana court may exercise personal jurisdiction over SWD in this case. SWD has transacted business with Montana customers at least ninety-six times, selling an undisclosed amount of product. SWD placed QuikShield 118XC into the stream of commerce, allegedly causing the accrual of a tort in Montana. Further, the exercise of personal jurisdiction over SWD in Montana would comport with the due process clause: SWD's multiple Montana sales demonstrates that it has purposefully availed itself to the privilege of conducting business in Montana; SWD has marketed and sold QuikShield 118XC to other Montana consumers, and, given SWD's activities within Montana, this Court's exercise of personal jurisdiction over SWD would be reasonable.

VI. ARGUMENT

The District Court correctly concluded that a company that markets and sells its products in Montana can be held responsible for its torts in Montana.

A. Specific Personal Jurisdiction Exists Over SWD Under Montana's Long-Arm Statute.

The District Court correctly found personal jurisdiction exists over SWD under Montana's long arm statute.

Montana's long-arm statute provides, in relevant part:

[A]ny person is subject to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, 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 or a tort action[.]

Mont. R. Civ. P. 4(b)(1)(A)-(B).

1. Personal Jurisdiction Exists Over SWD Because it Transacted Business in Montana.

The District Court correctly found that SWD transaction of business in Montana satisfies subpart (A) of Montana's long arm statute. App'x, Ex. 8 at 5.

The District Court noted that SWD's "distributor sold at least 28 drums of the specific product at issue to a contractor in Montana during the timeframe that [SWD]'s product was being installed in [the] Fleming's home." *Id.* Further, the District Court noted that SWD's "advertising in various venues is available to Montana residents and its product is targeted for cold weather states." *Id.*

As it did before the District Court, SWD argues that its Montana sales are only a "small fraction" of its overall sales. Pet. Writ at 14. However, SWD fails to present any admissible evidence to support its contention that its Montana sales were only a small percentage of its overall sales.

Further, the exercise of personal jurisdiction over SWD does not require SWD to sell a majority of its product to Montana consumers. In *Grizzly*, this Court

found personal jurisdiction despite defendant's argument that the sales to the plaintiff "did not constitute a significant component" of its business. *Grizzly Sec. Armored Express, Inc. v. Armored Grp., LLC*, 2011 MT 128, ¶29, 360 Mont. 517, 255 P.3d 143. Similarly, in *Bullard*, personal jurisdiction was found although "the volume of business the non-resident [defendant] conducted with Montana was slight" because the defendant "evinced a general intent to ship its products to Montana for sale here". *Bunch v. Lancair Int'l, Inc.*, 2009 MT 29, ¶29, 349 Mont. 144, 202 P.3d 784 (citing *Bullard v. Rhodes Pharmacal Co.*, 263 F. Supp. 79, 81, 83 (D. Mont. 1967) (defendant argued that its business in Montana "consists of less than one-half of one per cent of its total business.")); *see also Great Plains Crop Mgmt., Inc. v. Tryco Mfg. Co.*, 554 F. Supp. 1025 (D. Mont. 1983) (finding personal jurisdiction where Tryco sold only three tractors to one business in Montana); *Meeks v. Nutramax Labs. Vet. Scis., Inc.*, No. CV 19-88-M-DLC, 2019 U.S. Dist. LEXIS 202273, at *9 (D. Mont. Nov. 21, 2019) (finding personal jurisdiction where four solar chargers were shipped to Montana); *Duffy v. Kaman Aero. Corp.*, 590 F. Supp. 3d 1317, 1326 (D. Mont. 2022) (finding personal jurisdiction despite defendant arguing that the plaintiff was its "only Montana customer" and that its sale to the plaintiff "comprised less than 1% [of] Kaman's total net sales from 2017 to 2020.").

Personal jurisdiction can be triggered where a non-resident defendant

advertised on its website that it conducted business across the country, and where its advertising “likely would reach interested Montanans.” *Grizzly*, ¶¶33-35 (finding personal jurisdiction where defendant’s website indicated that it conducted business nationwide and suggested that “it willingly would transact business in Montana” and it had transacted business in Montana) (citing *Great Plains*, 554 F. Supp. at 1027 (finding personal jurisdiction based, in part, on the fact that Tryco “advertised in a magazine that could reasonably be expected to reach agriculturally-oriented states like Montana.”)).

