LJN LAW JOURNAL NEWSLETTERS

LJN'S Product Liability Law & Strategy®

An ALM Publication

Volume 32, Number 8 • February 2014

General Personal Jurisdiction: *Daimler AG v. Bauman*

By James H. Rotondo and John W. Cerreta

Every first-year student of civil procedure learns that a company must submit to general personal jurisdiction — all-purpose jurisdiction over any and all disputes — in a forum where the company conducts "continuous and systematic" business activities. *See International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945). This standard is easy enough to recite, but explaining it and applying it in a coherent manner has long been a more difficult task. Happily, with its recent decision in *Daimler AG v. Bauman*, the Supreme Court has now brought at least some measure of clarity and predictability to the notoriously vague standards governing general jurisdiction. This article provides an overview of the Court's general-jurisdiction doctrine, discusses the recent decision in *Bauman*, and assesses the likely impact of the decision going forward.

The State of the Doctrine Before *Bauman*

General Jurisdiction: The First 65 years

The basic outlines of the due process limits on personal jurisdiction are well settled. Before a court may exercise jurisdiction over an out-of-state defendant, that defendant must be shown to have "certain minimum contacts" with the forum "such that the maintenance of the suit" comports with "traditional notions of fair play and substantial justice." *International Shoe*, 326 U.S. at 316. The Supreme Court has identified two sub-categories of cases under this "minimum contacts" rule: specific jurisdiction and general jurisdiction. Specific jurisdiction is proper when the cause of action "aris[es] out of or relate[s] to" the defendant's forum contacts. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984). If, on the other hand, the controversy at issue is unrelated to the defendant's forum-based activities, then the defendant must have "the kind of continuous and systematic" forum contacts needed to justify an exercise of general jurisdiction over any and all cases involving the defendant. *Id.* at 415 n.9.

Up until three years ago, the Supreme Court had decided just two general-jurisdiction cases in more than six decades of jurisprudence under *International Shoe*. The first of these cases — and, to date, the only Supreme Court decision upholding the use of general jurisdiction — was the Court's 1952 decision in *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437. The defendant in *Perkins* was a Philippine mining corporation that had suspended operations in the Philippines during World War II and was conducting "limited wartime activities" from temporary headquarters in Ohio. One of the corporation's shareholders brought suit in Ohio on a dividend dispute that was unrelated to any corporate activities in the forum. In a tersely worded opinion, the Supreme Court upheld Ohio's exercise of jurisdiction based on the company's "continuous and systematic" activities within the state. *Id.* at 438, 447-48.

The bookend to *Perkins* came more than 30 years later in *Helicopteros Nacionales De Colombia, S.A. v. Hall*. The plaintiffs in *Helicopteros* were the survivors of U.S. citizens who had perished in a helicopter crash in Peru. The plaintiffs brought wrongful-death claims in Texas against the Colombian corporation that owned and operated the helicopter. The Supreme Court, however, rejected Texas' assertion of general jurisdiction because the defendant had not engaged in the sort of "continuous and systematic" forum activities "found to exist in *Perkins*" — the company's contacts with Texas were limited to occasional contracts in the state, business trips to Houston, and acceptance of "checks drawn on" Texas banks. 466 U.S. at 409-10, 415-16.

Perkins and *Helicopteros* have often been described as two points fixed at "opposite ends of the general jurisdiction spectrum." *See, e.g., Waterman S.S. Corp. v. Ruiz*, 355 S.W. 3d 387, 412-13 (Tex. App. 2011); *Alsop v. Carolina Custom Prods.*, 2007 U.S. Dist. LEXIS 65679, *10-11 (C.D. Cal. 2007). Under *Perkins*, general jurisdiction is proper at a corporate defendant's "principal, if temporary, place of business." *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779-780 n. 11 (1984). Under *Helicopteros*, general jurisdiction is improper in a forum where the defendant has conducted only episodic business dealings. The difficulty has come in "[n]avigating the territory between" the cases. S*ee, e.g., Tua-*

James Rotondo
jhrotondo@daypitney.com

John Cerreta
jcerreta@daypitney.com

James Rotondo, a member of this newsletter's Board of Editors, represents corporate clients in product liability, negligence, insurance coverage, and commercial litigation matters at Day Pitney. **John Cerreta** is Counsel at the firm.

zon v. R.J. Reynolds Tobacco Co., 433 F.3d 1163, 1172 (9th Cir. 2006). Neither *Perkins* nor *Helicopteros* provides any bright-line test. Courts applying the two precedents have thus been left to balance each case on its particular facts, which has often led to "disparate" and inconsistent results. *See, e.g.*, C. Rhodes, Clarifying General Jurisdiction, 34 *Seton Hall L. Rev.* 807, 829-55 (2004) (surveying cases).

