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9/16/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JONATHAN T. SORRENTINO, as Personal Representative of the Estate of THOMAS R. SORRENTINO,

Respondent,

v.

AMMCO TOOLS, INC., individually and as a subsidiary of HENNESSY INDUSTRIES, INC., individually and as a subsidiary of DANAHER CORPORATION; GENUINE PARTS COMPANY; HONEYWELL INTERNATIONAL INC., successor-in-interest to ALLIED SIGNAL, INC., successor-in-interest to BENDIX CORPORATION; PNEUMO ABEX, LLC; UNION CARBIDE CORPORATION; and WHITEY'S WRECKING, INC.,

Defendants,

VOLKSWAGEN GROUP OF AMERICA, INC., and VOLKSWAGEN AKTIENGESELLSCHAFT,

Appellants.

No. 85202-7-I

DIVISION ONE

UNPUBLISHED OPINION

DÍAZ, J. — Thomas Sorrentino, a former mechanic, sued Volkswagen Aktiengesellschaft (VWAG) and Volkswagen Group of America (VWoA) (together

VW), claiming its 1970s brake products contained asbestos and caused his fatal mesothelioma. A jury found VW's brakes were not reasonably safe and were a substantial factor in causing Sorrentino's mesothelioma. On appeal, VW argues the superior court erred by denying its motion for judgment as a matter of law (JMOL), by denying three of its proposed jury instructions, and by finding the court had personal jurisdiction over VWAG. We disagree and affirm the superior court.

I. BACKGROUND

VWAG defines itself as "a German stock company headquartered in Wolfsburg, Germany" which "design[s] and manufacter[s] Volkswagen vehicles." VWoA is a wholly owned subsidiary of VWAG. In a 1971 importer agreement, VWAG appointed VWoA as the "importer for VW Products" to the "continental United States and the States of Alaska and Hawaii." Through this agreement, VWoA established a network of VW distributors throughout the United States. United Volkswagen (United) was such a dealership for the Spokane area.

Sorrentino worked as a mechanic at United from 1972 to 1975. Sorrentino primarily serviced the brakes and clutches of VW vehicles. For brake jobs, Sorrentino used compressed air and brake grinders. According to Sorrentino, brake jobs left the "workshop full of dust at times," which contained asbestos.

In 2020, a doctor diagnosed Sorrentino with mesothelioma. In January 2021, Sorrentino filed suit in King County Superior Court against numerous entities, including VWAG and VWoA. Sorrentino alleged that VW's failure to provide asbestos warnings was a direct and proximate cause of his mesothelioma.

Sorrentino passed away in February 2021. Thereafter, a personal

representative of Sorrentino's estate litigated the suit.[1] A jury trial commenced on November 28, 2022.

At trial, as in the present appeal, VW did not dispute that its brakes contained asbestos at the time of Sorrentino's exposure at United. For example, a VWAG witness testified "[a]utomobiles [VWAG] manufactured and sold to [VWoA] between 1972 and 1975 contained asbestos brakes and clutches" and at the time, "all brakes contained asbestos.". And VW did not contest that it "knew in the 1940s asbestos could cause lung cancer" and "understood it was a carcinogen," but believed illness required "high doses."

As will be discussed in more detail below, Sorrentino received numerous instructional materials for brake jobs and VW did not dispute that VW's brake part boxes, instructional materials, and service bulletins lacked asbestos warnings at the time of Sorrentino's exposure. Finally, VW did not dispute that Sorrentino received no training at United on asbestos safety whether by VW, co-workers, or others.

After Sorrentino rested his case, VW moved for a JMOL under CR 50 on December 9, 2022, making the same arguments it makes now on appeal.[2] That

[1] For clarity and simplicity, we will continue referring to the respondent as "Sorrentino."

[2] Namely, VW argued that Sorrentino (a) failed to show VWAG was subject to personal jurisdiction in Washington; (b) offered no evidence that he would have read or heeded an asbestos warning; (c) offered no evidence that VW's brakes were unsafe beyond what was reasonably expected by the ordinary consumer at the time as it claimed it was industry custom in the 1970s to use asbestos in brake parts; and (d) failed to show exposure to asbestos survives a "but-for" or substantial factor test for in causing his injury. Moreover, VW had previously moved twice to dismiss under CR 12(b)(2) for lack of personal jurisdiction. Both

same day, the court denied this motion after hearing argument.

On December 19, 2022, the jury found both VWAG and VWoA liable for selling products that were not reasonably safe, and that those unsafe products were a substantial factor in causing Sorrentino's mesothelioma. However, the jury found both VWAG and VWoA were not liable for negligence. The jury awarded $5.75 million in damages, which the court reduced to $4.7 million.

VW renewed its above-referenced (A) JMOL motion, (B) related motion for a new trial, and (C) its motions to dismiss for lack of personal jurisdiction, each of which the court denied and which are now the subjects of the present appeal. We address each in turn.

II. ANALYSIS

As a preliminary matter, the parties agree that common law product liability principles govern Sorrentino's claims, rather than the Washington Product Liability Act (WPLA), chapter 7.72 RCW. LAWS OF 1981, ch. 27, § 3. We accept this agreement because Sorrentino's exposure occurred before the 1981 effective date of the WPLA. LAWS OF 1981, ch. 27, § 3. In Washington, common law product liability claims follow Restatement (Second) of Torts § 402A (Am. Law Ins. 1965). Lenhardt v. Ford Motor Co., 102 Wn.2d 208, 211, 683 P.2d 1097 (1984).

Under those principles:

> (1) One who sells any product in a defective condition *unreasonably dangerous* to the user or consumer or to his property is subject to liability for physical harm thereby *caused* to the ultimate user or consumer, or to his property, if

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motions were unsuccessful. None of these decisions are directly at issue on appeal.

> (a) the seller is engaged in the business of selling such a product, and
>
> (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
>
> (2) The rule stated in Subsection (1) applies *although*
>
> (a) *the seller has exercised all possible care in the preparation and sale of his product*, and
>
> (b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

RESTATEMENT § 402A (emphasis added).

Further, the Restatement measures liability "solely by the characteristics of the product [the seller] has produced rather than [the seller's] behavior" and, in this sense, the Restatement permits claims under "strict liability principles of this jurisdiction." Lenhardt, 102 Wn.2d at 213 (holding such strict liability claims do "not sound in negligence"); see also Br. of Resp't at 12 (describing his pertinent claim, without later objection, as a strict liability claim).

A. Whether the Court Erred in Denying Judgment as a Matter of Law

We review motions for a judgment as a matter of law de novo. Salisbury v. City of Seattle, 25 Wn. App. 2d 305, 314, 522 P.3d 1019 (2023). A JMOL is appropriate "only when *no* competent and substantial evidence exists to support a verdict." Id. (emphasis added). Substantial evidence is "sufficient to persuade a fair-minded person of the order's truth or correctness." Sylvester v. Pierce County, 148 Wn. App. 813, 823, 201 P.3d 381 (2009). "All evidence and reasonable inferences from the evidence must be viewed in the light most favorable to the nonmoving party," here Sorrentino. Salisbury, 25 Wn. App. 2d at 314.

