

## At Home With General Personal Jurisdiction

One of the first considerations of corporate counsel when served with process is whether the company is subject to personal jurisdiction in the plaintiff's choice of forum. Courts distinguish between general (all-purpose) jurisdiction and specific (conduct-linked) jurisdiction.<sup>1</sup>

Historically, doing substantial business in a state could subject an out-of-state company to personal jurisdiction within that state for any cause of action. Today, however, it is rare for a plaintiff to successfully establish general jurisdiction over a corporate defendant anywhere other than the corporation's place of incorporation or principal place of business. This recent evolution in general jurisdiction is significant and should be part of corporate counsel's initial case analysis.

The Supreme Court began curtailing in the reach of general jurisdiction in *Goodyear Dunlop Tires Operation, S.A. v. Brown*. In *Goodyear*, the Court reversed a finding that North Carolina had jurisdiction over foreign subsidiaries of Goodyear, which had been based on the subsidiaries having manufactured tires distributed in the State. In reversing, the Court observed that the North Carolina court's analysis "elided the essential difference between case-specific and all-purpose (general) jurisdiction," and held that the actions of the subsidiaries did not render them "at home" in North Carolina sufficient to subject them to general jurisdiction.<sup>2</sup>

The Court further narrowed the scope of general jurisdiction in *Daimler AG v. Bauman*, 571 U.S. 117 (2014) by focusing even more on where the defendant corporation would be considered to be "at home." The plaintiffs sued Daimler AG (a German company) in California, arguing that personal jurisdiction was proper on the basis that the defendants' California subsidiary's "systematic, continuous, and substantial" contacts supported general jurisdiction over Daimler AG. The Court held that even if the subsidiary's in-state contacts could be imputed to the defendant, general jurisdiction did not exist. Expanding upon its decision in *Goodyear*, the Court explained that the proper inquiry after *Goodyear* "is whether that corporation's affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State."<sup>3</sup>

The practical effect of *Daimler* is that the Court inoculated corporations against being hauled into court in every jurisdiction in which they do business, even when that business may be substantial. General jurisdiction for corporations is now mostly limited to the two "paradigm bases for general jurisdiction" — the place of incorporation and principal place of business. Effectively invalidating the general jurisdiction approach taken by the long-arm statutes of many states, the

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<sup>1</sup> *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

<sup>2</sup> *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915, 927-929 (2011).

<sup>3</sup> *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014) (quoting *Goodyear*, 564 U.S. at 919) (internal quotations omitted).

Court has made it clear that allegations that a defendant has “done business” or engaged in “substantial” activity in the forum state, no longer suffice to establish general jurisdiction in that State.

*Daimler* left open the narrow “possibility” that “a corporation’s operations in a forum other than its formal place of incorporation or principal place of business” could “be so substantial and of such a nature as to render the corporation at home in that State.”<sup>4</sup>

But the Court emphasized that such would be the “exceptional case.”<sup>5</sup> *Daimler* gave a single example of such an exceptional case: *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), in which the defendant was incorporated under the law of the Philippines, where it operated gold and silver mines. During World War II, when the Japanese occupied the Philippines, Benguet’s president moved to Ohio, where he kept an office, maintained the company’s files, and oversaw the company’s activities, which had been suspended in the Philippines. The Court held that Ohio courts could exercise general jurisdiction over Benguet without offending due process because “Ohio was the corporation’s principal, if temporary, place of business.”<sup>6</sup>

Cases since *Daimler* have confirmed that courts will rarely find a case to be “exceptional,” even when the defendant engages in a substantial, continuous, and systematic course of business in the forum.<sup>7</sup> The Court recently reaffirmed *Daimler* in *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017). There, the Court rejected the Montana Supreme Court’s view of general jurisdiction, and held that the Fourteenth Amendment due process constraints described in *Daimler* apply “to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or the business enterprise sued.”<sup>8</sup>

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<sup>4</sup> *Id.* at 139 n. 19 (2014).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 130 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780, n. 11 (1984)).

<sup>7</sup> See *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2nd Cir. 2016) (Connecticut courts could not exercise general jurisdiction over Lockheed Martin even though the company leased a 9,000 square foot building in Connecticut, ran operations at three other leased locations in the State, employed between 30 and 70 workers in the State, and derived about \$160 million in revenue from its work in Connecticut over a four year period); *Ritchie Capital Mgmt., L.L.C. v. Costco Wholesale Corporation*, Case No. 4-CV-4819, 2015 U.S. Dist. LEXIS 176994 (S.D.N.Y. Sept. 21, 2015) (Costco was not subject to the general jurisdiction of New York courts, despite evidence that it had New York sales of \$2.8 billion, operated 17 warehouses in New York, and had 3,400 New York employees); *Martinez v. Aero Caribbean*, 764 F.3d 1062 (9th Cir. 2014) (California court could not assert general jurisdiction over defendant despite the defendant’s numerous contacts with California, including contracts worth between \$225 and \$450 million to sell airplanes to a California corporation, and promotion of its products in California).

<sup>8</sup> *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549, 1558-59 (2017).

Accordingly, the next time a plaintiff comes knocking based only on general personal jurisdiction, will you be at home?