Lack of clarity in the law is never ideal. And in this area, the longstanding jurisprudential muddle on general jurisdiction has run directly contrary to one of the basic purposes of the Due Process Clause: to bring "a degree of predictability to the legal system," such that defendants may "structure their primary conduct" with at least some assurance as to where they "will and will not" be subject to suit. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). These goals have been left unfulfilled under a standard as ill-defined as the one set down in *Perkins* and *Helicopteros*.

The Goodyear Decision and Signs of a Shift

After decades of silence, the high court has in recent years produced a bumper crop of personal-jurisdiction cases, including two separate cases on general jurisdiction. The first of these — and the first general-jurisdiction case in a generation — was *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011).

On its facts, *Goodyear* was not a particularly close case, as it presented what was, if anything, a weaker claim for general jurisdiction than *Helicopteros*. The defendants in Goodyear were European tire manufacturers — each an indirect subsidiary of the Goodyear Tire and Rubber Company — whose tires were alleged to have caused a bus accident in Paris, France. Two of the crash victims were traveling North Carolinians, and their survivors brought a product-liability suit against the manufacturers in North Carolina state court.

The defendants' only contact with North Carolina was the fact that a "small percentage" of their tires had been "distributed in [the state] by other Goodyear" affiliates. A state appellate court held that these limited in-forum sales through "the stream of commerce" were sufficient to support general jurisdiction, but the Supreme Court unanimously reversed. The Court explained that, while a "stream-of-commerce analysis" may support specific jurisdiction when a product causes injury within a forum, the mere "[f]low of a manufacturer's products into the forum" provides no basis for asserting general, all-purpose jurisdiction. *Goodyear*, 131 S. Ct. at 2851-52, 2855.

The result in *Goodyear* was unremarkable, but some of the Court's reasoning was more noteworthy. Justice Ginsburg's opinion for the Court repeatedly invoked a new (and seemingly more strict) verbal formulation of the kinds of contacts that give rise to general jurisdiction. The Court stated, several times, that general jurisdiction properly lies in a forum where the defendant's "affiliations … are so 'continuous and systematic' as to render [the defendant] *essentially at home*." *Id.* at 2851 (emphasis added). The Court explained that the "paradigm forum for the exercise of general jurisdiction" over an individual is "the individual's domicile." *Id.* at 2853-54.

"[F]or a corporation," the Court continued, the paradigm forum "is an equivalent place, one in which the corporation is fairly regarded as at home." *Id.*, citing Lea Brilmayer, et al., A General Look at General Jurisdiction, 66 *Tex. L. Rev.* 723, 728 (1988). European subsidiaries of Goodyear obviously fell "far short" of satisfying this standard because they were "in no sense at home in North Carolina." *Id.* at 2857.

The use of this "at home" phraseology raised the tantalizing possibility of a clearer and more strict test for general jurisdiction, perhaps extending only to a corporate defendant's main base of operations. This restrictive reading of *Goodyear* also found support in another personal-jurisdiction case decided the same day — *J. McIntyre Machinery, Ltd. v. NiCastro* — in which a plurality of four Justices cited *Goodyear* for the proposition that general jurisdiction is proper in a corporate defendant's state of "incorporation or principal place of business." 131 S. Ct. 2780, 2787 (2011). In the aftermath of *Goodyear* and *McIntyre*, practitioners and academic commentators noted that a strict "at home" standard, if adopted and applied in future cases, would greatly simplify the law of general jurisdiction. *See, e.g.*, Feder: Goodyear "Home," and the Uncertain Future of Doing Business Jurisdiction, 63 *S.C. L. Rev.* 671, 681 (2012). In addition, commentators further noted that a bright-line "at home" test would also overturn a vast body of lower-court case law.

For many decades, courts routinely approved the use of general jurisdiction outside of a corporate defendant's "home" state. Courts regularly held that general jurisdiction could lie in any forum where a corporation was "doing business" — where, for example, it maintained a staffed office. *See, e.g., Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 265-66 (1917). Even when a defendant maintained no office within a forum, some courts permitted general jurisdiction based on a corporate defendant's "continuous and systematic" in-state sales activity or advertising. *See, e.g., Thomason v. Chemical Bank*, 234 Conn. 281, 300 (1995). Indeed, courts and commentators often "assumed" that large national manufacturers such as Toyota and "General Motors" were necessarily "subject to general jurisdiction in every state" based on their "extensive" nationwide "sales activit[ies]." *See, e.g.*, Peterson: The Timing of Minimum Contacts, 80 *Geo. Wash. L. Rev.* 202, 213-14 (2011). Some courts even approved general, all-purpose jurisdiction based solely on a corporate defendant's forum-directed Internet sales through its website. *See, e.g., Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 511-13 (D.C. Cir. 2002).

