

Personal Jurisdiction Webinar Where Can You Pursue a Recovery Claim?

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Juris-Whatnow?

Two Kinds of Jurisdiction:

1. Subject Matter Jurisdiction

- Court's power to hear case
- Diversity, federal question, etc.
- NOT what we're talking about today

2. Personal Jurisdiction

- A court's ability to exercise jurisdiction over a person or entity
- What we're talking about today

Personal Jurisdiction Basics

- Two Kinds of personal jurisdiction:
 1. General Jurisdiction
 2. Specific Jurisdiction

1. General Jurisdiction

- Defendant's contacts w/ forum are so pervasive that Defendant is subject to suit in forum for **any** matter
- “For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.”

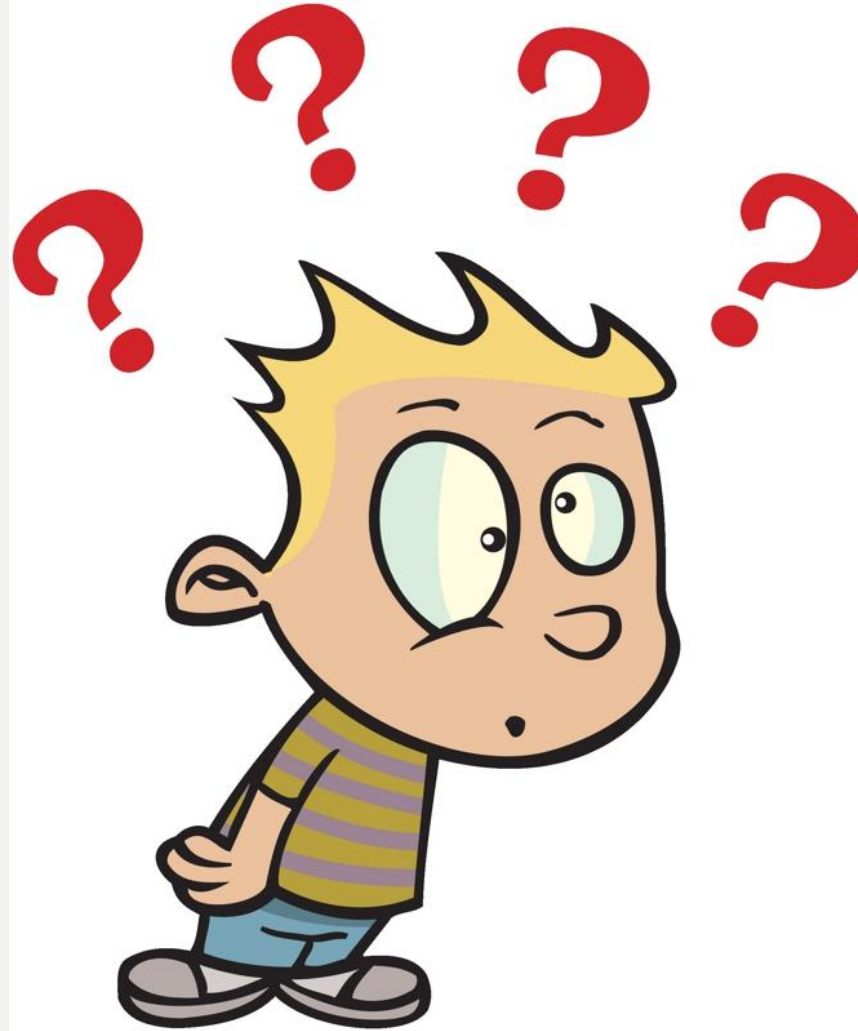
Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011)

2. Specific Jurisdiction

- Defendant has adequate contact w/forum to make Defendant amenable to suit arising from/related to contact w/forum
- “[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.”

Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011).

Uh, what? Why does this matter?



Why Personal Jurisdiction Matters

- If a court doesn't have personal jurisdiction over a target, your claim might be dismissed or you might have to litigate it in an inconvenient forum
 - That sounds like a problem for the lawyer....
 - It is! And we'd love to help you with that problem!
 - But there are things you can do on the front end to help as well.

Pillars of the New Personal Jurisdiction World

1. Daimler AG v. Bauman, 571 U.S. 117, 127 (2014).
2. BNSF Railway Co. v. Tyrrell, 137 S.Ct. 1549 (2017).
3. Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County, 137 S.Ct. 1773 (2017).

