Leseprobe zu

Bonomi/Romano (Hrsg.)

*Yearbook of Private International Law Vol. XVI - 2014/2015*

Yearbook of Private International Law

2016, Bd. 016, 588 Seiten, Handbuch

ISBN 978-3-504-08004-4

189,00 €
DOCTRINE

DAIMLER AG V. BAUMAN:
A NEW ERA FOR JUDICIAL JURISDICTION IN
THE UNITED STATES

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I. Introduction

The United States Supreme Court decision in early 2014, Daimler AG v. Bauman, severely curtailed the reach of a particular type of judicial jurisdiction – that is, general jurisdiction – in the United States.1 Holding that a corporation can only be

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sued at home – specifically at its place of incorporation or principal place of business – on claims unrelated to forum activity, Daimler put an end to nearly 70 years of jurisprudence permitting general jurisdiction over corporate defendants that carried on “continuous and systematic activities” in the forum state. At the same time, the Supreme Court failed to provide significant guidance on the major issue raised in the Daimler case: whether and/or when a foreign (or out-of-state corporation) can be held subject to jurisdiction in a forum state on the basis of the activities of its subsidiaries. The Court’s decision also created other potential issues, such as whether the heightened standard for general jurisdiction would apply to actions for recognition and enforcement of foreign judgments and arbitral awards, as well as whether states can require corporations that are not subject to general jurisdiction to consent to jurisdiction as a prerequisite to doing business within their borders.

II. Background: Daimler AG v. Bauman in Context

In some ways, the Supreme Court’s earlier 2011 decisions on personal jurisdiction (Goodyear Dunlop Tires v. Brown and J. McIntyre Machinery v. Nicastro) altered the landscape of judicial jurisdiction more dramatically than Daimler itself. Daimler added little new to what the Court already held in Goodyear, except to say that “we really mean what we said”. The Court in Daimler did highlight the

only the power to adjudicate with respect to issues deriving from, or connected with, the very controversy that establishes jurisdiction to adjudicate. This we call specific jurisdiction. On the other hand, American practice for the most part is to exercise power to adjudicate any kind of controversy when jurisdiction is based on relationships, direct or indirect, between the forum and the person or persons whose legal rights are to be affected. This we call general jurisdiction.” (emphasis added)).

4 131 S. Ct. 2780 (2011). McIntyre was a specific jurisdiction case in which the United States Supreme Court ultimately held that an English manufacturer who engaged a U.S. distributor in Ohio to sell its products throughout the entire United States was not subject to jurisdiction in the State of New Jersey. The dispute was based on a product liability claim by a New Jersey plaintiff who was injured while using the English manufacturer’s product in New Jersey. For further discussion of this case, see infra notes 64-71 and accompanying text.
transnational context of the case; a point the Supreme Court did not factor into its analysis in the 2011 cases, which also involved foreign defendants.

A. United States Case-Law before Daimler

As reflected in the Supreme Court’s decision in *Pennoyer v. Neff*, the constitutional underpinnings of judicial jurisdiction rested on territorial theories of power and consent. Accordingly, the reach of a forum’s adjudicatory authority extended only as far as its own borders, and applied to both individuals and corporations. For individual defendants, domicile or residence in the forum and service effected on the defendant while present within the forum state were the paradigm examples of general jurisdiction. Corporate analogues for domicile or “presence” created greater complexity. The corporation’s place of incorporation was considered its “domicile”, and the corporation’s presence could be established not only at its principal place of business but also where it could be said to have a certain level of systematic activity often based on physical offices and number of employees. Also, both individuals and corporations could consent to general