VW's argument that the court wrongly denied his renewed JMOL is twofold. First, VW claims Sorrentino failed to prove that the sale of its unreasonably dangerous product without a warning *caused* his injury because there is no substantial evidence he would have read or heeded any such warning. Second, VW claims that Sorrentino failed to present substantial evidence that VW brakes were less safe than the ordinary consumer would have expected between 1972 and 1975. We disagree with both arguments.

1. Whether There is Substantial Evidence Sorrentino Would have Heeded

Specifically, VW argues that Sorrentino's own testimony conclusively establishes that, while "he could [have] referenced" (unrelated) materials VW provided, he did not consult such materials during his time at United other than 'as needed.'" VW also cites to Sorrentino's testimony that he "'was always a hands-on, see-it, touch-it kind of a learner'" and did not read instructions about grinding brake pads, using compressed air, or replacing clutches. Based on such testimony, VW claims Sorrentino failed to establish causation because there is no substantial evidence, i.e., no fair-minded person could conclude, Sorrentino would have heeded an asbestos warning even if one had been placed on its product.

"For strict liability and negligence claims, a plaintiff must establish proximate cause between the defect or breach and the injury." Budd v. Kaiser Gypsum Co., Inc., 21 Wn. App. 2d 56, 73, 505 P.3d 120 (2022). Proximate causation requires both cause in fact and legal causation. Id. Here, the parties contest only cause in fact, which "refers to the 'but for' consequences of an act—the physical connection between an act and an injury.'" Id. (quoting Ayers v. Johnson & Johnson Baby

Prods. Co., 117 Wn.2d 747, 753, 818 P.2d 1337 (1991)). "In a failure to warn case, a showing that the plaintiff *would have heeded a warning* had one been given can establish cause in fact." Id. (emphasis added). In other words, a plaintiff may establish cause in fact in a failure to warn case if they put forth evidence they would have "heeded a warning." Id. With this standard in mind, we disagree with VW for three general reasons.

First, VW's argument misunderstands how we must view Sorrentino's testimony. Sorrentino testified that he referred to a binder of instructional materials on brake jobs, albeit "as needed," to track updated techniques and procedures. When we view this testimony in the light most favorable to Sorrentino, as we must, a fair-minded jury could interpret this statement simply to mean he reviewed written materials regularly as the need arose. Salisbury, 25 Wn. App. 2d at 314. That interpretation of that statement alone is substantial evidence that he would have read a warning on the product, if the need arose.

Sorrentino also takes an overly narrow of this testimony, which must be viewed within its broader testimonial context. Sorrentino testified as follows:

> Q. . . . For the work you described with the brakes, taking, you know, brakes off a vehicle and then installing new brakes, did you ever refer to any type of written instruction in order to perform that work?
> A. Oh. I believe there was some *pamphlet illustrations* that you could reference.
> Q. And what were those pamphlets or illustrations?
> A. They were – I'm trying to recall the exact name of them, but they were put out by Volkswagen, and they were just sort of an updated material that could be put in a *binder for reference purposes,* because they may have found little changes to things that they felt were conducive to doing a better job.
> Q. Did you refer to that binder?
> A. As needed.
> Q. Okay. And why would you refer to the binder; what did you need

> to know that Henry[3] hadn't taught you?
> A. I don't recall the specifics, but, you know, the idea was that if we got a piece of the material as such, you know, someone in the shop would *begin to talk about*, 'Oh, hey, I ran across this' – you know, this update on perhaps something like a bearing installation and torque – and torque numbers. *Something like that might change, and so you could reference that and find out what – you know where the change was made.*

(Emphasis added.) Seeing his "as needed" testimony in this context and viewing this testimony in the light most favorable to Sorrentino, a fair-minded jury could interpret this testimony to mean he received, organized in binders, discussed, and referenced (i.e., heeded) instructional materials to do "a better job" changing brakes. In turn, a fair-minded jury could reasonably infer that, because Sorrentino read some materials VW provided, he would have read and heeded an asbestos warning.[4]

Moreover, Sorrentino also testified that he inspected the packaging for VW brake parts as well as the parts themselves, stating:

> Q. What were – what were the brand or manufacturer of the parts they stocked at United Volkswagen, if you remember?
> A. Primarily they were OEM parts, Volkswagen parts that they stocked.
> Q. What do you mean by "OEM"?
> A. Original equipment.
> Q. *And how did you know they were Volkswagen?*
> A. *Oh, they would have a little insignia, either, I think on the box,*

[3] "Henry" refers to Henry Proctor, a "service specialist at United." Proctor received training from VW which he passed on to workers at United.

[4] Expanding the context even further, immediately following the testimony reviewed above, the jury heard contrasting testimony about Sorrentino's practices in changing *clutches*, where he unequivocally stated he never referred to written materials when "removing clutches and replacing clutches" because "that came to me via hands-on" without any elaboration. Based on this testimony, again, the jury could reasonably infer Sorrentino more frequently reviewed written materials about the brakes than is suggested by VW's reading of the "[a]s needed" comment in isolation.

> *sometimes on the side of the – stamped in the side of the brake pad shoe – brake shoe, yeah.*

(Emphasis added.) In other words, the jury could reasonably infer that Sorrentino would have seen a warning located on a brake part box or the part itself. In turn, as in Budd, the above "evidence shows [the plaintiff] read[]" materials provided by the manufacturer generally and, thus "viewed in [Sorrentino's] favor" as the nonmoving party, "sustains the jury's verdict" that he would have heeded such a warning here.[5] 21 Wn. App. 2d at 75 n.13.

Second, VW's argument minimizes binding authority that warnings may travel from a manufacturer to a consumer through intermediaries. For instance, our Supreme Court has held that the "WPLA does not specify who should receive these warnings." Taylor v. Intuitive Surgical, Inc., 187 Wn.2d 743, 754, 389 P.3d 517 (2017). Similarly, the Restatement does not specify who should receive these warnings from a manufacturer. RESTATEMENT § 402A.

In fact, the actions of intermediaries can be critical to alerting consumers of potential dangers. Taylor, 187 Wn.2d at 755 (hospitals as an intermediary between their staff and equipment manufacturers); Ayers, 117 Wn.2d at 758 (parents as an intermediary between their children and baby oil manufacturers);

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[5] It is also telling that, VW questioned Sorrentino about his smoking habits, asking "you told us the other day that even though you saw cigarette – warnings on cigarette packs, you still didn't quit smoking. So even if you have been warned, what would you have done?" As in Budd, where the court rejected the defendant's similar argument that evidence that Budd smoked cigarettes despite reading the warning labels showed he would not have heeded a warning about the asbestos-containing product, this evidence *supports* the inference that Sorrentino read warning labels and, as will be discussed below, given the severity of the injury here, supports the inference he would have heeded such a warning. Budd, 21 Wn. App. 2d at 75 n.13.

