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Is There Jurisdiction? The Evolution of Personal Jurisdiction under Daimler and Its Progeny

Personal jurisdiction, which is limited by the Due Process Clause of the 14th Amendment (state courts) and 5th Amendment (federal courts), comes in two varieties:

General Jurisdiction allows for “any and all claims” against:

- Individuals: where they are domiciled or can be served personally;
- Corporations: “fairly regarded as home”; typically, place of incorporation or principal place of Business.
- Example: Plaintiff can sue defendant in states of incorporation or PPB. No exceptions, “any and all claims.”

Specific Jurisdiction, in contrast, is satisfied based on defendant’s contacts with the forum.

Three-part test:

- Has defendant “purposely availed” itself of the forum state?
- Do the claims “arise out of or relate to” the defendant’s contacts with the state?
- Is the exercise of personal jurisdiction “reasonable” under the circumstances?

I. *International Shoe* and Minimum Contacts Are No Longer The Rule

Daimler v. AG Bauman (U.S. 2014) drastically changed where a court exercise jurisdiction over a defendant. Systematic and continuous contacts are no longer sufficient to establish jurisdiction. The Supreme Court explained that a corporation is not “at home” everywhere it does substantial business, effectively abrogating many state laws that authorize exercise of personal jurisdiction against any out-of-state company found to be “doing business” in the state. Instead, the Court has largely constrained the exercise of *general* personal jurisdiction over a corporation to the state where it is incorporated or has its principal place of business.¹ In addition, the Court severely curtailed plaintiffs’ ability to use a subsidiary’s presence in the forum state to claim jurisdiction over a foreign or out-of-state parent corporation.

- ***BNSF Railway v. Tyrrell (May 30, 2017)***

The Supreme Court addressed general jurisdiction in *BNSF Railroad v. Tyrrell*, 137 S. Ct. 1549 (2017).

BNSF involved cases brought in Montana state courts under the Federal Employers Liability Act (FELA), which permits railway workers injured on the job to sue their employer. None of the plaintiffs resided in Montana and none of the events that caused the injury occurred in Montana. However, the defendant railroad did substantial business in Montana, with more than 2,000 miles of track and 2,000 employees in the state. The Montana Supreme Court held that general jurisdiction was conferred by 45 U.S.C. § 56, which provides that a FELA action “may be brought” where “the defendant shall be doing business at the time of commencing the action.” The Montana court’s conclusion was that jurisdiction was proper in Montana because of the defendant’s level of activity in the state. Here, the Supreme Court rebuked the state court for failing to apply *Goodyear* and *Daimler*. The defendant was not incorporated in Montana, nor did it have its principal place of business in Montana. The activity-based general jurisdiction was not proper.

- ***Bristol-Myers Squibb v. Superior Court of California (June 19, 2017)***

In *Bristol-Myers Squibb*, a class of plaintiffs, most of whom are not California residents, filed a product liability suit against Bristol-Myers Squibb Company in California state court. The plaintiffs alleged that they were harmed by the company’s blood-thinning drug, Plavix. Although BMS engages in business activities in California and sells Plavix there, BMS did not develop, create a marketing strategy for, manufacture, label, package, or work on the regulatory approval for Plavix in the State. In addition, the plaintiffs that resided outside of California did not allege that they obtained Plavix from a California source, that they were injured by Plavix in California, or that they were treated for their injuries in California. The Court ruled that a mass tort brought against the drug company failed to establish specific jurisdiction in California because there was an insufficient link between their claims and that state.

This was the United States Supreme Court’s first extended discussion of the “relatedness” requirement for specific jurisdiction, less concerned with “fairness” requirement for specific jurisdiction; shows the current SCOTUS is focused on “sovereign authority” of the States and specifically limited that authority.

The majority decision never mentioned the three-pronged test of availment, relatedness and reasonableness. The Court, instead, focuses on whether the State has the power to issue a valid judgment against a defendant based on claims by a nonresident plaintiff for actions or harms that did not occur in the forum state;

Justice Sotomayor’s dissent stressed that the majority’s focus on “relatedness” ignored the fundamental requirement of fairness and Justice Sotomayor argues that the “core concern” of personal jurisdiction is “fairness” and “there is nothing unfair about subjecting a massive

corporation to a suit in a State for a nationwide course of conduct that injures both forum residents and non-residents.”

The “New” Factors to Consider

- 1) Principal place of business**
- 2) Incorporation**
- 3) Contracts**
- 4) Am I exceptional?**

II. Where Can You Use Personal Jurisdiction Motions based upon BMS and BNSF

YES

- Out of State Plaintiff/Out of State Injury
- Products Liability/Mass Tort
- Multiple Party Cases
- Parent/Subsidiary/ Holding Company
- Foreign defendants
- Individuals
- Master Service Agreements
- REITs/Regional Developers
- Aviation
- Contractual Term Limited Cases (i.e. cruise lines and tour operators)

NO

- Defendant is incorporated in or has a principal place of business in the state (general jurisdiction)
- Tort Occurred in State (specific jurisdiction)
- Exceptional circumstances

QUESTIONABLE

- Sales into a state
- Predecessor liability
- Corporate relationships

Is There “Consent Jurisdiction”?

Neither BNSF nor Daimler addressed consent to general jurisdiction.

Consent to jurisdiction exists when parties have agreed to, either by accord, by contract, by general appearance, or by some other manner, to the jurisdiction of the forum state. This issue has arisen when a foreign corporation has registered to conduct business in another state. For example, the Superior Court of Pennsylvania issued two decisions in 2018 applying “consent Registration” as a basis for establishing personal jurisdiction in Pennsylvania. (See, Webb-Benjamin and Murray). Based on Webb-Benjamin and Murray, the Court of Common Pleas of Philadelphia County in Davis v. United States Steel Corporation vacated its original order sustaining defendants’ preliminary objections to personal jurisdiction, and overruled

defendants' objections to lack of personal jurisdiction. It is worth noting that the plaintiff in Davis never lived or worked in Pennsylvania.

However, in 2017 the State of Delaware found consent Registration to an unconstitutional exercise of personal jurisdiction. And in 2016, the District Court for the Western District of Pennsylvania dismissed a case premised on Consent Jurisdiction on the basis that the provision of the Registration statute didn't exist at the time Lockheed-Martin registered to do business.

- For a 50 state survey on consent to general jurisdiction through registration to do business, see <https://www.druganddevicelawblog.com/2017/12/quasi-guest-post-50-state-survey-on-general-jurisdiction-through-consent-by-registration-to-do-businessputting-bauman-and-baseball-back-together.html#>