Here, SWD engaged in nationwide advertisement efforts that were likely to reach Montana consumers and suggested that “it willingly would transact business in Montana”. See *Grizzly*, ¶¶33-35; Tabs 5-10, 12-20. Before stopping sales, SWD also specifically marketed QuikShield 118XC as a product to be installed during cold weather, which would naturally have a market in a cold weather state such as Montana. Tab 15 at 12; Tabs 17-19; Tab 20 at 2.

Under these circumstances, the District Court correctly concluded that SWD has transacted business in Montana.

2. Personal Jurisdiction Exists Over SWD Because it Committed Acts which Resulted in the Accrual of a Tort in Montana.

The District Court also correctly concluded specific personal jurisdiction under subpart (B) of the long-arm statute, because SWD’s conduct resulted in the

accrual of a tort within Montana. App’x, Ex. 8 at 5-6 (finding that “the tortious act alleged to have occurred—damage to Fleming’s home due to the failure of [SWD’s] foam insulation product—happened in Montana.”).

SWD appears to conflate the Due Process clause analysis with Montana’s long-arm statute analysis and asserts that its “connections with Montana are not strong enough to find specific personal jurisdiction in the absence of a more direct link between [SWD]’s activities in the forum and the claims at issue in this lawsuit.” Pet. Writ. at 14.

In *Ford*, this Court determined that the tort “undoubtedly accrued in Montana” because “the accident occurred while Gullett was driving on a Montana roadway.” *Ford Motor Co. v. Mont. 8th Jud. Dist. Ct.*, 2019 MT 115, ¶11 n.1, 395 Mont. 478, 443 P.3d 407 (emphasis added). This Court noted that the Plaintiff’s “claims of design defect, failing to warn, and negligence against Ford, if proven, resulted in the accrual of a tort in Montana”. *Ford*, ¶11 n.1. This Court therefore concluded that personal jurisdiction existed under Montana’s long-arm statute. *Ford*, ¶11 n.1; *see also Bunch*, ¶40 (finding personal jurisdiction under Montana’s long-arm statute where the alleged tort accrued in Montana because the plane crashed in Montana); *Bullard*, 263 F. Supp. at 82; *Rodoni v. Royal Outdoor Prods.*, No. CV 19-17-M-DLC, 2019 U.S. Dist. LEXIS 90775, at *5-6 (D. Mont. May 30, 2019)(finding personal jurisdiction under Montana’s long arm statute because

“Rodoni’s design defect claim ‘accrued’ and the ‘injury causing event occurred’ when Rodoni ‘gently leaned’ against Royal Outdoor Products’ railing, which failed and caused him to fall from a second-story balcony”); *Person v. Tannerite Sports LLC*, No. CV-21-93-GF-BMM, 2022 U.S. Dist. LEXIS 82503, at *19 (D. Mont. May 6, 2022)(“The elements of the tort accrued in Montana. Plaintiffs have alleged that the explosion of Defendants’ target caused a fire that resulted in damage to their property.”); *Meeks*, 2019 U.S. Dist. LEXIS 202273, at *6 (finding that “tort accrual jurisdiction is straightforward in this case” and that “[t]he tort accrued in Montana because the solar charger caught fire in Montana. Catching fire is the injury-causing event.”); *Colstrip Energy LP v. JBED Ventures, LLC*, No. CV 18-138-BLG-SPW, 2019 U.S. Dist. LEXIS 169054, at *10 (D. Mont. Sept. 30, 2019)(“The rotor’s failure in Montana was the injury-causing event, and Colstrip’s negligence claim therefore accrued in Montana.”).

SWD argues that *Ford* is inapplicable here because Ford is a “global company” which exposes itself to litigation in Montana—unlike a comparatively small company like SWD. However, SWD cites no authority to suggest that a company’s size has any bearing on whether the company’s conduct resulted in the accrual of a tort in Montana.

Here, the tort at issue undoubtably accrued in Montana: Fleming’s Montana residence was allegedly damaged by SWD’s QuikShield 118XC. Personal

jurisdiction under Montana’s long arm statute is established under these circumstances.

B. Exercising Personal Jurisdiction Over SWD Does Not Violate the Due Process Clause.

After concluding that personal jurisdiction existed under Montana’s long arm statute, the District Court properly considered whether the exercise of personal jurisdiction would comport with the Due Process Clause. App’x, Ex. 8 at 6-8.

This Court considers 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, ¶12 (citation omitted).

The District Court correctly concluded that such exercise of jurisdiction comports with the Due Process Clause.

