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Federal District Courts Increasingly "At Home" With Dismissal for Lack of General Jurisdiction

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Defendants may find it easier today to challenge general jurisdiction over them than in the past, as shown by a recent decision from the U.S. District Court for the Southern District of Texas. In *Locke v. Ethicon, Inc.* – F. Supp.3d – (Nov. 10, 2014), the district court dismissed the claims brought by 76 of 77 plaintiffs for lack of general jurisdiction without ever reaching the challenge to subject matter jurisdiction. The court's willingness to jump straight to the personal jurisdiction question can be credited to the well-defined and more easily-applicable "at home" standard for general jurisdiction articulated by the U.S. Supreme Court in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011).

In *Brown*, the U.S. Supreme Court explained that general jurisdiction over a defendant corporation exists where the corporation is "at home." In mid-2014 the Court clarified in *Bauman* that, absent exceptional circumstances, a corporation is "at home" only where it has its "place of incorporation and principal place of business." Applying this standard, the Court in *Bauman* refused to find Daimler "at home" in California despite its having offices, servicing agents, and generating 2% of its total sales in that state.

Following *Bauman*, the U.S. Court of Appeals for the Fifth Circuit recognized that "[i]t is … incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business." *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014). In *Monkton*, it was undisputed that the defendant bank's place of incorporation and principal place of business were both in the Cayman Islands. The bank's limited contacts with Texas, resulting largely from a partially interactive website that allowed accountholders to access accounts from Texas, did not give rise to the type of exceptional circumstances that would render the Cayman bank "at home" in Texas. The court reached this decision while denying requests for jurisdictional discovery because evidence of additional contacts with Texas "would not be enough to show that [the bank] is 'at home' in Texas."

It is in the wake of these decisions that the district court in *Locke* found itself faced with a jurisdictional challenge. In that case, 77 individuals sued two New Jersey corporations in Texas state court for complications related to a transvaginal mesh device. Only one of the plaintiffs alleged injuries arising from a mesh implantation performed in Texas. For the remaining 76 plaintiffs, the allegations related to use of a mesh device in other states, so that it was undisputed that there was no way for plaintiffs to establish specific jurisdiction in Texas. That left general jurisdiction as the only possible way for most of the plaintiffs to establish the court's jurisdiction over the defendant corporations. But both defendants are incorporated and have their principal places of business in New Jersey, and there were no allegations on the face of the complaint pointing to another place where the defendants might be at home.

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Based on these facts, defendants did two things. First, they timely removed the case to federal district court, claiming federal diversity jurisdiction. Second, defendants filed a motion to dismiss the claims by all but one of the plaintiffs for lack of personal jurisdiction. Plaintiffs challenged the removal based on the joinder of a plaintiff from New Jersey and moved to remand the case back to state court. Plaintiffs challenged the merits of the motion to dismiss, but also argued that because the removal was improper, the district court lacked subject matter jurisdiction to rule on the motion to dismiss. Plaintiffs urged the court instead to remand the case without reaching the question of personal jurisdiction.

With clear direction from *Brown*, *Bauman*, and *Monkton*, the lack of personal jurisdiction for all but one plaintiff was glaringly obvious to the district court. Plaintiffs' only arguments for general jurisdiction were that defendants sold more mesh devices in Texas than in their home state of New Jersey and that defendants' websites were at least partially accessible by Texas residents. The district court found that these facts were similar to those expressly rejected in *Bauman* and *Monkton* and fell far short of the "exceptional circumstances" necessary to find defendants "at home" in a state that is neither company's place of incorporation nor their principal place of business.

Yet, the plaintiffs had challenged subject matter jurisdiction based on lack of diversity, leaving the court with a dilemma. If it addressed subject matter jurisdiction first, the New Jersey plaintiff would destroy diversity of citizenship, resulting in a remand to the state court even though there is no personal jurisdiction over the New Jersey plaintiff's claims. The state court would then have to address the jurisdictional question that would result in dismissal of 76 plaintiffs for lack of personal jurisdiction, leaving only the one plaintiff over which the court would have otherwise had diversity jurisdiction in the first place. On the other hand, if the court addressed personal jurisdiction first, it could dismiss 76 out of 77 plaintiffs from the outset, leaving only the one proper plaintiff before the court (and preventing a waste of state judicial resources).

Citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574 (1999), the court recognized its authority "to dispose of jurisdictional questions in a manner that promotes judicial economy." And, as the court concluded, "resolution of the personal jurisdiction question leads to a more efficient result without offending principles of federalism" since the Texas jurisdictional standards are commensurate with federal law.

The "at home" standard for determining general jurisdiction must be credited for the district court's willingness to address the general jurisdiction question first. Relying on the "at home" standard, the decision in *Locke* practically presumes that general jurisdiction cannot be established outside a defendant corporation's home state. No discovery was needed, and the court could easily decide the lack of general jurisdiction on the simple facts before it based on the defendants' places of incorporation and principal places of business in New Jersey.

It is not clear whether the court would have been as willing to jump to the personal jurisdiction argument if general jurisdiction were a more fact-intensive inquiry. But perhaps that question will never have to be answered. After all, in most cases, establishing the principal place of business and place of incorporation should end the inquiry, before or after removal, in state court or federal. Indeed, after *Brown, Bauman, Monkton,* and now *Locke*, courts in the Fifth Circuit should find themselves—to borrow a phrase—at home with general jurisdiction, and it should be the rare case where general jurisdiction poses a fact-intensive inquiry. Yet, these decisions are still very new. Only time will tell if courts in other circuits will copy *Monkton* and *Locke* in narrowly defining "at home" jurisdiction so as to allow a swift resolution of general jurisdiction challenges.

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