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7 95 U.S. 714 (1877).
8 Id. at 722 et seq. (stating “no State can exercise direct jurisdiction and authority over persons or property without its territory […] [and] no tribunal established by it can extend its process beyond that territory”, and that “the defendant […] must be brought within its jurisdiction by service of process within the State, or his voluntary appearance”).
9 In a 19th century case, *St. Clair v. Cox*, 106 U.S. 350, 354 (1882), Justice Field observed: “The principle that a corporation must dwell in the place of its creation, and cannot […] migrate to another sovereignty, coupled with the doctrine that an officer of the corporation does not carry his functions with him when he leaves his state, prevented the maintenance of personal actions against it.” This very limited view of jurisdiction did not prevail even in the early part of the 20th century, and the expansion of interstate and international commerce gave rise to broader adjudicative authority over corporations through concepts of “presence”, “doing business” and “implied consent”. See P.B. Kurland, The Supreme Court, the Due Process Clause, and the In Personam Jurisdiction of State Courts: From Pennoyer to Denckla: A Review, 25 U. Chi. L. Rev. 569, 573 (1958) (noting that principles of due process “which were appropriate for the age of the «horse and buggy» or even for the age of the «iron horse» could not serve the era of the airplane, the radio, and the telephone”).
10 See P. Kurland (note 9), at 582 et seq. (noting courts’ willingness to find a corporation “present”, even in the absence of “consent” if the nonresident corporation is conducting business “as to warrant the inference that it is present there”). In support of his argument, Kurland relied on *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259 (1917), a case in which New York’s jurisdiction over a Pennsylvania corporation based on the defendant’s maintenance of an New York office with nine employees who regularly organized commercial shipments from Pennsylvania to New York. See also *Hutchinson v. Chase & Gilbert*, 45 F.2d 139, 142 (2d Cir. 1930) (noting maintenance of an office carried heavy weight in exerting jurisdiction over nonresident corporations when that office was accompanied by additional business activity).
jurisdiction by various means.\textsuperscript{11} A narrower type of jurisdiction involving claims that arose from the individual or corporation’s activity – that is, specific jurisdiction – was permitted on a theory that the defendant had “impliedly consented” to jurisdiction over such claims through its conduct.\textsuperscript{12}

In 1945, in \textit{International Shoe v. Washington}, the U.S. Supreme Court transformed the understanding of the constitutional authority for judicial jurisdiction in U.S. courts. In place of physical power, \textit{International Shoe} and its progeny established the relationship between plaintiff, defendant, and the forum state as constitutionally critical in the exercise of both general and specific jurisdiction. Moving from a constitutional due process requirement of territorial presence to an inquiry of whether the defendant has “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice”,\textsuperscript{13} the Supreme Court reconceptualized the approach to both general and specific jurisdiction.\textsuperscript{14} As to specific jurisdiction, the Court stated that the commission of single or occasional acts by a defendant out of which the particular claims arose, depending upon the nature and quality and the circumstances of their commission, justified judicial jurisdiction by a state.\textsuperscript{15} With respect to general jurisdiction, the Court noted “instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities”.\textsuperscript{16}

Between \textit{International Shoe} and \textit{Daimler}, the Supreme Court heard only three cases testing the due process limits of general jurisdiction.\textsuperscript{17} Each of the cases was relatively easy under the \textit{International Shoe} standard. In \textit{Perkins v. Benguet Consolidated Mining Co.},\textsuperscript{18} the Court upheld general jurisdiction as consistent with

\textsuperscript{11} See P. KURLAND (note 9), at 578 et seq. Consent may be manifest in a variety of different ways. For example, a defendants is said to consent to jurisdiction by voluntarily appearing before the court, by contractually agreeing to suit in a particular forum (express consent), or by proceeding with litigation in a court and failing to object to jurisdiction (implied consent). Corporations have been viewed as consenting to jurisdiction if they appoint a local agent for service of process. For further discussion of such consent after \textit{Daimler}, see infra notes 94-110 and accompanying text.

\textsuperscript{12} Certain types of specific-act statutes were upheld on that theory. For example, in \textit{Hess v. Pawloski}, 274 U.S. 352 (1927), the Supreme Court, resting on a theory of “implied consent” upheld as constitutional a Massachusetts statute that conferred jurisdiction over a non-resident who operated a motor vehicle in the state for claims arising from accidents from such conduct. Similarly, jurisdiction over corporations for claims arising out of the corporation’s activities in the forum state was justified on a theory of “implied consent”.


\textsuperscript{14} A. VON MEHREN/ D. TRAUTMAN (note 1), Jurisdiction to Adjudicate, at 1136.

\textsuperscript{15} \textit{International Shoe}, 326 U.S. at 318.

\textsuperscript{16} Id. (emphasis added).