Sherman v. Pfizer, Inc., 8 Wn. App. 2d 686, 702, 440 P.3d 1016 (2019) (a drug manufacturer may rely on doctors as learned intermediaries if the product has the necessary warnings); Campbell v. ITE Imperial Corp., 107 Wn.2d 807, 814, 733 P.2d 969 (1987) (discussing the failure of an employer with actual knowledge of hazard to warn its employees). In other words, evidence that a plaintiff would have "heeded a warning" from an intermediary also can establish cause in fact.

At oral argument, VW's appellate counsel argued that it would be mere "speculation" and an "unreasonable inference" to assume United, as an intermediary, would have passed on asbestos warnings in light of evidence on their lacking safety practices.[6] Wash Ct. of Appeals oral argument, Jonathan T. Sorrentino v. Volkswagen Group of America Inc. et al, No. 85202-7-I (July 9, 2024), at 9 min., 30 sec. through 10 min., 5 sec. video recording by TVW, Washington State's Public Affairs Network,

[6] In full, VW's appellate counsel stated:

> If we look at the testimony of Rob Saraceno going through cross examination, the manual required that the workplace, the machine be bolted down to the workbench. That wasn't done by United. It also required a dust collection bag to be affixed to the back of the machine so that it would prevent these plumes of dust being scattered throughout the shop. That wasn't done. That's the type of workplace practice and workplace training that we are talking about on this record. And the- and speculation that United . . . would have then passed on warnings about asbestos . . . in the brake parts to their employees and they would have followed those warnings, that would be an unreasonable inference.

Wash Ct. of Appeals oral argument, Jonathan T. Sorrentino v. Volkswagen Group of America Inc. et al, No. 85202-7-I (July 9, 2024), at 9 min., 30 sec. through 10 min., 5 sec. video recording by TVW, Washington State's Public Affairs Network, https://www.tvw.org/watch/?clientID=9375922947&eventID=2024071092.

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Indeed, the jury heard testimony on loose safety practices at United, including that employees and supervisors did not use provided respirators. Sorrentino's former United coworker, Robert Saraceno, testified that he never saw "anyone use a respirator or respiratory protection when they were grinding brake shoes at United Volkswagen," even though masks were available and everyone used the brake grinder which created a lot of dust. And Saraceno further testified that he did not recall Sorrentino ever wearing a mask. But, again, this is not the totality of the testimony.

The jury, however, also heard Sorrentino's own testimony that he would have heeded warnings from a qualified intermediary, if they had indicated there was an issue with asbestos or United's safety practices, stating:

> Q. Well you told us the other day that even though you saw cigarette – warnings on cigarette packs, you still didn't quit smoking. So even if you had been warned, what would you have done?
> A. Well, given that, the differences in the scenario I think is that, you know, cigarette smoking was a social thing, and even though, yes, it did have a warning on it, you saw most everybody ignore it as if it was some almost ploy to – I don't know – get you to buy more, or what have you.
>
> But . . . *a warning from a – in a setting where you're working and there's a – supposedly an [Occupational Safety and Hazard] representative that's supposed to be doing something about it, I think I'd have paid attention.*
> Q. Do you believe that your employer, United Volkswagen, should have taken steps to protect the safety of you and your coworkers?
> . . .
> A: You know, I think any employer should care about their employees.

As in Taylor, this testimony supports a reasonable inference by a fair-minded person that Sorrentino would have heeded a warning from an intermediary had it

been given. 187 Wn.2d at 755.

Third, this same testimony also supports a reasonable inference that, had a warning existed explaining the *severity* of the consequences of asbestos exposure, Sorrentino would have heeded it. Our Supreme Court has cited approvingly to jury instructions stating that a product "warning must be appropriate in view of the seriousness of any danger involved to reasonably advise of the consequences of improper use." Lockwood v. AC&S, Inc., 109 Wn.2d 235, 269, 744 P.2d 605 (1987). Here, the severity of the injury is extraordinarily high as asbestos exposure causes multiple forms of life-threatening cancer.[7] Thus, the inference is more easily drawn that Sorrentino would have heeded a warning highlighting the inordinate risk involved.

Moreover, Sorrentino testified (albeit at a high level) that he "certainly wish[ed he] knew something about asbestos." A fair-minded jury could have coupled that testimony with his testimony about heeding warnings from intermediaries to find Sorrentino would have heeded such a warning, had it been in "a form which reasonably could be expected to catch the attention of, and to be understood by, the ordinary user." Id. at 269.

Finally, VW also cites to two cases where our courts rejected a failure to warn claim as the plaintiff failed to show they would have heeded a warning: Hiner v. Bridgestone/Firestone, Inc., 138 Wn.2d 248, 257-58, 978 P.2d 505 (1999) and

[7] At trial, it was discussed that the "main categories" of injuries associated with asbestos exposures are "a scarring of lung tissue normally associated with a high level of exposure. The second is lung cancer. And the third is malignant mesothelioma, a cancer of the lining of either the lung, but it also can occur in the gut cavity or in the -- around the heart."

Sherman, 8 Wn. App. 2d at 702. Neither case helps the appellants.

In Hiner, the plaintiff definitively "testified she looked at her owner's manual for some information, *but had not read the statement about snow tires* in the five years she had the manual." 138 Wn.2d at 257 (emphasis added). Additionally, she testified "*she did not look for warnings* on any of" the challenged products. Id. at 257-58 (emphasis added). As such, our Supreme Court held the record did not support the inference that the plaintiff would have heeded warnings had they existed. Id. at 258. Hiner is plainly distinguishable because Sorrentino at a minimum reviewed VW's materials "as needed" and regularly reviewed the brake's packaging.

Similarly in Sherman, the plaintiff "testified unequivocally that . . . he did not read package inserts and did not recall ever reading a package insert" meaning "any changes to the package inserts for [the drug in question] did not impact his prescription decision because he did not look at them." 8 Wn. App. 2d at 699 (emphasis omitted) (citing Douglas v. Bussabarger, 73 Wn.2d 476, 438 P.2d 829 (1968) (a similar case where plaintiff testified they had *never* read warning materials)).

The testimony from Hiner and Sherman is materially different from Sorrentino's testimony, both as to the unequivocal tone of the testimony and the lack of any consideration of the severity of the injury. The record here does not compel a fact finder to conclude that any warnings would not have affected Sorrentino's decision. Sherman, 8 Wn. App. 2d at 698-99.

For the reasons above, we hold the court did not err in denying VW's motion

for JMOL as VW failed to establish there was "*no* competent and substantial evidence" that that Sorrentino would have heeded an asbestos warning. Salisbury, 25 Wn. App. 2d at 314. A fair-minded jury could interpret all of this evidence to mean that Sorrentino would have read and heeded a warning. In turn, we hold there is substantial evidence to establish the failure to warn was a cause in fact of Sorrentino's injury. Budd, 21 Wn. App. 2d at 73.

