



SUPREME COURT'S *DAIMLER* DECISION MAKES IT A GOOD YEAR FOR GENERAL JURISDICTION CLARITY

by Mark Moller

Three generations of law students have been taught there are two types of jurisdiction over a person—specific and general. Specific jurisdiction is the subject of a long, tangled line of Supreme Court jurisprudence. By contrast, general jurisdiction has suffered neglect. Until very recently it was the subject of exceedingly spare authority: a single obscure sentence in *International Shoe v. Washington*, plus two later enigmatic Supreme Court cases. Then, in 2011, the Court broke its silence in *Goodyear Dunlop Tire Operations, S.A. v. Brown*, providing the most sustained discussion of general jurisdiction to date.

This term's *Daimler AG v. Bauman* case provided a dramatic sequel to *Goodyear*. In a decision that will require rewriting Civil Procedure textbooks, treatises, and—perhaps most significantly—law firms' motion-to-dismiss templates, the Court offers an even more comprehensive discussion of general jurisdiction. *Daimler* is notable for two main reasons. It provides the clearest, most definitive statement yet that general jurisdiction is limited, except in rare cases, to those states in which a corporate defendant is incorporated or headquartered. And it was nearly unanimous (only Justice Sotomayor dissented).

General Jurisdiction: A Short History. Before discussing *Daimler*, a short overview of general jurisdiction is in order. The concept has its roots in one cryptic sentence in the landmark *International Shoe* decision. Departing from a century of case law linking *in personam* jurisdiction to the defendant's "presence" in a forum state's territory, *International Shoe* reframed the constraints on state adjudicative jurisdiction. Due process, it said, does not require the defendant's presence. It demands only that a jurisdiction comport with "fair and play and substantial justice."¹

Two passages from *International Shoe* organized the subsequent development of personal jurisdiction. First, it said authority over the defendant "has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on."² Arthur von Mehren and Donald Trautman labelled this idea—that due process ordinarily confines states to jurisdiction over claims arising out of defendants' contacts in the forum—"specific jurisdiction."³ Second, it said there also have been 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."⁴ From this sentence, von Mehren and Trautman derived the idea that courts can exercise "general" or dispute-blind jurisdiction over a defendant with a significant forum affiliation.⁵

¹ *International Shoe v. Washington*, 326 U.S. 310, 316 (1945).

² *Id.* at 317.

³ Arthur von Mehren & Donald Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1141-63 (1966).

⁴ *International Shoe* at 318.

⁵ Von Mehren & Trautman, *Jurisdiction to Adjudicate*, 79 HARV. L. REV. at 1141-63.

Mark Moller is an Associate Professor of Law, DePaul University College of Law and an Adjunct Scholar with the Cato Institute.

Pre-*Goodyear*, the received wisdom was that *International Shoe* had envisioned that “general jurisdiction” would lie in cases where defendants did a substantial (or “continuous and systematic”) amount of business in the forum. Yet, in the subsequent decades, the Court addressed general jurisdiction but twice—in *Perkins v. Benguet Consolidated Mining Co.* and *Helicopteros Nacionales de Colombia S.A. v. Hall*. Neither cryptic decision offered the “doing substantial business” theory much precedential support.

In *Perkins*, the plaintiff had haled Benguet, a mining company chartered and based in the Philippines, into an Ohio court. Plaintiff’s suit arose entirely from activities outside of Ohio. The Court upheld jurisdiction, finding the company had sufficiently “continuous and systematic contacts” with Ohio to justify the state’s exercise of general jurisdiction.⁶ Yet citing *Perkins* as authority for the proposition that states in which defendants do substantial business may exercise general jurisdiction overreads the case. The suit arose while Japan occupied Philippines during World War II. Benguet’s contacts flowed from the company’s decision, during the occupation, to make Ohio its headquarters-in-exile. The *Perkins* Court repeatedly emphasized Benguet’s headquarters-like contacts, including its president’s directing the company from the state.⁷

The Court’s other pre-*Goodyear* foray into general jurisdiction came in a case where it rejected Texas’s assertion of jurisdiction over Helicopteros, a Columbian company, in a suit arising out of a helicopter crash in Peru.⁸ The plaintiffs claimed Helicopteros was amenable to Texas jurisdiction because it had bought helicopter equipment from a Texas company and sent pilots to a training program in Dallas. The Court disagreed. Some have argued that the decision restricted general jurisdiction to cases involving *sales* of goods, but not purchases, presumably because holding otherwise would chill the foreign market for American goods. But the Court said little about the scope of general jurisdiction beyond the facts at hand.