Goodyear's "at home" formulation raised serious questions about the continuing viability of all this lower-court caselaw. Lower courts interpreting *Goodyear*, however, generally read the decision narrowly and declined to reconsider prior expansive interpretations of the doctrine's scope. *See, e.g., J.B. v. Abbott Labs., Inc.*, 2013 U.S. Dist. LEXIS 15768, *9 (N.D. Ill. 2013) (rejecting defendant's claim that "*Goodyear* created a 'new standard'" under which "general jurisdiction exists 'only in a forum where the corporation is 'essentially at home'"). Academics took a similar approach, with one scholar even suggesting that the "at home" formulation may have been just "loose language on the part of Justice Ginsburg," *see* Peterson, 80 *Geo. Wash. L. Rev.* 202, 214 — notwithstanding the fact that Justice Ginsburg is herself a former civil-procedure professor and a master of the subject.

Daimler AG v. Bauman and The Test for General Jurisdiction

The Bauman Litigation

Lower courts and academic commentators may have been reluctant to embrace

the implications of *Goodyear's* "at home" standard, but the Supreme Court was not. Just two-and-a-half years on from *Goodyear*, the Supreme Court once again turned to general jurisdiction in *Daimler AG v. Bauman*.

The underlying lawsuit in *Bauman* was litigated in a California federal court, but the case arose a continent away in Argentina. In the late 70s and early 80s, at the height of Argentina's "Dirty War," workers at a Mercedes Benz auto plant were targeted by the country's military dictatorship as "subversives." The government — allegedly with the assistance of the workers' employer, Mercedes Benz Argentina — detained and in some instances "disappeared" the targeted workers. In 2004, the workers and their representatives filed suit against Daimler AG, the parent corporation of Mercedes Benz Argentina, alleging claims under the Alien Tort Statute, the Torture Victims Protection Act, and the common law of torts. The plaintiffs, all residents of Argentina, elected to bring suit in the Northern District of California. They claimed that Daimler AG was properly subject to suit in California on a theory of general jurisdiction. *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 910-12 & n.1 (9th Cir. 2011).

Daimler AG is a German Aktiengesellschaft (a stock corporation, essentially) with headquarters in Stuttgart. At all relevant times, Daimler maintained no offices in the State of California, employed no workers there, and conducted no direct sales activity in the forum. Petition for Writ of Certiorari at 2. But while the company itself clearly lacked the "systematic and continuous contacts" with California needed to support general jurisdiction, its New Jersey-based subsidiary, Mercedes-Benz USA, maintained several offices in California and distributed large numbers of Daimler-manufactured automobiles throughout the state. 644 F.3d at 914, 917.

Based on these "extensive contacts with California" — and prior to the Supreme Court's articulation of the "at home" standard in *Goodyear* — Daimler conceded in the lower courts that Mercedes-Benz USA was "subject to general jurisdiction in California." 644 F.3d at 914. The key issue in the lower courts was thus whether Mercedes-Benz USA's California contacts could be "imputed" to its German parent company for jurisdictional purposes. *Id.*

The district court held that the separate corporate forms of Daimler AG and its subsidiary should be respected, and the court dismissed the suit for want of personal jurisdiction. *Id.* The Ninth Circuit initially affirmed that decision (over a dissent by Judge Reinhardt), but the panel later granted rehearing and reversed (this time with Judge Reinhardt writing for the majority). Applying circuit precedent, the panel held that due process permits jurisdictional veil-piercing in any case where a subsidiary "functions as the parent corporation's representative" or agent in the forum, and where the forum activities are significant enough that, in the absence of the subsidiary, the parent "corporation's own officials" would maintain the contacts. *Id.* at 920. In the panel's view, Mercedes-Benz USA's distribution of vehicles in California was both "substantially control[led]" by Daimler AG and important to its overall business. *Id.* at 924. As a result, the Ninth Circuit concluded that subjecting Daimler to general jurisdiction in California fully "comport[ed] with fair play and substantial justice." *Id.* at 929.

