

EXPERT ANALYSIS

Does *Daimler v. Bauman* Portend an End To Madison County's Reign as a Top 'Magnet Jurisdiction'?

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In pharmaceutical, medical device, and other "mass tort" litigation, plaintiffs' counsel frequently collect cases to file in certain preferred "magnet" jurisdictions without regard to where the particular plaintiffs' claims arise. Asbestos litigation is a case in point. In certain jurisdictions, most asbestos lawsuits are ones in which the plaintiffs (or their decedents) allegedly lived and were exposed to asbestos elsewhere and have no meaningful connection to the forum. Perhaps the most notorious of these "magnet" jurisdictions is Madison County, Illinois where, if anything, forum shopping — particularly in asbestos cases — has only gotten worse in recent years.

Although last year saw a dip from the record 1678 asbestos filings in Madison County in 2013, the number of new asbestos filings in Madison County *quadrupled* between 2006 and 2014, when 1300 new cases were filed.¹ Moreover, in 2014, only 109 of the 1300 new plaintiffs — or *less than 9 percent* — were residents of Illinois, and *less than 2 percent* were residents of Madison County.² There is no real dispute that the overwhelming majority of the asbestos cases filed in Madison County have no connection to Illinois, let alone to Madison County.³

Defendants have traditionally challenged plaintiffs' choice of forum in such cases by invoking the doctrine of *forum non conveniens*. But the U.S. Supreme Court's decision last year in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) ("*Daimler*") has given many defendants dragged into court in Madison County a powerful new argument — that such cases should be dismissed for lack of personal jurisdiction.

It is black-letter law that the party seeking to assert personal jurisdiction, *i.e.*, the plaintiff, bears the burden of demonstrating that the court may exercise personal jurisdiction over the defendant. Moreover, the plaintiff must establish that the "requirements of *International Shoe*" — that the assertion of personal jurisdiction would comport with due process — are "met as to *each defendant*."⁴ This requirement is particularly significant in asbestos litigation, where plaintiffs often name *dozens* of defendants — virtually anyone that conceivably might have had any connection to the plaintiff's alleged exposure.

But before *Daimler*, personal jurisdiction was largely a non-issue in asbestos litigation because corporations were subject to general jurisdiction — permitting the defendant to be sued for any claim, even if the conduct giving rise to the claim had nothing to do with the forum — in any state in which they were "doing business." As a result, companies with business nationwide were effectively subject to general jurisdiction in virtually every case no matter where it was brought. *Daimler* changed that.

The *Daimler* decision represents a sea change in U.S. law with respect to general jurisdiction, effectively eliminating "doing business" jurisdiction for out-of-state corporations and expressly rejecting the proposition that general jurisdiction is permitted "in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'"⁵



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Under *Daimler*, “general jurisdiction requires affiliations so continuous and systematic as to render [the foreign corporation] essentially at home in the forum state, *i.e.*, comparable to a domestic enterprise in that State.”⁶ And “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose [general] jurisdiction there.”⁷ With respect to a corporation, the “paradig[m] ... bases for general jurisdiction” are its “place of incorporation and principal place of business.”⁸

Although the Court in *Daimler* left open the theoretical “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 [and subject to general jurisdiction] in that State,” it emphasized that this possibility was reserved for the “exceptional case.”⁹ And as the Court explained, the inquiry into whether circumstances present such an “exceptional case” does not “focu[s] solely on the magnitude of the defendant’s in-state contacts,” but “instead calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide.”¹⁰ That is, to determine whether a corporation is “at home” in a forum state, courts must compare the corporation’s connections with the forum state to its connections elsewhere, for “[a] corporation that operates in many places can scarcely be deemed at home in all of them.”¹¹ Thus, as the Fifth Circuit recently observed, as a practical matter, post-*Daimler*, “[i]t is ... incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business.”¹²