2. Whether Feasibility Defines a Consumer's Reasonable Expectations

Under Washington's common law test, a product is not reasonably safe if it is "unsafe to an extent beyond that which would be contemplated by the ordinary consumer." Seattle–First Nat'l Bank v. Tabert, 86 Wn.2d 145, 154, 542 P.2d 774 (1975). Factors such as the "relative cost of the product, the gravity of the potential harm from the claimed defect and the cost and feasibility of eliminating or minimizing the risk *may* be relevant in a particular case." Id. (emphasis added).

Feasibility is only one of several factors under the common law that could establish the "reasonable expectations of an ordinary consumer." Lenhardt, 102 Wn.2d at 215 ("industry custom is *not always* admissible in a product liability cause of action that arises before the effective date of the [WPLA]") (emphasis added). As such, the jury could assign whatever weight it wished to feasibility in weighing the various factors: including the "gravity of the potential harm." Tabert, 86 Wn.2d at 154.

VW argues that the "undisputed evidence showed that there was no feasible, safer alternative to the encapsulated chrysotile asbestos in Volkswagen friction products." In other words, it avers that "[e]liminating asbestos from

Volkswagen friction products was indisputably not feasible." VW heavily relies on Connor v. Skagit Corp., 99 Wn.2d 709, 664 P.2d 1208 (1983), for the proposition that when a plaintiff bases the product defect claim on the availability of an alternative design, it becomes her burden to prove feasibility. Connor does not support their position.

The court in Connor held that "the existence of an alternative, safe design is *a* factor which the jury *may* consider in determining whether a product is unreasonably dangerous" and held that a plaintiff may "establish that a product is unreasonably dangerous by means of factors other than the existence of alternative design." 99 Wn.2d at 715 (emphasis added).

Here, Sorrentino does not "contend[] that a reasonable alternative design existed for asbestos containing friction products in the 1970s," but that the "magnitude of the harm—death by cancer—and the nature of the product made the product unreasonably unsafe." As in Ayers, "'because of the gravity of the potential harm," we hold that "the jury could have reasonably concluded that the product was unsafe to an extent beyond that contemplated by the ordinary consumer." 117 Wn.2d at 766. That is, a fair-minded jury could find that no reasonable mechanic (the consumer) expects fatal consequences from installing new brake pads, regardless of the feasibility of other options at the time. In turn, there is substantial evidence for the jury's finding despite that factor and it was not error for the court to deny VW's motion for a JMOL.

B. Whether the Court Erred in Giving the Jury Instructions It Did

"In general, whether to give a particular instruction is within the trial court's

discretion." Taylor, 187 Wn.2d at 767. "Where substantial evidence supports a party's theory of the case, trial courts are required to instruct the jury on the theory." Id. However, "[j]ury instructions are generally sufficient if they are supported by the evidence, allow each party to argue its theory of the case, and when read as a whole, properly inform the trier of fact of the applicable law." Fergen v. Sestero, 182 Wn.2d 794, 803, 346 P.3d 708 (2015).

Even so, "[a]n erroneous instruction is reversible error only if it is prejudicial to a party." Fergen, 182 Wn.2d at 803. "A jury instruction is prejudicial if it substantially affects the outcome of the case." Moratti ex rel. Tarutis v. Farmers Ins. Co. of Wash., 162 Wn. App. 495, 505, 254 P.3d 939 (2011). "'Prejudice is presumed if the instruction contains a clear misstatement of law; prejudice must be demonstrated if the instruction is merely misleading.'" ADA Motors, Inc. v. Butler, 7 Wn. App. 2d 53, 60 n.11, 432 P.3d 445 (2018) (quoting Anfinson v. FedEx Ground Package Sys., Inc., 174 Wn.2d 851, 860, 281 P.3d 289 (2012)). "The party challenging an instruction bears the burden of establishing prejudice." Fergen, 182 Wn.2d at 803.

"We review a trial court's decision to give a jury instruction 'de novo if based upon a matter of law, or for abuse of discretion if based upon a matter of fact.'" Taylor, 187 Wn.2d at 767 (quoting Kappelman v. Lutz, 167 Wn.2d 1, 6, 217 P.3d 286 (2009)).

Here, VW challenges the superior court's denial of three of its proposed jury instructions, which we address in turn.

1. Whether the Court Erred in Failing to Give a Failure to Heed Instruction

VW proposed an instruction which stated, in pertinent part, that, if the jury found "one or more of the defendants was required to place a warning on its products and failed to do so, or gave an inadequate warning, you should also consider whether plaintiff has proven that Thomas Sorrentino would have heeded such a warning." The court declined the request and its instructions did not expressly reference the possible failure to heed.

VW now argues the court was obligated to provide this proposed instruction as it was derived from our Supreme Court's holding in Hiner. However, VW does not rigorously explain why the ultimate holding in Hiner is appropriate and, in fact, concedes in a footnote that the "proposed instruction did not appear in Hiner" as that matter was resolved on a JMOL argument. Br. of Appellant at 41 n.6 (citing Hiner, 138 Wn.2d at 250-51, 253). The Hiner court was not presented with and did not address whether to provide the jury this precise instruction or not.

Moreover, this court held that "[s]imply because a statement is made by an appellate court does not mean that it can be properly incorporated into a jury instruction." Van Cleve v. Betts, 16 Wn. App. 748, 756, 559 P.2d 1006 (1977). Otherwise, courts would risk misusing an "overbroad statement of the law when it is removed from the factual context of that case." Id.

And, had the proposed instruction been given, the holding in Hiner would have been "removed from" its distinguishable factual context. Id. As discussed earlier, the plaintiff in Hiner unequivocally stated she never read the relevant warnings. 138 Wn.2d at 257-58. The evidence here does not support that Sorrentino never would "have heeded such a warning," as the factual context in

Hiner suggests is required. In turn, we hold the court did not abuse its discretion in finding as "a matter of fact" that the instruction was not warranted. Taylor, 187 Wn.2d at 767.

As a matter of law, the VW's proposed instruction also presents an overly narrow definition of causation focused implicitly on (a) only VW itself providing warnings to Sorrentino and (b) Sorrentino suffering injuries only when he himself was changing brakes. As to the former, as discussed earlier, intermediaries can play a key role in warning consumers of dangerous products. Id. at 755. As to the latter, at issue at trial was whether Sorrentino was also affected by "bystander exposure." There was testimony that "Sorrentino would have not only the exposure to asbestos from his own work, but he would also have exposures to asbestos as a bystander to the work of the other mechanics."

VW's proposed jury instruction did not capture any of the above considerations and, in turn, does not "properly inform the trier of fact of the applicable law." Fergen, 182 Wn.2d at 803. As such, we hold the court did not improperly find as "a matter of law" that the instruction was not appropriate. Taylor, 187 Wn.2d at 767.