General Jurisdiction as “Home State” Jurisdiction. These things remained until 2011, when the “doing business” theory suffered a new blow in *Goodyear Dunlop Tire Operations, S.A. v. Brown*. That case grew out of an accident in France, in which an exploding Goodyear tire allegedly caused a bus crash, killing two North Carolina soccer players. Their parents sued Goodyear and its French subsidiaries in North Carolina. The subsidiaries moved to dismiss for lack of personal jurisdiction. Because the accident and the defective tire’s manufacture, sale, and distribution all occurred outside the U.S., North Carolina courts lacked specific jurisdiction. But they upheld general jurisdiction, reasoning that thousands of the companies’ tires were sold there. The Supreme Court reversed, holding that a corporation is subject to general jurisdiction only where it is “fairly regarded at home.” “For an individual,” wrote Justice Ginsburg for the Court, the “paradigm” forum is the individual’s domicile.” “For a corporation,” she added, “it is an equivalent place.”⁹ Because the French defendants were not “at home” in North Carolina, general jurisdiction did not obtain to them.

Since *Goodyear*, the \$64,000 question has been: when is a corporation “at home” in the forum? *Goodyear* hinted that general jurisdiction should be confined to states in which the defendant is domiciled. Indeed, the “at home” test announced therein echoed a proposal made over 20 years earlier by Mary Twitchell. She had rejected the then-dominant “doing substantial business” test. Instead, citing the difficulty of administering such a test, she advocated a “home base” approach to general jurisdiction that restricted its exercise to a corporate defendant’s place of incorporation and its headquarters.¹⁰ But did *Goodyear* really announce a domicile-based approach to general jurisdiction, or did it mean something else?

Daimler Clarifies the “at Home” Test. In *Daimler AG v. Bauman*, the Court came the closest yet to squarely endorsing Professor Twitchell’s home-state approach. *Bauman* involved an Alien Tort Statute action

⁶ *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 445 and 447-8 (1952).

⁷ *Id.* at 447-48.

⁸ *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408 (1984).

⁹ *Goodyear Dunlop Tire Operations, S.A. v. Brown*, 564 U.S. ___, 131 S. Ct. 2846 (2011).

¹⁰ See Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 669-70 (1988).

initiated in California federal court by Argentinians. Their complaint alleged Mercedes-Benz Argentina (“MB Argentina”) had conspired with Argentinian state security forces to “kidnap, detain, torture, and kill” them and their relatives during Argentina’s “Dirty War” in the 1970’s. All incidents detailed in the complaint took place in Argentina and had no connection to California or “anywhere else in the United States.”¹¹

Rather than sue MB Argentina, plaintiffs sought to hold Daimler AG, a German company and successor-in-interest to MB Argentina’s parent company, vicariously liable. Daimler moved to dismiss for want of personal jurisdiction. In response, plaintiffs invoked the “doing substantial business” theory of general jurisdiction. Daimler, they argued, does significant business in California, and, alternatively, Daimler has extensive California contacts (unrelated to the suit) via Mercedes-Benz USA, a Daimler subsidiary that plaintiffs said was “Daimler’s agent for jurisdictional purposes.”¹²

The Supreme Court rejected both of plaintiffs’ arguments and attacked the “doing business” theory of general jurisdiction at its root. The theory, it said, rested on an erroneous reading of *International Shoe*. That case had not held that defendants’ “continuous and systematic” in-forum contacts confer *dispute-blind* jurisdiction. It had, rather, mentioned “continuous and systematic” contacts in conjunction with its discussion of *specific* jurisdiction.¹³ In fact, said the Court, “we have declined to stretch general jurisdiction beyond traditional limits.”¹⁴ The proper inquiry, as *Goodyear* had held, is not “whether a foreign corporation’s in-forum contacts can be said to be in some sense ‘continuous and systematic.’” It is whether the corporation’s affiliations are “so ‘continuous and systematic’ as to render [it] essentially at home in the forum state.”¹⁵

The Court emphasized that “the place of incorporation” and the “ ‘principal’ place of business” or “head office” are “paradig[m]” home states. Use of the word “paradigm” suggests general jurisdiction is not woodenly limited to these places, but the Court emphasized that upholding general jurisdiction outside the corporate domicile would require “exceptional” facts.¹⁶ Helpfully, it offered *Perkins* as an example. There the forum state amounted to “a [wartime] surrogate for the place of incorporation or head office.”¹⁷ Hence, *Daimler*’s discussion of *Perkins* supports a narrow understanding of the “exceptional” case.¹⁸

Much of *Daimler*’s policy-oriented discussion of general jurisdiction suggests little room for exceptions too. In addition to promoting predictability and simplicity, *Daimler* noted, the “at home” test centers on “affiliations that have the virtue of being unique.” The state of incorporation and principal place of business or “head office” “each ordinarily indicate only one place.” And that place is “easily ascertainable.”¹⁹

The Court also invoked the other standard defenses of the home-state approach—namely that it deters forum shopping and protects horizontal federalism. Large companies do business in all 50 states, so a loose “doing business” test would subject them to general jurisdiction in every state. Plaintiffs in turn would gravitate to those states with the most plaintiff-protective laws. This lopsided effect poses acute federalism

¹¹ *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014).