Indeed, in *Daimler* itself, the Court held that even though Daimler’s putative agent, MBUSA, was the “largest supplier of luxury vehicles to the California market” and MBUSA’s California sales “account[ed] for 2.4% of Daimler’s worldwide sales,”¹³ it was “error for the Ninth Circuit to conclude that Daimler, *even with MBUSA’s contacts attributed to it*, was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California.”¹⁴

Since *Daimler* was decided last year, numerous lower courts have recognized that it “make[s] clear that even a company’s ‘engage[ment] in a substantial, continuous, and systematic course of business’ is alone insufficient to render it at home in a forum.”¹⁵ Moreover, in a number of cases, courts — including the Circuit Court in Madison County — have applied *Daimler* in asbestos litigation and other “mass tort” cases in dismissing claims for lack of personal jurisdiction.

For example, in *BNSF Ry. Co. v. Superior Court*, 2015 WL 1404544, at * 6 (Cal. Ct. App. Mar. 27, 2015) — in which the plaintiff alleged exposure to asbestos at premises in Kansas — the California Court of Appeal held that the trial court had erred in finding general jurisdiction based on BNSF’s “conduct[ing] continuous and systematic business in California” by owning 1,149 miles of track, employing 3,520 people, and generating 6 percent of its overall revenue here.¹⁶ The court specifically rejected the plaintiffs’ policy argument that BNSF “should be amenable to suit in California despite having its principal place of business and place of incorporation elsewhere” because “asbestos disease is an indivisible injury, and requiring plaintiffs affected by it to ‘sue individual defendants, each in its own state of incorporation or in its principal place of business, in multiple places throughout the country,’ would ‘present a horrific burden to *all* the courts,’ work a grave injustice to injured plaintiffs, and ‘unjustifiably assist defendants in avoiding responsibility for their conduct.’” The court explained that while it was “not unsympathetic to” plaintiffs’ “concerns,” “the due process rights of defendants cannot vary with the types of injury alleged by plaintiffs,” and that plaintiffs could sue BNSF in either of the “two paradigmatic fora in which a corporation is subject to general jurisdiction, its place of incorporation and its principal place of business.”¹⁷

In short, defendants in asbestos and other mass tort litigation should use *Daimler* to challenge blatant forum shopping by plaintiffs’ counsel in “magnet” jurisdictions such as Madison County. Unless the defendant is incorporated or has its principal place of business in the forum state, it will have a very strong argument that *Daimler* forecloses the exercise of *general* personal jurisdiction and that the case must be dismissed unless the plaintiff can establish *specific* personal jurisdiction.

Although a discussion of specific jurisdiction is beyond the scope of this article, where the claim arises outside of the forum state, the exercise of specific jurisdiction may be precluded by the Supreme Court's decision last year in *Walden*, which made clear that "[f]or a State to exercise [specific] jurisdiction consistent with due process, the defendant's *suit-related conduct* must create a *substantial connection with the forum State*."¹⁸

NOTES

¹ Bethany Krajelis, 2013 *Asbestos Filings on Pace with Last Year at 793 Year to Date*, MADISON-ST. CLAIR RECORD, June 27, 2013; Ann Maher, *Asbestos filings in Madison County down 20 percent from previous year*, MADISON-ST. CLAIR RECORD, Jan. 12, 2015.

² *Id.*

³ Indeed, numerous legal observers have noted this point. See, e.g., Nicholas J.C. Pistor, *Judge Ends Controversial Asbestos Trial 'Reservations'*, ST. LOUIS POST-DISPATCH, Mar. 29, 2012 ("almost all" claims resolved in Madison County "involved plaintiffs who were not from Madison County"); Miles Bardell, *Madison County Asbestos Docket Feeds Off Intake Firm Referrals*, LEGAL NEWSLINE, Jan. 19, 2012 (Madison County has become "a clearinghouse for massive numbers of asbestos lawsuits from all over the country"); Travis Akin, *New Chief Judge Can Help Madison County Shed Its 'Judicial Hellhole' Reputation*, MADISON-ST. CLAIR RECORD, May 8, 2013 ("Madison County comprises .0008 percent of the nation's population but handles more than 25 percent of nation's asbestos cases.").