Even assuming arguendo that the instruction was given in error, VW fails to establish prejudice. VW claims it was prejudiced by the failure to give the instruction because it allowed Sorrentino to assert in his closing argument that it was "absolutely false" that the plaintiff is required to prove Sorrentino would have heeded the warning. In other words, VW avers that the lack of an instruction permitted Sorrentino to not prove causation in full.

On the contrary, the court's instruction flatly stated it was the plaintiff's burden to prove causation and to prove that VW's failure to warn "was a proximate cause of the plaintiff's injury." Based on this instruction, VW could*, and did*, argue at length during its closing argument that Sorrentino failed to prove causation, when its counsel stated:

> The claim is failure to warn. *How do you warn a guy who doesn't look at the manual?* Think back on what he said. Was it something like, mechanic see, mechanic do? Something like that, right? He was hands on. He didn't look at the book. Mr. Proctor got training. He learned from others.
>
> But the instruction that they claim was missing, *they have to prove to your level of confidence that he would have seen it and he would have heeded it.* In other words, he would have followed it.

(Emphasis added). VW's counsel continued:

> So where was the opportunity to warn him and where *did they prove that he would've followed those instructions?* That burden is theirs. Ask yourself, did they prove to your level of confidence that he would've followed an instruction had an instruction been given? Did they prove to your level of confidence that he would've followed an instruction had an instruction been given?

(Emphasis added).

We hold that, even if there was an instructional error, the court's instruction "allow[ed] each party to argue its theory of the case." Fergen, 182 Wn.2d at 803. VW's counsel made the argument it would have made with the instruction. And otherwise, VW does not show the absence of a more specific instruction "substantially affect[ed] the outcome of the case." Moratti, 162 Wn. App. at 505. Thus, this assignment of error fails.

2. Whether the Court Erred in Failing to Give a But-For Causation Instruction

There are two types of proximate causation at issue here: "but-for"

causation and "substantial factor" causation. "Washington courts have applied the substantial factor test in only four types of cases," one of which being "toxic tort cases, including multisupplier asbestos injury cases." Fabrique v. Choice Hotels Int'l, Inc., 144 Wn. App. 675, 685, 183 P.3d 1118 (2008) (refusing to extend the substantial factor test to facts involving a "contaminated food product."). "[B]ecause of the peculiar nature of asbestos products and the development of disease due to exposure to such products, it is extremely difficult to determine if exposure to a particular defendant's asbestos product actually caused the plaintiff's injury." Lockwood, 109 Wn.2d at 248. As such, "substantial factor causation instructions are commonly given in asbestos-injury cases tried in Washington," and "allow the plaintiff to establish causation by showing that the defendant's . . . product was a substantial factor in bringing about the injury, even though the injury would have occurred without it." Mavroudis v. Pittsburgh-Corning Corp., 86 Wn. App. 22, 28-29, 935 P.2d 684 (1997).

VW argues that a substantial factor instruction, which the court gave here, is only proper in cases involving multiple sources of potential exposure. In turn, VW asserts that the court was required, as a matter of law, to give VW's proposed instruction which put forth a "but for" causation standard and which "requires a plaintiff to establish that had the defendant's act not occurred, the plaintiff would not have been harmed." Br. of Appellant at 44 (citing Daugert v. Pappas, 104 Wn.2d 254, 260, 704 P.2d 600 (1985)).

We could not locate an asbestos exposure case where the court gave a "but for" causation instruction, nor does VW cite to one. This omission alone requires

us to reject VW's argument. DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.").

Still, VW insists that a substantial factor standard "is justified only 'when a plaintiff is unable to show that one event alone was the cause of the injury.'" Br. of Appellant at 45 (quoting Fabrique, 144 Wn. App. at 684). This claim is inaccurate.

This court recently considered a case where a worker "wore 3M Company's 8710 mask from 1972 to around 1980 while working as an insulator at Puget Sound Naval Shipyard (PSNS), where he was exposed to asbestos and asbestos-containing products." Roemmich v. 3M Company, 21 Wn. App. 2d 939, 943, 509 P.3d 306 (2022). In other words, Roemmich was focused on one job (PSNS) and one product (a type of 3M mask). Id. Yet there, this court held that, while the "change from the 'but-for' test to the substantial factor test is *normally* justified only when a plaintiff is unable to show that one event alone was a cause of the injury," "the substantial factor test should be used in cases where it is difficult to establish the exact event or party that caused the harm." Id. at 950 (emphasis added). Thus, the question is not what plaintiff must or must not show, but whether it is difficult to establish the exact event or party that caused the harm.

As noted above, the evidence at trial established numerous potential sources of exposure, including the dust released by Sorrentino's co-workers. Sorrentino also testified that he was exposed to asbestos when changing non-VW

brakes for family and friends in his driveway, regularly over a period of about ten years. There was no evidence to the contrary. In turn, as in Roemmich, "regardless of whether [VW's brakes parts were] the only reason for [] mesothelioma, there was substantial evidence from which the jury could determine that the [parts were] defective and contributed to his injury. And because the harm done by [VW] and [] other[s] … was identical—[Sorrentino] developing mesothelioma—the substantial factor test applies." 21 Wn. App. 2d at 951.

Finally, VW did not even argue that it was prejudiced by the absence of this instruction, as was its burden. Fergen, 182 Wn.2d at 803. As such, for the reasons above, we hold the court did not improperly find as "a matter of law" that the instruction was not warranted. Taylor, 187 Wn.2d at 767.

3. Whether the Court Erred in Failing to Give an Industry Custom Instruction

VW proposed an instruction which stated in pertinent part that in "evaluating Plaintiff's claims, you may consider evidence of custom in the industry, and whether or not the product complied with government regulatory standards in place at the time." The court's given instruction did not expressly reference industry custom, but stated the jurors could consider "the cost and feasibility of eliminating or minimizing the risk, and such other factors as the nature of the product and the claimed defect indicate are appropriate."

As discussed earlier, industry custom is "not always admissible in a product liability cause of action that arises before the effective date of the [WPLA]"—let alone a dispositive factor—in determining the reasonable expectations of an ordinary consumer because the "liability of the manufacturer is measured solely by

the characteristics of the product he has produced rather than his behavior." Lenhardt, 102 Wn.2d at 213-15 (adding "strict liability does not sound in negligence"). Thus, we hold the court was not obligated as "a matter of law" to provide such an instruction. Taylor, 187 Wn.2d at 767.

Even so, industry custom or feasibility of design can be considered when the plaintiff opens the door by "present[ing] evidence that puts in issue the custom of the industry or feasibility of alternative design" as "the defendant should be allowed to meet that evidence." Lenhardt, 102 Wn.2d at 213-14. That said, "when a plaintiff establishes at trial that a particular design allows a certain event to occur and alleges that event is not reasonably safe based upon the reasonable consumer expectation concerning that product, the defendant may not introduce evidence that his design comports with the design of other manufacturers." Id. at 214. And VW alternatively argues that this instruction was necessary as Sorrentino opened the door to industry custom in three distinct ways.