\textsuperscript{18} 342 U.S. 437 (1952).
due process. In *Perkins*, the defendant Philippine corporation had been closed down during the World War II occupation of the Philippines. As a result, the operations of the company, which included an office, were conducted in Ohio. For all intents and purposes, Ohio was the company’s de facto headquarters. In *Helicopteros v. Nacionales de Colombia, S.A. v. Hall*, the Court held that a Colombian corporation which purchased four million dollars worth of helicopters and equipment from a Texas company, sent prospective pilots and other personnel to Texas for training, negotiated a contract with a Texas joint venture, and received various payments from a Texas bank did not have the constitutionally requisite, systematic activities to be sued in Texas on a claim resulting from an accident in Peru. More recently, in the 2011 case *Goodyear Dunlop Tires Operations S.A. v. Brown*, North Carolina plaintiffs – the estates of two minors who were killed in a bus accident in France caused by allegedly defective tires – brought suit in North Carolina against the foreign manufacturers of the tires, basing jurisdiction on the defendants’ sales of similar tires in the United States, including in North Carolina. The Supreme Court’s unanimous decision, holding that an assertion of general jurisdiction on these facts was unconstitutional, was unsurprising. Prior to *Goodyear*, most state and federal courts had held that a defendant’s mere sales of products into a state was constitutionally insufficient as a basis for jurisdiction for claims that did not arise out of those sales (i.e., as a basis for general jurisdiction). But since the North Carolina intermediate state court upheld jurisdiction in *Goodyear*, the Supreme Court had good reason to take the case in order to ensure that these well-accepted constitutional limitations on general jurisdiction were not ignored. However, the Supreme Court went much further. Justice Ginsburg’s opinion for the Court stated that general or “all-purpose” jurisdiction requires that a corporation’s affiliations with a forum be “so continuous and systematic as to render it essentially at home in the forum state.” More specifically, the Court identified the paradigm situations of “at home” as the place of incorporation and principal place of business of the corporation, leaving open the question whether

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20 Id. at 410.
22 Id. at 2857 n.6. See also *Glater v. Eli Lilly & Co.*, 744 F.2d 213, 215 *et seq.* (1st Cir. 1984) (finding that product advertisements in trade journals sent into the forum and eight in-state sales representatives selling in the forum were insufficient to establish general jurisdiction); *Congoleum Corp. v. DLW Aktiengesellschaft*, 729 F.2d 1240, 1242 (9th Cir. 1984) (“[N]o court has ever held that the maintenance of even a substantial sales force within the state is a sufficient contact to assert jurisdiction in an unrelated cause of action.”); *Johnston v. Multidata Sys. Int’l Corp.*, 523 F.3d 602, 611 (5th Cir. 2008) (collecting cases).
23 As the Court emphasized in *Goodyear*, “even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales”, *Goodyear*, 131 S. Ct. at 2857 n.6.
24 Id. at 2851.
other indications of substantial corporate activity in a state might also establish
general jurisdiction over a non-resident defendant.26

B. The Supreme Court Decision in Daimler

In Daimler, the Supreme Court repeated what it said in Goodyear: general or “all-
purpose” jurisdiction requires that a corporation’s affiliations with a forum be so
continuous and systematic as to render it essentially “at home”. Long-accepted
concepts of “doing business” and “presence” based on “continuous and systematic”
activities, permitting jurisdiction for claims unrelated to those activities, were
rejected.27

Curiously, the facts of the case and the issue on which the Supreme Court
granted certiorari in Daimler did not require the Supreme Court to address the “at
home” issue at all. In Daimler, Argentinian workers brought a lawsuit in California
against the German company Daimler AG for alleged human rights violations
committed in Argentina by Daimler’s Argentine subsidiary, Mercedes-Benz
Argentina; the claims against Daimler were based on a theory of vicarious liability.
The basis for jurisdiction over the German company was the existence of its
indirect subsidiary in the United States, Mercedes-Benz USA, a Delaware
corporation with its principal place of business in New Jersey, but with various
facilities in California.28 Mercedes USA is Daimler’s exclusive importer and
distributes cars to independent dealerships throughout the U.S. Indeed, Mercedes’
California sales accounted for 2.4% of Daimler’s worldwide sales.29 However,
there were no allegations that Mercedes USA had any connection to the events in
Argentina that gave rise to the claims.30

The district court granted Daimler’s motion to dismiss the action for lack of
personal jurisdiction, holding (1) that Daimler’s own activities in California were
insufficient to support the exercise of general jurisdiction; and (2) that the

26 In the wake of Goodyear, some scholars read the Court’s “at home” language to
suggest that “continuous and systematic” business activity was no longer sufficient for
establishing general jurisdiction over a corporation. See, e.g., A. STEIN (note 5); M. FEDER,
671 (2012). But see T.D. PETERSON, The Timing of Minimum Contacts After Goodyear and
McIntyre, 80 Geo. Wash. L. Rev. 202 (2011) (arguing Goodyear’s “at home” language is
merely superfluous and did not alter current doctrine).

27 The Court referred to such cases as “decided in the era dominated by Pennoyer’s
territorial thinking” and stated that they “should not attract heavy reliance today”. Daimler,
134 S. Ct. at 761 n.18.

L. Rev. 1023 (2004) (analyzing contemporary forms of vicarious jurisdiction and concluding
those models are flawed).

29 Daimler, 134 S. Ct. at 752.

30 Id. at 751.