⁴ *Walden v. Fiore*, 134 S. Ct. 1115, 1123 (2014) (emphasis added; internal quotation marks omitted).

⁵ 134 S. Ct. at 761.

⁶ 134 S. Ct. at 758 n.11 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011) (internal quotation marks omitted)).

⁷ *Id.* at 760.

⁸ *Id.* (alterations in original; quotation marks omitted).

⁹ *Daimler*, 134 S. Ct. at 761 n.19. The only example of such a case that the Court identified in *Daimler* was *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952), in which the defendant's usual home (the Philippines) had been invaded and occupied during World War II, and since the occupation, all of the corporation's "activities were directed by the company's president from within Ohio," making Ohio its "principal, if temporary, place of business." *Daimler*, 134 S. Ct. at 756 & n.8 (citations omitted). "Given the wartime circumstances, Ohio could be considered a surrogate for the place of incorporation or head office." *Id.* (quotation marks omitted).

¹⁰ *Id.* at 762 n.20.

¹¹ *Id.*

¹² *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014). Plaintiffs may seek to forestall personal jurisdiction motions by serving "jurisdictional discovery." But in *Daimler*, the Supreme Court noted that the personal jurisdiction issue "should be resolved expeditiously at the outset of litigation" and recognized that any discovery concerning general jurisdiction should be limited because "it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home." *Daimler*, 134 S. Ct. at 762 n.20.

¹³ *Daimler*, 134 S. Ct. at 752.

¹⁴ *Id.* at 762 (emphasis added).

¹⁵ *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 226 (2d Cir.) (per curiam), cert. denied, 134 S. Ct. 2888 (2014).

¹⁶ 2015 WL 1404544, at * 6.

¹⁷ *Id.*; see also, e.g., *Smith v. Union Carbide Corp., et al.*, 2015 WL 191118 (Mo. Cir. Jan. 12, 2015) (finding no general jurisdiction over DuPont in Missouri for claims based on alleged exposure to asbestos at premises in Oklahoma); *In re Plavix Related Cases*, 2014 WL 3928240, at *1, 10 (Ill. Cir. Ct. Cook Cty. Aug. 11, 2014) (in coordinated proceeding involving 502 plaintiffs allegedly injured by ingesting drug, finding no general jurisdiction and dismissing the claims of the 486 non-resident plaintiffs); *Cirkles v. Asbestos Corp.*, No. 13-L-940 (Ill. Cir. Ct. Madison Cty. Feb. 13, 2014) (finding that New Jersey corporation with principal place of business in Connecticut was not "at home" and subject to general jurisdiction in Illinois); *Locke v. Ethicon Inc.*, 58 F. Supp. 3d 757, 765 (S.D. Tex. 2014) (in suit brought by 77 plaintiffs alleging injuries arising out of implantation of transvaginal mesh device, where neither defendant was incorporated or had its principal place of business in Texas, dismissing for lack of personal jurisdiction the claims of all plaintiffs except for the one plaintiff who was a Texas resident and alleged injuries arising from a mesh implantation in Texas); *Evans v. Johnson & Johnson*, 2014 WL 7342404, at *6 (S.D. Tex. 2014) (in suit brought by 96 plaintiffs

for injuries arising out of implantation of medical device, granting motion to dismiss for lack of personal jurisdiction claims of non-resident plaintiffs “[b]ecause Texas cannot exercise general jurisdiction over the Defendants with regard to the claims asserted by the non-Texas plaintiffs and there are no claims supporting specific jurisdiction with regard to these plaintiffs”).

¹⁸ *Walden*, 134 S. Ct. at 1121 (emphasis added). See also *Goodyear*, 131 S. Ct. at 2851 (“Because the episode-in-suit, the bus accident, occurred in France, and the tire alleged to have caused the accident was manufactured and sold abroad, North Carolina courts lacked specific jurisdiction to adjudicate the controversy.”).



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