First, VW alleges Sorrentino elicited answers on industry custom when questioning fact witnesses at trial. The initial citation points to the testimony of Neal Palmer, a VW products analysis engineer. But there, VW's *own* attorney was cross examining Palmer. The remainder of the citations involve trial testimony from Lars Muhlfelder, a VW engineer who was being questioned by Sorrentino's attorney. In that questioning, Muhlfelder asserted, repeatedly and unprompted, that asbestos was an "industry standard" material in brakes and clutches. Sorrentino's attorney did not ask about industry custom. The remaining two citations point to cross examination by VW's counsel. In short, Sorrentino did not

open the door to a discussion of industry custom at the times VW cites.[8]

Second, VW alleges Sorrentino's opening statement opened the door to industry custom. There, Sorrentino's counsel stated that "[t]he [VW] break contained chrysotile asbestos in the 1970s, and all brakes had chrysotile asbestos in the break pad during this particular time period." However, this reference to industry custom was isolated and made in passing within a relatively lengthy opening statement. This one line–which was unconnected to any evidence Sorrentino adduced and supports VW's substantive claim—is hardly placing industry custom "at issue."

Third, VW alleges the "studies relied on by Sorrentino's experts addressed the automotive industry's use of chrysotile asbestos in brake manufacturing" opened the door requiring a related jury instruction. Similar to the above, the expert either brought up industry custom unprompted or otherwise did not make any direct claims as to the uniformity of industry custom. As such, we hold the court did not abuse its discretion to find as "a matter of fact" that the instruction was not warranted under that theory. Taylor, 187 Wn.2d at 767.

Even if there was error to not give this instruction, the instruction given still allowed the jury to consider the "feasibility of eliminating or minimizing the risk."

[8] Similarly, VW alleges Sorrentino elicited testimony from its expert which opened the door to evidence of industry custom. In the first two citations, in response to Sorrentino's attorney's question on the expert's "experience" and about the brakes used at United, the expert discussed industry custom unprompted. In the final citation, Sorrentino's attorney asked about "background level asbestos exposure." The expert answered that this information was not necessary for their causation analysis. As above, Sorrentino's attorney thereafter did not ask about industry custom, and any response related thereto was unsolicited.

And during their closing argument, VW could, *and did*, argue for the jury to consider "the *cost and feasibility* of eliminating or minimizing the risk" of asbestos, which they argued it was Sorrentino's "burden to prove." (Emphasis added). What's more, VW argued that the jury "may consider *custom in the industry*, technological feasibility, and whether the product was or was not in compliance with nongovernmental standards or with statutes or administrative regulations." (Emphasis added). In other words, VW repeatedly urged the jury to consider industry custom under the court's given instructions.

We hold that, even if there was an instructional error, the court's instruction "allow[ed] each party to argue its theory of the case." Fergen, 182 Wn.2d at 803. Further, VW point to no relevant fact in the record to prove the absence of such an instruction "substantially affect[ed] the outcome of the case." Moratti, 162 Wn. App. at 505. [9]

C. Whether This Court Has Personal Jurisdiction Over VWAG

A court's exercise of personal jurisdiction must comport with the relevant state long-arm statute and the Fourteenth Amendment's due process clause. Duell v. Alaska Airlines, Inc., 26 Wn. App. 2d 890, 896, 530 P.3d 1015 (2023). Washington's "'long-arm statute permits jurisdiction over foreign corporations to

[9] VW does argue that the "split verdict" at trial shows it was prejudiced by the absence of guidance on industry custom in the common law product liability portion of the case. It is true that the court expressly mentioned industry custom in its negligence instructions and that the jury returned a verdict finding VW was not negligent. However, as discussed above, Lenhardt explains that (strict) liability in pre-WPLA claims "is measured solely by the characteristics of the product" and "does not sound in negligence." Lenhardt, 102 Wn.2d at 213. In other words, what the jury decided on negligence is conceptually distinct from its decision on a strict liability claim such as a common law pre-WPLA claim.

the extent permitted by the due process clause of the United States Constitution.'" Id. (quoting Sandhu Farm Inc. v. A&P Fruit Growers Ltd., 25 Wn. App. 2d 577, 583, 524 P.3d 209 (2023)).[10] The due process clause requires that a defendant have certain minimum "contacts" with it such that "the maintenance of the suit . . . does not offend 'traditional notions of fair play and substantial justice.'" Id. at 897 (quoting Int'l Shoe Co. v. State of Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)).[11]

"A Washington court may exercise specific personal jurisdiction over a nonresident defendant when the defendant's limited contacts give rise to the cause of action." Gorden v. Lloyd Ward & Associates, P.C., 180 Wn. App. 552, 567, 323 P.3d 1074 (2014). When gauging whether there are sufficient minimum contacts for specific jurisdiction, Washington courts utilize the two-prong Ford test. Duell, 26 Wn. App. 2d. at 899 (citing Ford Motor Co. v. Montana Eighth Judicial Dist. Ct., 592 U.S. 351, 352, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021)). Under this test,

[10] Specifically, Washington's long-arm statute, RCW 4.28.185(1)(a)-(b), states that "[a]ny person" submits to the jurisdiction of Washington courts by conducting a "transaction of any business within this state" or by "commi[tting] a tortious act within this state" and that "'any person'" includes both "nonresident individuals and foreign corporations to the extent permitted by the due process clause of the United States Constitution." Downing v. Losvar, 21 Wn. App. 2d 635, 654, 507 P.3d 894 (2022) (quoting RCW 4.28.185(1)(a)).

[11] There are two bases for personal jurisdiction under the minimum contact requirement. General jurisdiction provides for personal jurisdiction over a defendant corporation when they are "'essentially at home'" in the forum state. Duell, 26 Wn. App. 2d at 897 (quoting Montgomery v. Air Serv. Corp., 9 Wn. App. 2d 532, 538, 446 P.3d 659 (2019)). "Specific jurisdiction covers a narrower class of claims when a defendant maintains a less intimate connection with a state." Id. Sorrentino does not allege that VWAG was "at home" in Washington and subject to general jurisdiction. Thus, we will discuss the requirements only for specific jurisdiction.

"(1) the defendant must purposefully avail itself of the privilege of conducting activities within the forum state, and (2) the plaintiff's claims must arise out of or relate to the defendant's contacts with the forum." Id. Courts then must consider additionally whether applying personal jurisdiction comports with "traditional notions of fair play and substantial justice." Downing v. Losvar, 21 Wn. App. 2d 635, 678, 507 P.3d 894 (2022).