1. SWD Purposefully Availed Itself of the Privilege of Conducting Activities in Montana.

The District Court correctly concluded that SWD purposefully availed itself of the privilege of conducting activities in Montana. The District Court noted that SWD “admits that the specific product, Quik Shield 118XC, IS sold to Montana distributors and contractors, and that at least one distributor . . . sells [SWD]

products from Belgrade, Montana;” SWD advertises in Montana through its distributor in Montana; and “supplies its products directly to contractors in Montana.” App’x, Ex. 8 at 6 (emphasis in original). The District Court further noted that “[t]hese contacts were not based on the unilateral activity of Fleming or [NII] or on random, fortuitous, or attenuated contacts.” *Id.*

A non-resident defendant has purposefully availed “‘itself of the benefits and protections of the laws’” of Montana “‘when it takes voluntary action designed to have an effect in the forum.’” *Ford*, ¶13 (citation omitted). However, if the defendant’s only contacts with Montana are “‘random, fortuitous, attenuated, or due to the unilateral activity of a third party,’” the defendant has not purposefully availed itself to Montana’s laws. *Ford*, ¶13 (citation omitted).

This is primarily because a defendant that invokes the forum state’s laws by purposeful availment “‘should reasonably anticipate being haled into court in the forum state’ and, therefore, exercising jurisdiction over that defendant is ‘fundamentally fair.’” *Gateway Hosp. Grp. Inc. v. Phila. Indem. Ins. Co.*, 2020 MT 125, ¶30, 400 Mont. 80, 464 P.3d 44 (citation omitted); *see also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (when a corporation has purposefully availed itself to a forum, “it has clear notice that it is subject to suit there”).

Purposeful availment can be established if the non-resident defendant demonstrates an “intent or purpose to serve the market” in Montana, such as by “designing the product for the market” in Montana, “advertising” in Montana, “establishing channels for providing regular advice to customers” in Montana, or “marketing the product through a distributor who has agreed to serve as the sales agent” in Montana. *Ford*, ¶15 (quoting *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 112 (1987)).

SWD notes that NII happened to purchase the product in Washington, as opposed to Montana, and suggests that happenstance should preclude personal jurisdiction in Montana. However, the question is whether SWD has availed itself of the benefits of transacting business in Montana, not whether it sold the precise product at issue directly into Montana. SWD admits it made at least 96 sales to distributors and consumers in Montana, SWD’s distributor has sold QuikShield 118XC directly to a Montana contractor, and SWD designs and markets this product for use in cold weather states such as Montana. SWD’s actions demonstrate that it should reasonably have anticipated “being haled into court” in Montana. *See Gateway Hosp. Grp. Inc.*, ¶30. The District Court correctly concluded that SWD purposefully availed itself of the privilege of conducting activities in Montana under the facts present here.

2. Fleming's Claims Arise out of or Relate to SWD's Forum-Related Activities.

The District Court noted that the “due process does not require a direct connection” between the claim and SWD’s forum related activities. App’x, Ex. 8 at 6 (citing *Ford*, ¶19). Rather, the due process clause “only requires that the plaintiff’s claims ‘arise out of’ or ‘relate to’ the defendant’s forum-related activities.” *Id.* (citing *Ford*, ¶19). The District Court correctly concluded that NII’s claims against SWD arise out of or relate to SWD’s Montana related activities. *Id.* (“The relationship among [SWD], Montana and the litigation in this case arises out of the contacts [SWD] created with Montana.”).

In an argument already rejected by this Court and the United States Supreme Court, SWD contends that Montana lacks personal jurisdiction over it because NII purchased the QuikShield 118XC in Washington instead of Montana. Pet. Writ at 17-18 (arguing that SWD sold its product to IDI who sold the product to NII in Washington).

This Court rejected this precise argument when Ford made it several years ago. *Ford*, ¶18 (affirmed by *Ford Motor Co. v. Mont.* 8th Jud. Dist. Ct., 141 S. Ct. 1017, 1030(2021)). Ford argued that because it “first sold” the Ford Explorer “outside of Montana” the claims related to the car accident in Montana did not arise out of or relate to Ford’s Montana activities. *Id.* This Court rejected Ford’s

argument, finding that “due process does not require a direct connection” between Ford’s Montana activities and the claim at issue. *Ford*, ¶19. This Court noted that if the sale of a product arises from efforts of a manufacturer to directly or indirectly serve the market in Montana, it is ““not unreasonable”” to subject that manufacturer to suit in Montana if the defective product causes injury in Montana. *Ford*, ¶20 (quoting *World-Wide Volkswagen*, 444 U.S. at 298). This Court concluded that “if a defendant’s actions resulted in the accrual of a tort [] in Montana,” *and* the defendant “purposefully availed itself of the privilege of conducting activities in Montana” *then* plaintiff’s claim would “relate to” the defendant’s Montana activities *so long as* “a nexus exists between the product and the defendants’ in-state activity”, and *so long as* the defendant “could have reasonably foreseen its product being used in Montana.” *Ford*, ¶12.