Daimler AG v. Bauman (2014)

- Addressed general personal jurisdiction
- Factual Background:
 - Daimler was a German company
 - Mercedes Benz Argentina, a Daimler subsidiary, kidnapped its own employees
 - Mercedes Benz USA, another Daimler subsidiary, sold cars in California
 - Plaintiffs asked a California court to exercise PJ over Daimler



Daimler AG v. Bauman (2014)

- SCOTUS holds California court does not have personal jurisdiction over Daimler
- Narrowed scope of general jurisdiction
 - Daimler requires “affiliations with the State that are so ‘continuous and systematic’ as to render [defendant] **essentially at home in the forum State.**” 571 U.S. at 127 (2014).
- What makes you ‘essentially at home?’

Daimler AG v. Bauman (2014)

- Person: “[T]he paradigm forum for the exercise of general jurisdiction is the individual's domicile” 571 U.S. at 137.
- Corporation: “[T]he place of incorporation and principal place of business are “paradigm] ... bases for general jurisdiction.” 571 U.S. at 137.
 - “These bases afford plaintiffs recourse to **at least one clear and certain forum** in which a corporate defendant may be sued on any and all claims.” 571 U.S. at 137.
 - A “substantial, continuous, and systematic course of business” **does not** make a corporation at home – that would be “unacceptably grasping” 571 U.S. at 137.

BNSF Railway Co. v. Tyrrell (2017)

- Addressed **general** personal jurisdiction
- Factual Background:
 - MT statute **explicitly provided**
 - **for personal jurisdiction** over “persons found within MT”
 - Def. BNSF Railway has 2,000 miles of track in MT, employs 2,000 people in MT, and derives 10% of its revenue in MT
 - Plaintiff was ND resident who was injured outside MT



BNSF Railway Co. v. Tyrrell (2017)

- SCOTUS doubles down on Daimler, holding MT law providing for general personal jurisdiction violated Due Process Clause
- Reinforced state of incorporation and principal place of business as “paradigm forums” for general personal jurisdiction
 - Can only have general personal jurisdiction outside paradigm forum in “exceptional case”
 - Exceptional case: War forces business to temporarily relocate

BNSF Railway Co. v. Tyrrell (2017)

- “A corporation that operates in many places can scarcely be deemed at home in all of them.” BNSF, 137 S.Ct. at 1559.
- “In short, the business BNSF does in Montana is sufficient to subject the railroad to specific personal jurisdiction [but] does not suffice to permit the assertion of general jurisdiction over claims . . . that are unrelated to any activity occurring in Montana.” BNSF, 137 S.Ct. at 1559.

Bristol-Myers Squibb (2017)

- Addressed specific personal jurisdiction
- Factual Background:
 - Class action involving CA and non-CA residents injured after taking Plavix
 - BMS incorporated in Delaware, with a PPB in New Jersey
 - Suit filed in CA, where BMS has five facilities and hundreds of employees
 - BMS sold 187 million Plavix pills/made \$900 million in CA from 2006-2012
 - Non-CA residents didn't buy Plavix, take Plavix, or suffer in injury in CA, but claims are otherwise identical to those of CA residents



Bristol-Myers Squibb (2017)

- BMS moved to dismiss non-CA residents' claims for lack of personal jurisdiction
- CA Supreme Court held BMS's "extensive contacts" with CA subjected BMS to personal jurisdiction for non-CA residents' claims
 - CA SC exercised specific personal jurisdiction "based on a less direct connection between BMS's forum activities and plaintiffs' claims than might otherwise be required" given extent of BMS's California contacts. 137 S.Ct. at 1779.

Bristol-Myers Squibb (2017)

- SCOTUS found exercise of personal jurisdiction over BMS for non-CA resident claims to be unconstitutional
 - “The mere fact that other plaintiffs were prescribed, obtained, and ingested Plavix in California - and allegedly sustained the same injuries as did the nonresidents - does not allow the State to assert specific jurisdiction over the nonresidents’ claims.” 137 S.Ct. at 1781.
 - “What is needed - and what is missing here - is a **connection between the forum and the specific claims at issue.**” 137 S.Ct. at 1781.

Combined Effect of Daimler, BNSF, & BMS

- Personal jurisdiction is harder to find
- General personal jurisdiction is extremely narrow
 - Effectively limited to state of incorporation and/or PPB
 - “One clear forum”
- Specific personal jurisdiction requires great specificity
 - Must be able to tie your injury to Defendant’s specific contact in forum



Hypothetical One

Big Brand Battery is incorporated in DE with a principal place of business in NY. Big Brand Battery sells lithium ion batteries nationwide, including in PA. Big Brand Battery has continuously done business in PA for over a decade. Big Brand battery has five research lab facilities in PA and employs 500 people in PA. In the last decade, Big Brand Battery has sold 187 million batteries in PA, producing \$900 million in revenue.

A Big Brand Battery installed in a laptop computer catches fire in PA.