This court reviews motions to dismiss for lack of personal jurisdiction de novo. State v. LG Elecs., Inc., 186 Wn.2d 169, 176, 375 P.3d 1035 (2016). Additionally, the plaintiff has the burden of demonstrating personal jurisdiction. FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 175 Wn. App. 840, 885-86, 309 P.3d 555 (2013). However, because VWAG never asked for a CR 12(d) evidentiary hearing, we consider only whether Sorrentino made a sufficient prima facie showing of jurisdiction, and not whether VWAG rebutted said showing.[12] Id. "In this setting, '[w]e treat the allegations of the complaint as true.'" Id. at 886 (quoting SeaHAVN, Ltd. v. Glitnir Bank, 154 Wn. App. 550, 563, 226 P.3d 141 (2010), abrogated on other grounds by Noll v. American Biltrite Inc., 188 Wn.2d 402, 411-16, 395 P.3d 1021 (2017)).

By way of summary, VW argues the "trial court erred when it concluded that it could exercise specific jurisdiction over VWAG" as "VWAG never made any

[12] "CR 12(d) permits any party to seek an evidentiary hearing prior to trial when 'lack of jurisdiction over the person' has been raised as an affirmative defense pursuant to CR 12(b)(2): '[U]nless the court orders that the hearing and determination thereof be deferred until the trial.'" State v. LG Elecs., Inc., 185 Wn. App. 394, 409, 341 P.3d 346 (2016) (alteration in original) (quoting CR 12(d)). There was no request for an evidentiary hearing prior to or after trial, and no request for special interrogatories to the jury on these issues.

purposeful connection to or otherwise availed itself of Washington." In support of its position, VW challenges many of the superior court's findings of fact supporting personal jurisdiction.

"We review findings of fact under the substantial evidence standard." Johnson v. Horizon Fisheries, LLC, 148 Wn. App. 628, 640, 201 P.3d 346 (2009). Substantial evidence is that "quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." In Re Dependency of A.M.F., 23 Wn. App. 2d 135, 141, 514 P.3d 755 (2022). When evidence is voluminous and complex, this court has the authority to defer to the trial court's findings as to the facts of the circumstances. Noll v. Special Elec. Co., Inc., 9 Wn. App. 2d 317, 321, 444 P.3d 33 (2019). Additionally, "we view the evidence and reasonable inferences drawn from it in the light most favorable to the prevailing party[,]" i.e., Sorrentino. A.M.F., 23 Wn. App. 2d at 141. "Unchallenged findings of fact are verities on appeal." Rush v. Blackburn, 190 Wn. App. 945, 956, 361 P.3d 217 (2015).

Here, we address only the challenged findings necessary for our jurisdictional analysis.

1. Whether VW Purposefully Availed Itself of Washington

To satisfy the purposeful availment prong of the Ford test, "[t]he contacts between the non-resident defendant and the forum state must show that the defendant deliberately 'reached out beyond' its home." Duell, 26 Wn. App. 2d at 901 (quoting Ford, 592 U.S. at 358). A defendant's "random, isolated or fortuitous" contacts with the forum state do not satisfy due process requirements. Id. (quoting Ford, 592 U.S. at 359). Even so, "[j]urisdiction may not be avoided merely because

the defendant did not physically enter the forum state." Id. at 901.

That said, the United States Supreme Court "held that a foreign manufacturer's sale of products through an independent, nationwide distribution system is not sufficient, *without something more*, for a state to assert personal jurisdiction over the manufacturer when only one product enters the forum state and causes injury."[13] Noll, 188 Wn.2d at 414 (emphasis added) (citing J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 888-89, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011)). Even so, J. McIntyre "'[does] not foreclose an exercise of personal jurisdiction over a foreign defendant where a substantial volume of sales took place in a state as a part of the regular flow of commerce.'" Id. (quoting LG Elecs., 186 Wn.2d at 181).

Here, Sorrentino's complaint alleged facts that indicated VWAG's involvement with VWoA "was much more than a standard parent-subsidiary relationship." FutureSelect, 175 Wn. App. at 891. Specifically, Sorrentino alleged that "VWAG purposely availed itself of the Washington legal system by entering into an importer agreement with [VWoA]." And, pursuant to that agreement, he alleges that, "VWAG distributed hundreds of thousands of vehicles to the United States each year in the 1970s with the intent and expectation that many of those vehicles would be sold in Washington State." Following trial, the court found—in

[13] Our Supreme Court held that "stream of commerce cases from the United States Supreme Court in recent years have been deeply fragmented" and found that these cases should be decided based on Justice Breyer's concurrence in J. McIntyre because this opinion was decided on the narrowest grounds. Noll v. American Biltrite Inc., 188 Wn.2d 402, 414, 395 P.3d 1021 (2017) (citing J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011)).

finding of fact 13, now challenged by VW—that VWAG sold a significant number of vehicles "through" VWoA with the intent that some would be sold in Washington. This allegation and finding are supported by ample evidence.

Alfred Ströhlein, VWAG's CR 30(b)(6) designated representative, chief legal officer, and deputy general counsel, testified it was "correct" to say the "importer agreement included Washington state." Further, Ströhlein "agree[d]" that VWAG's "business objective was to have customers purchase as many [VWAG] vehicles as possible throughout each of the U.S. states, *including Washington state*."

Ströhlein further testified that VWAG's importer agreement *required* VWoA to market VWAG's automobiles specifically in Washington, in the following exchange:

> Q. Volkswagen AG knew and understood that its automotive products were being advertised by Volkswagen of America for sale in the continental US, *including Washington state*, between 1971 and 1975, correct? . . .
>
> THE WITNESS: That is a *requirement* under the importer agreement in place at the time.

(Emphasis added).

Ströhlein's testimony also distinguishes this matter from World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980), which VW relies on. There, VW entity did not market in Oklahoma, nor did it regularly sell to Oklahoma residents. Id. at 289. That entity had no contacts with Oklahoma other than one of its cars could happen to drive through the state. Id. at 294. Thus, the court found the VW entity did not purposefully avail

itself of the laws of Oklahoma because the car reaching Oklahoma was "fortuitous" and "isolated." Id. at 295.

In contrast, Ströhlein's testimony provides substantial evidence that VW's importer agreement required VWAG's automobiles to reach Washington markets and, thus, it was hardly a mere "isolated" or "fortuitous" occurrence that VW's cars were in Washington. Duell, 26 Wn. App. 2d at 901 (quoting Ford, 592 U.S. at 358).

Still, VW also disputes the court's finding of fact 15, which found that the importer agreement also tasked VWoA with creating a distribution network. The importer agreement, in fact, states the "[i]mporter will appoint at locations to be *approved by VW* such number of dealers as may correspond to the requests of VW and will enter with them into agreements which will impose . . . duties and obligations assumed by Importer towards VW." (Emphasis added). The standard dealer terms and conditions created pursuant to the above applied to United between 1972 and 1975. Again, this evidence provides ample support for this finding.

Finally, VWAG argues that the court's findings 18, 20, and 26 are not supported by substantial evidence. Finding 18 states that the importer agreement represents VWAG giving VWoA "specific directives" with the former "retain[ing] control over [VWoA]'s activities." Similarly, finding 20 states that VWAG retained control and could give directives related to customer service and promotion of VWAG products. Finding 26 states that VWAG retains control over repair and servicing of the vehicles. We hold that there is substantial evidence for each.