Eight judges of the Ninth Circuit voted to rehear the case *en banc* and registered their dissent from what they saw as a "breathtaking expansion of general personal jurisdiction." 676 F.3d 774, 775-78 (9th Cir. 2011) (O'Scannlain, J., dissenting). The Supreme Court then granted certiorari to consider whether "it violates due process" for a court to exercise general jurisdiction "based solely on" the forum activities of an "indirect corporate subsidiary perform[ing] services" on behalf of a foreign defendant. Petition for Certoriari at i.

The Briefing and Argument in The Supreme Court

Much like the litigation in the lower courts, the parties' briefs in *Bauman* were not principally focused on the meaning of *Goodyear's* "at home" standard. Rather, the issue that occupied most of the parties' attention was the question of what standard to apply when a plaintiff seeks to pierce a defendant's corporate veil for jurisdictional purposes. The Ninth Circuit's "agency" test permitted attribution of contacts based on a subsidiary's performance of tasks that "the foreign entity … would itself perform" if no agent were available. *Bauman*, 644 F.3d at 921. Daimler and its amici argued that this broad test was at odds with the traditional rule of "corporate separateness" "deeply rooted in American law and business." Petitioner's Brief at 16; *see also Bauman*, 676 F.3d at 777 (O'Scannlain, J.). Daimler thus urged the Court to limit attribution of contacts to cases where the two "corporations [a]re alter egos" as a matter of substantive veil-piercing law. Petitioner's Br. at 20-22.

Daimler's proposed "alter ego" test for jurisdictional veil-piercing was in accord with existing law in several circuits. But at oral argument before the Supreme Court, it became clear that several Justices did not see how this alter-ego rule — or any other rule for that matter — could be tied back into the Due Process Clause. "[R]espect for corporate separateness" is certainly a "well-established principle of corporate law deeply ingrained in our economic and legal system." *See, e.g., United States v. Bestfoods*, 524 U.S. 51, 61 (1998). But this "deeply ingrained" principle has generally been the province of the States, not the federal Constitution. Picking up on this point, both Chief Justice Roberts and Justice Breyer suggested at oral argument that they saw "nothing in the Constitution … [to] prohibit a State from" making "a parent … responsible for any acts of a wholly-owned subsidiary." Oral Arg. Tr. at 4, 33-34. Justice Scalia, as well, suggested in his questions that the entire attribution-of-contacts issue was a matter for "State law" that should have been certified to the California Supreme Court, not decided by the Ninth Circuit. Oral Arg. Tr. at 46.

In light of these conceptual difficulties, several Justices suggested at oral argument that they preferred to decide the case on an alternative ground — namely, by holding that, even with all the "attribution in the world," there would still be "no general jurisdiction over Daimler" because the company still would not be "at home" in California. *See* Oral Arg. Tr. at 8, 22, 31, 50 (questions of Justice Kagan). To be sure, refining the "at home" standard was not the precise question that the Court had granted certiorari to review. But both Daimler and its amici had addressed Goodyear's "at home" issue in their briefs. Reply Br. at 4-5; Brief of the Chamber of Commerce, et al., as Amici Curiae in Support of Petitioner at 6-23. And the Justices' questions suggested that several of them saw the issue as the best means of resolving this case.

The Court's Opinion

Sure enough, the Court's decision, released on Jan. 14, took exactly this ap-

proach. Speaking for a total of eight Justices — all but Justice Sotomayor — Justice Ginsburg's opinion for the Court held that "Daimler [was] not 'at home' in California" and could not be sued there on a theory of general jurisdiction. *Daimler AG v. Bauman*, 571 U.S. __ (2014), 2014 U.S. LEXIS 644.

With a nod to the veil-piercing issue that had occupied most of the parties' attention, the Court first criticized the Ninth Circuit's "agency finding" for having improperly "stack[ed] the deck" in favor of jurisdiction. *Id*. at *35. The Ninth Circuit's analysis, the Court noted, had focused on whether the California contacts of Daimler's U.S. subsidiary were sufficiently "'important' to" the parent. *Id*. at *35. This was, in the Court's view, the wrong test, since "'[a]nything a corporation does through … a subsidiary" is presumably important enough that "'the corporation would do [it] by other means'" in the subsidiary's absence. *Id*. at *35-36, quoting *Bauman*, 676 F.3d at 777 (O'Scannlain, J., dissenting from denial of rehearing en banc). The Ninth Circuit's test "thus appear[ed]" overbroad and, according to the Court, threatened to "subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate." *Id*. at *36.