Survey for Hypothetical One

- Is Big Brand Battery subject to personal jurisdiction in PA?
 1. Yes
 2. No

Hypothetical Two

PipeX is incorporated in Canada and has its principal place of business in Canada. PipeX sells plumbing connectors in the U.S. through distributors in CA, NY, and TX. 85% of PipeX's products go through CA, generating 85% of PipeX's annual worldwide revenue. PipeX employees visit CA multiple times each year.

A PipeX connector causes a water loss in NH. You can't determine how the specific connector that caused your loss came into the U.S. and which distributor it went through.



Survey for Hypothetical Two

Where in the U.S. can you subject PipeX to personal jurisdiction for the loss that occurred in NH?

1. NH
2. CA
3. TX
4. NY
5. CA, TX or NY
6. Nowhere

Hypothetical Three

CoffeeCorp.com is an online seller of specialty coffee products, which is located in OR. It does not maintain any inventory. One of the products it sells throughout its website is a coffee grinder manufactured by Grinder Co., a company in India with no U.S. offices. An individual in PA purchases a Grinder Co. grinder from CoffeeCorp.com. The product is shipped from a warehouse in NJ by a company that is now out of business and has no remaining assets. The coffee grinder causes a fire while in use in PA.



Survey for Hypothetical Three Part 1

- Where in the U.S. can you get jurisdiction over CoffeeCorp.com?
 1. Oregon
 2. Pennsylvania
 3. New Jersey

Survey for Hypothetical Three Part 2

- Where in the U.S. can you get jurisdiction over Grinder Co.?
 1. Oregon
 2. Pennsylvania
 3. New Jersey
 4. Nowhere

Hypothetical Four

- Big RV is German manufacturer of RVs which sells its RVs in every state in the U.S through a variety of authorized third party distributors but does not maintain any actual U.S operations or offices. Hughsey's RVs sells used RVs from a lot in Florida and does not do business anywhere else. An Ohio resident purchases a used Big RV from Hughsey's and is driving it back to his home in Ohio when it catches fire in Kentucky. There are certain express warranties issued by Hughsey's that do not run to Big RV so the injured party would like to sue both companies.



Survey for Hypothetical Four Part 1

Where in the U.S. can you get jurisdiction over Big RV?

1. Florida
2. Ohio
3. Kentucky
4. Nowhere
5. Anywhere

Survey for Hypothetical Four Part 2

- Where in the U.S. can you get jurisdiction over Hughsey's?
 1. Florida
 2. Ohio
 3. Kentucky

How Can You Help?

- Gather information about product following loss
 - Where was product purchased?
 - Hypo 2 – who sold the connector?
 - Are there receipts or purchase orders for the product?
 - If commercial insured – what does it know about the product manufacturer's business?

Potential Workarounds

1. Waiver if entity registered to do business in forum

- Authority split across states
- Conflicting authority in PA
 - Mallory v. Norfolk Southern Railway (Pa. Commw. Ct. May 30, 2018)
 - Bors v. Johnson & Johnson, 2016 U.S. Dist. Lexis 128259 (E.D. Pa. Sept. 20, 2016)

2. Company has agent for service of process in forum

- Authority split across states

Potential Workarounds

3. BMS arguably doesn't apply to personal jurisdiction in federal court
 - BMS addressed impact of 14th Amendment's DPC on state, left open whether 5th Amendment's DPC would have same impact on federal court
 - 4th, 5th, 6th, and 11th Circuits have noted BMS may not control federal court
- DO NOT bet the farm on these potential workarounds

Practical Implications

- May have to litigate case in a jurisdiction other than where the loss occurred
- May have to litigate case in multiple jurisdictions
 - Claim against manufacturer in one jurisdiction and seller in another
 - File in multiple jurisdictions to protect statute of limitations
- Possibility you are left without a forum in the U.S. to sue certain defendants – only option is to sue defendant outside the U.S.

Litigating in Jurisdiction Other Than Where Loss Occurred

- Increased expense
- Transfer of evidence
- Experts and witnesses need to travel
- May have to present videotape testimony at trial
- Lack of sympathy from jury
- Impact settlement value



What happens if you file in the wrong jurisdiction

- Dismissal
 - May be out of luck in state court if statute has run in other jurisdiction where you could have filed
- In Federal Court, the case could be transferred to another district court under 28 U.S.C. §1406 (a)

The district court of a district in which it is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought

Import to Identify Jurisdictional Issues Early

- Different jurisdictions have different statutes of limitations
- File suit early
 - Time to correct if the court finds there is no jurisdiction
 - May need to conduct jurisdictional discovery
- Is it practical and economically feasible to litigate in place where you have jurisdiction?

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