The importer agreement demonstrates VWAG's control over VWoA's

dealerships sites. The agreement stipulates that the "Importer shall maintain a place of business . . . in a manner *reasonably satisfactory to VW*." (Emphasis added). Indeed, the agreement lays out specific requirements for the layout of such sites, such as requirements for "a salesroom, a repair shop and *an inventory of VW parts*." (Emphasis added).

Moreover, the importer agreement outlines VWAG's sweeping control over various aspects of VWoA's operations, when stating:

> (3) In the conduct of its business, Importer will safeguard *and in every possible way promote the interests of VW* and the favorable reputation of VW Products. Importer will arrange for the efficient promotion of VW Products; and in such promotion, as well as in its activities relating to the sale of VW Products, the customer's service for VW Products and the supply of VW Parts, it *will give due consideration to all reasonable directives and suggestions of VW relating thereto.*

(Emphasis added).

Further, VWAG's importer agreement required VWoA "employ such number of competent office employees and technical fieldmen, *as in the opinion of VW*, may be required to assure prompt and satisfactory customer's service[.]" (Emphasis added).

A later similar importer agreement further requires that "technical personnel . . . will be *thoroughly trained in special Volkswagen courses* and thereafter currently and thoroughly instructed about all new suggestions of VW for the servicing and repair of VW products." (Emphasis added).

Additionally, VWoA was required to provide "at least one complete set of Volkswagen customer's service literature per repair shop." Accordingly, VWAG created service bulletins and service manuals. These bulletins, as Ströhlein

agreed, were made "to ensure that the standard of quality was passed down from [VWAG] to [VWoA] and, ultimately, to distributors and dealers." The manuals had a similar goal. Thus, findings 18, 20, and 26 are supported by substantial evidence.[14]

For the reasons above, we hold Sorrentino made a sufficient prima facie showing of jurisdiction, and the superior court did not err in finding, that VWAG purposefully availed itself of the privilege of operating in Washington.

2. Whether the Claims Arise From or Relate to VW's Contacts

Again, the second prong of the Ford test—whether the claim arises out of or relates to the defendant's contacts—is met when a plaintiff establishes a nexus between her claims and the defendant's contacts with the forum. Duell, 26 Wn. App. 2d at 904. Under Ford, the phrase "arise out of or relate to . . . 'asks about causation; but the back half after the 'or' contemplates some relationships that will support jurisdiction without a causal showing.'" Duell, 26 Wn. App. 2d at 904-05 (quoting Ford, 592 U.S. at 362). "'Even regularly occurring sales of a product in a state do not justify the exercise of jurisdiction over a claim unrelated to those sales.'" Id. (quoting Downing, 21 Wn. App. 2d at 673).

VWAG briefly argues there is no nexus between Sorrentino's claim and VWAG as the latter only had a "general interest in the United States" and "never

[14] VWAG makes two further arguments we need not respond to, namely that (a) it did not purposefully avail itself of doing business in Washington because an agency relationship did not exist between VWAG and VWoA, and (b) the court improperly relied on a stream of commerce theory to exercise personal jurisdiction, The court's assertion of personal jurisdiction over VWAG is not premised on either theory alone, and we need not address this argument further.

deliberately extended business into Washington." As in Duell, VWAG "provides little argument other than conclusory statement[s] that any suggested link between [VWAG] and [Sorrentino] [are] too attenuated." Id. at 905. For that reason alone, its argument fails.

More substantively, Sorrentino's complaint in fact alleged that his "mesothelioma was proximately caused by asbestos exposure arising from his work on asbestos-containing brakes manufactured by VWAG" and "through the use of asbestos containing VWAG replacement parts under the supervision of service managers . . . who were contractually obligated to follow VWAG work practices."

What's more, Sorrentino alleged his injuries arose from a failure to include asbestos warnings within brake parts as well as in instruction manuals and bulletins created by VWAG and required by the importer agreements to be utilized by United. Additionally, the brake parts, instruction manuals, and bulletins created by VWAG were in Washington because VWAG specifically required VWoA to create a distribution network for their automobiles and parts. And again, Ströhlein testified that VWAG's importer agreement with VWoA required expansion into Washington specifically. Even Sorrentino's role as a "technical fieldm[a]n" in United's repair shop was required by the importer agreements.

For the reasons above, we hold Sorrentino made a sufficient prima facie showing of jurisdiction and, in turn, the superior court did not err in finding Sorrentino's claims arose out of or were related to VWAG's minimum contacts with Washington. FutureSelect, 175 Wn. App. at 891.

3. Whether Jurisdiction Comports with Fair Play and Substantial Justice

In addition to the two-pronged Ford test, this court must consider whether the forum state asserting personal jurisdiction over the foreign entity comports with fair play and substantial justice. Downing, 21 Wn. App. 2d at 679. A defendant bears the burden to "present a *compelling* case that . . . render jurisdiction unreasonable" and "[o]nly in rare cases will the exercise of jurisdiction not comport with fair play and substantial justice when the nonresident defendant has purposefully established minimum contacts with the forum state." Id. at 678-80 (emphasis added).

VWAG briefly argues that exercising personal jurisdiction over it would offend notions of fair play and substantial justice because VWAG "at best had only attenuated contacts with the United States market." Otherwise, VWAG essentially reiterates its previously discussed arguments, but now urges us to evaluate these arguments in light of fairness and reasonableness. We disagree.

Under Downing, we evaluate the interests of the State, the defendant, and the plaintiff to determine the fairness and reasonableness of haling the defendant into a Washington court. 21 Wn. App. 2d at 679. We further held the State is interested in "making businesses bear the burden of placing defective products in commerce." Id. at 660. We further noted that "[m]odern commerce demands personal jurisdiction throughout the United States of large manufacturers" and the "'vast expansion of our national economy during the past several decades has provided the primary rationale for expanding the permissible reach of a State's jurisdiction under the Due Process Clause.'" Id. at 665 (quoting Helicopteros

Nacionales de Colombia, SA v. Hall, 466 U.S. 408, 422-23, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984) (Brennan, J., dissenting)). In short, given the State's interest in protecting its residents from defective products purposefully placed in its market, the exercise of jurisdiction over VWAG here comports with fair play and substantial justice.

We also held that "modern transportation and communications render defending oneself in another state less burdensome." Id. at 679. VWAG's generalized arguments fail to overcome these interests and other considerations. Thus, personal jurisdiction over VWAG comported with fair play and substantial justice.

Therefore, considering each of the Ford factors, we hold the superior court did not err in finding it had personal jurisdiction over VWAG.

III. CONCLUSION

For the reasons above, we affirm the superior court's denial of VW's motion for a JMOL, the court's denial of VW's proposed jury instructions, and the court's determination that it has personal jurisdiction over VWAG.

Díaz, J.

WE CONCUR:

Chung, J.

Dwyer, J.