These requirements are each met in this case. As analyzed above, SWD’s actions allegedly resulted in the accrual of a tort in Montana and SWD purposefully availed itself of the privilege of conducting business in Montana. There is a nexus between the QuikShield 118XC installed in the Fleming residence and SWD’s Montana activities because SWD sold the same product in Montana and marketed its use in cold-weather states such as Montana. *See* Tab 4; Tab 15 at 12; Tab 20 at 2. Finally, SWD could have “reasonably foreseen” that its product would be used in Montana, after it marketed its product to cold weather states and

sold its products directly to Montana distributors and consumers. Simply because *this sale* of insulation occurred in Washington, when it just as easily could have occurred in Montana, does not mean that the exercise of personal jurisdiction over SWD would violate SWD’s due process rights. Due Process does not require a direct causal connection between the accrual of the tort and SWD’s Montana related activities. *Ford*, ¶19.

The United States Supreme Court affirmed this Court’s decision in *Ford*, concluding that no direct causal link is required between a company’s in-state activities and plaintiff’s claims. *Ford*, 141 S. Ct. 1017. The Court reflected that Ford conducted business in Montana, and enjoyed the benefits and protection of Montana’s laws, which created “reciprocal obligations” that Ford’s products were safe for use by Montana’s citizens, which was hardly undue. *Ford*, 141 S. Ct. at 1029-30 (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

The District Court correctly concluded that no direct causal relationship is required, and that NII’s claims against SWD arise out of or relate to SWD’s Montana activities.

3. Exercise of Personal Jurisdiction is Presumed Reasonable, which SWD Fails to Overcome.

Because the District Court concluded that SWD had purposefully availed itself of the privilege of conducting activities in Montana, it concluded that “[a]

presumption of reasonableness arises against which [SWD] must present a compelling case that jurisdiction would be unreasonable.” App’x, Ex. 8 at 7; *see also Ford*, ¶¶12, 28. The District Court considered the seven factors to determine reasonableness and concluded that the exercise of personal jurisdiction would be reasonable. App’x, Ex. 8 at 7-8 (citing *Ford*, ¶29).

The District Court correctly concluded “that all of the factors except the second one weigh toward finding that the imposition of specific personal jurisdiction over [SWD] in this matter is reasonable and comports with Due Process.” *Id.* at 8. The District Court reasoned that SWD “has interjected its business into Montana by selling its products directly to distributors and contractors in Montana, and advertising its products in venues available to Montanans, including that the product at issue is targeted to cold weather states such as Montana.” *Id.* at 7. The District Court also analyzed Montana’s interest in adjudicating the case: “Montana has a strong interest in adjudicating the dispute, as the alleged damages occurred to a home in Montana....”. *Id.* The District Court did acknowledge that SWD would face some hardship having to defend a Montana lawsuit. *Id.* However, the District Court ultimately concluded “that all of the factors except [hardship] weigh toward finding that the imposition of specific personal jurisdiction over [SWD] in this matter is reasonable and comports with Due Process.” *Id.* at 8.

VII. CONCLUSION

NII respectfully requests the Court deny SWD's Petition and allow a Montana jury decide the merits at trial.

DATED this 7th day of March, 2024.

/s/ Emma L. Mediak
*Attorneys for North Idaho Insulation, LLC, John
L. Holdeman*

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Word for Microsoft 365 MSO is 3,972 words, excluding Certificate of Service and Certificate of Compliance.

/s/ Emma L. Mediak
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L. Holdeman*

APPENDIX

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3	Ex. 2: Insulation Distributors, Inc. Invoices dated October 3, 2019, February 20, 2020, May 28, 2020, August 14, 2020, SWD to G& G Construction	18	November 21, 2022
4	Ex. 3: Superior Insulation Products dated November 17, 2022 (<i>Foundational Declaration of Emma L. Mediak</i>)	18	November 21, 2022
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21	Affidavit of John L. Holdeman (<i>Third-Party Plaintiffs' Brief in Opposition to Third-Party Defendant's Motion to Dismiss</i>)	19	November 21, 2022
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CERTIFICATE OF SERVICE

I, Emma Laughlin Mediak, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 03-07-2024:

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