Nonetheless, after expressing these doubts about the Ninth Circuit's analysis, the Court elected not to rest its decision on the attribution-of-contacts issue. Instead, the Court assumed (because the point had been conceded in the courts below) that Daimler's U.S. subsidiary was subject to general jurisdiction in California. *Id*. at *37. The Court also assumed that all of the subsidiary's California "contacts [were] imputable to Daimler." *Id*. Even under these assumptions, however, the Court saw no basis for "subjecting Daimler to general jurisdiction in California." *Id*.

In explaining this conclusion, the Court made clear that the holding of *Goodyear* was not just "loose language": General jurisdiction is appropriate only in a place where a corporate defendant may "fairly [be] regarded as at home." *Id*. at *39. The "paradigm" examples of a "home" forum, the Court reiterated, are the place "where the [defendant] is incorporated" and the place where it "has its principal place of business." *Id*. at *39. The Court explained that, in listing these "paradigm" examples, it did not mean to "foreclose the possibility that," in "an exceptional case," a corporate defendant might also be "at home" in another jurisdiction as well. *Id*. at *39-42 & n.19. But in *Bauman*, as in *Goodyear*, the Court had "no occasion to explore" the outer limits of the "at home" standard, because the California contacts of Daimler and its subsidiary — which included a regional headquarters, several other offices, and billions of dollars in automobile sales — "plainly d[id] not" amount to an exceptional case in which the in-state operations were akin to a principal place of business. *Id*. at *42 n.19.

Separately, the Court also faulted the Ninth Circuit for paying "little heed" to the "transnational context of th[e] dispute" and the "risks to international comity" posed by the lower court's overbroad use of general jurisdiction. *Id*. at *46-48. The European Union, the Court noted, generally requires that suits against a corporation be brought "in the nation" where the defendant has its "principal place of business" or "domicile." *Id*. at *47. Further, according to the Solicitor General, "expansive views of general jurisdiction" by American courts had "in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments." *Id*. at *48. In the Court's view, these "considerations of international rapport" only "reinforce[d]" the conclusion that "subjecting Daimler" to general jurisdiction in California did not comport with "fair play and substantial justice." *Id*.

Justice Sotomayor's Concurrence In the Judgment

In a solo opinion, Justice Sotomayor concurred in the judgment, but strongly disagreed with the Court's reasoning. As a matter of procedure, Justice Sotomayor thought it quite improper to bypass the issue on which the Court granted review in order to address an "argument[] that [the] lower court[] had not addressed." *Id*. at *56. As a matter of substance, Justice Sotomayor also viewed the majority's strict "at home" standard as unfair and ill-considered. Not only had the Court overturned a vast collection of lower court caselaw, but it had also, in Justice Sotomayor's view, allowed "national and multinational conglomerates" to escape from general jurisdiction based solely on the size and extent of their out-of-state activities. Americans may "have grown accustomed to the concept of multinational corporations that are supposedly 'too big to fail,"' Justice Sotomayor ruefully noted, but she saw no reason for the Court to "deem[] Daimler 'too big for general jurisdiction.'" *Id*. at *50, *76-78

Rather than announce a strict "at home" test for general jurisdiction, Justice Sotomayor would have decided the case on the narrow ground that the "exercise of jurisdiction would be unreasonable" under the particular circumstances of the case. *Id*. at *52-*54.

Conclusion

In the space of just two-and-a-half years, the Court's decisions in *Goodyear* and *Bauman* have effected a sea change in the law of general personal jurisdiction. "Doing business" jurisdiction — the widely accepted rule permitting the exercise of general jurisdiction wherever a corporate defendant maintains an office or conducts substantial operations — is no more. In its place, the Court has adopted a much stricter test that limits general jurisdiction to those places where the corporate defendant is truly at home: its state of incorporation, its principal place of business, and (in an "exceptional case") an equivalent forum analogous to these "paradigm" examples. *Id*. at *40 41-42 & n.19.

This new standard is, of course, not without its ambiguities, and further interpretation and refinement will undoubtedly be required in future cases. But these ambiguities aside, the Court's recent pronouncements have clearly provided courts and litigants with a much more workable and understandable test. By replacing the vague standards of *Perkins* and *Helicopteros* with the "at home" test of *Goodyear* and *Bauman*, the Court has done exactly what the Due Process Clause is supposed to do — it has brought a "degree of predictability to the legal system," thereby enabling corporate defendants to "structure their primary conduct" with some assurance as to where they may be subjected to suit. *World-Wide Volkswagen*, 444 U.S. at 297.