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IS THERE A HOLE IN MY INTERNATIONAL SHOE?

I. The History of Personal Jurisdiction

In 2014 the United States Supreme Court expanded and again clarified its decision in Goodyear Dunlop Tires Operations SA v. Brown, 131 S.Ct.2846 (2011) in the matter of Daimler v. AG v. Bauman, 134 S.Ct. 746 (2014). These two (2) decisions, especially Bauman have the potential to reshape the once thought of liberal notions of personal jurisdiction to now limit and restrict access to particular forums in the United States Courts, both Federal and State.

Looking back to the landmark decision of International Shoe Company v. Washington, 326 U.S. 310, it appeared that concepts of personal jurisdictions were set in granite. There are two (2) types of personal jurisdiction, specific jurisdiction and general jurisdiction. Specific jurisdiction focuses upon the Defendant=s contacts within the forum jurisdiction itself. General jurisdiction on the other hand, looks to the Defendant’s operations within a particular forum and if those operations are of a Asubstantial nature, to justify a Plaintiff to bring suit against that Defendant in that forum where it had no Aphysical presence. Thus, under the International Shoe concept, arose the criteria of Aminimum contacts. It became common place in American jurisprudence that minimum contacts was the gold standard. Simply advertising in a jurisdiction or having a sales agent in a jurisdiction or even having a website, could be thought to create a minimum contact within a jurisdiction. Courts were essentially open doors for litigation against Defendants from any state and/or country.

II. Back to the Future and How Things Changed

International Shoe was decided in 1945 the year President Roosevelt died and President Truman took office. World War II in Europe ended. The manufacture of American Automobiles resumed in October of 1945. The United States was returning to a peace-time economy. The first United States national television broadcast was introduced on January 1, 1954 of the Tournament of Roses Parade. We had not landed on the moon. Color television did not broadcast in prime time until 1965. All color broadcasting did not occur until 1972. Funding for the national super computer, i.e., the internet, was not provided to the NSF until the early 1980s. Modern warfare and the use of drones and other unmanned devices did not begin until the late 1990s and 2000s. Modern internet service did not really become part of the American culture until the mid-1990s. The United States Supreme Court in 1945, never heard nor could have conceived of a cell phone, texting, the internet, Skype, Snap Chat, Facebook and/or Twitter. International Shoe was decided in an era

when the United States was ending a World War, restarting its manufacturing and production of hard goods and services, and looking forward to peace.

III. All Things in Context

In 1945, could the United States Supreme Court envision a world run by super computers linked to a global economy? Could the United States Supreme Court envision China being a major and dominant force not only in politics but in economics? Could the United States Supreme Court envision North Korea having an AH bomb? Could a United States Supreme Court envision a paperless economy, most of Europe on a single currency system, a business environment run by multinational corporations, products sold at your finger tips with a click of a mouse? Cell phones, cable TV, laptop computers, all allowing a consumer to purchase hundreds of dollars of goods and services from a wireless network while driving in the HOV lane to and from work. The International Shoe Court would most likely be saying, AStop. Wait. Is this what we really meant when we decided personal jurisdiction.

IV. Fenner Dunlop

Goodyear Dunlop Operations v. Brown

The Goodyear Dunlop Tires Operations v. Brown decision, 131 S.Ct.2846 (2011) saw the United States Supreme Court address the application of general jurisdiction. In that matter, the Court held that jurisdiction over an out of state corporation may only be asserted when that corporation's Aaffiliations within the (forum) state are so continuous and systematic as to render them essentially at home Athere. Thus, the Goodyear Dunlop decision started a tightening on the notion of general jurisdiction.

Strong, Sophisticated and State of the Art

In 2014, the United States Supreme Court relied upon an expanded Goodyear Dunlop and decided the Bauman v. Daimler Chrysler case. In the Bauman matter, 22 Argentinian residents filed suit in the United States District Court for the Northern District of California against Defendant, Daimler, a manufacturer of Mercedes-Benz Automobiles headquartered in Germany. Plaintiffs were former workers and family members of former employees of the Gonzalez-Caten Plant of Mercedes-Benz Argentina (MB Argentina). MB Argentina was a wholly owned subsidiary of Daimler. Plaintiffs allege that MB Argentina assisted the Argentinian government during the country's Adirty war to kidnap, detain, torture and kill plant workers which it believed to be union agitators. Plaintiffs attempted to litigate their grievances in the United States District Court of Northern California against Daimler.

Daimler moved to dismiss the case for lack of personal jurisdiction. Plaintiffs conceded that the Northern District Court lacked specific personal jurisdiction because their claims did not arise out of or relate to an activity within the forum state. However, Plaintiffs asserted that general jurisdiction applied because of Daimler's and/or Mercedes-Benz USA=s contacts within the state of California. Plaintiffs argued that Mercedes-Benz USA was a wholly owned subsidiary of Daimler thus creating, minimum contacts within the state of California. Plaintiffs argued that general jurisdiction applied within the state of California as either Daimler and/or Mercedes-Benz USA engaged in substantial and continuous activities and in a systematic course of business in California.

The Supreme Court held that under due process, Daimler, a German Corporation, could not be subject to California's general jurisdiction in a suit filed by Argentinian Plaintiffs concerning events that occurred in Argentina based upon Daimlers affiliation with its sales force, showrooms, dealers, etc., in the United States. The Court stated that Daimler simply did not have enough minimum contacts within the state of California to reach the threshold of being At home in California. The Daimler Court held that expanding the principals of general jurisdiction in this instance was just too extensive and could not be maintained.

V. The Future and Beyond

Presently, 645 Federal Court cases have addressed the Daimler decision in some fashion. Approximately 65 State Courts have addressed Daimler in reported decisions. The issues which are presented are what does Daimler hold for the future of litigation, discovery and insurance coverage in a world which is becoming borderless and the boundaries are blurred, economics are dependent upon foreign resources, trade is open and free and in some cases markets are unregulated. Currency is transferred by wire, multinational corporations do business worldwide, and Courts are seeking to stream line litigation and litigate matters in an economic and efficient fashion in a single forum to provide for controlled discovery, risk and probability. Also, how and when should Daimler be used and what are the risks of a successful Daimler challenge. These questions must be discussed and answered under the construct that the United States Supreme Court set under the Daimler ruling.