¹² *Ibid.*

¹³ *Id.* at 758. This reading, incidentally, is the same as Professor Twitchell’s. See Mary Twitchell, *Why We Keep Doing Business with Doing Business Jurisdiction*, 2001 U. CHI. LEGAL F. 171, 182-83 (making this argument).

¹⁴ *Id.* at 757-58.

¹⁵ *Id.* at 761.

¹⁶ *Id.* at 761 n.17.

¹⁷ *Id.* at 756 n.8.

¹⁸ See Von Mehren & Trautman, *Jurisdiction to Adjudicate*, 79 HARV. L. REV. at 1177. The Court followed the analysis of von Mehren and Trautman here. Not only did these two professors coin the specific/general distinction, but they were also early advocates of a “home base” approach to general jurisdiction, except in “rare” and “exceptional” cases like *Perkins* in which the state is a *de facto* but not formal headquarters.

¹⁹ *Daimler* at 760. The Court, incidentally, made much the same argument in favor of confining corporate “citizenship,” for diversity jurisdiction purposes, to corporate headquarters and the state of incorporation in *Hertz Corp. v. Friend*, 555 U.S. 77, 94 (2010).

problems as well as fairness problems. Although jurisdiction and choice of law involve analytically distinct questions and different tests, there is a well-recognized link, in practice, between them.²⁰ Forum states tend to resolve choice-of-law problems in favor of applying forum law. A “doing business” jurisdictional test accordingly would allow outlier states to give their plaintiff-protective policies an outsized impact bearing no relation to the amount of business transacted there.

The *Daimler* Court highlighted just this issue: “Nothing in *International Shoe* and its progeny suggests that a ‘particular quantum of local activity’ should give a State authority over a ‘far larger quantum of ... activity’ having no connection to any in-state activity.”²¹ *Daimler*’s domicile test, by contrast, alleviates the problem. Confining general jurisdiction to the corporate domicile empowers the states most interested in the defendant’s activities. And specific jurisdiction encompasses other states where the “events-in-suit,” or conduct at issue, occurred. The framework that emerges thus sensibly winnows the range of states that may assert jurisdiction properly to just those with the greatest interest in the transaction or the parties.

Conclusion—and a Note of Caution. *Daimler*, then, is the Court’s strongest affirmation yet of a domicile-based approach to general jurisdiction. If this consensus holds, it would seem to portend the elimination of nationwide class-action lawsuits brought in jurisdictions other than where a single injurious event (think airplane crash) occurs, or where a corporate defendant has its home base. Whether the *Daimler* court meant to produce such a sweeping result is open to debate. However, if the Court indeed meant what it first said in *Goodyear* and then reinforced in *Daimler*, these twin decisions would go a long way to tamping down on so-called magic jurisdictions where many plaintiffs’ attorneys prefer to file their lawsuits.

But, some caution is due. If there is any lesson to be had from 70-odd years of personal jurisdiction jurisprudence, it is that consensus on the Court in this area has not proven durable.²² Given the Court’s history of disagreement about personal jurisdiction, *Daimler*’s near-unanimity is somewhat surprising. But passages in *Daimler* hint that a return to normalcy is not out of the question. Justice Ginsburg, for example, was careful to label general jurisdiction as a “safety valve.”²³ “We do not,” she noted, “need to justify broad exercises of dispute-blind jurisdiction unless our interpretation of the scope of specific jurisdiction unreasonably limits state authority over nonresident defendants.”²⁴ In other words—keep an eye on specific jurisdiction.

The Court’s seeming unanimity in *Daimler* may reflect less a firm consensus than a wary truce. How long the eight justices in the majority will continue to agree on the narrowness of the general jurisdiction “safety valve” may well depend on which approach to specific jurisdiction ultimately prevails—something that, at this point, is hard to predict. Stay tuned and don’t get too comfortable.

²⁰ See *Phillips Petroleum v. Shutts*, 492 U.S. 797, 821 (1985) (“[T]he issue of personal jurisdiction ... is entirely distinct from the question of the constitutional limitations on choice of law.”)

²¹ *Daimler* at 762 n.20.

²² See *J. McIntyre Machinery v. Nicastro*, 564 U.S. ___, 131 S. Ct. 2780 (2011), (demonstrating the current Court’s divide on the scope of specific jurisdiction, with Justices Ginsburg, Kagan, Sotomayor, Breyer, and Alito committed to a more flexible vision of specific jurisdiction than is Justice Kennedy’s plurality opinion.)

²³ *Daimler* at 757 n.9 (quoting Patrick Borchers, *The Problem with General Jurisdiction*, 2001 U. CHI. LEGAL F. 119, 139).

²⁴ *Id.* at 757 (citing Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. at 676).