

BY DANIEL RITTER

PERSONAL JURISDICTION

Recent rulings from the U.S. and Illinois Supreme Courts have shrunk the scope of personal jurisdiction, making it harder for plaintiffs to sue in the court of their choosing. This article discusses the developments and makes the case that the battle over personal jurisdiction is far from over.

Limiting Personal Jurisdiction: The Impact of *Tyrrell*, *Bristol-Myers Squibb*, and *Aspen American*



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PLAINTIFFS WANT TO BRING THEIR ACTIONS IN THE LOCATION MOST

FAVORABLE FOR THEM, but they cannot simply file suit wherever they like. Instead, the location hinges on three procedural rules: personal jurisdiction, subject matter jurisdiction, and venue.

This article focuses on recent developments in personal jurisdiction. By laying out the law of personal jurisdiction and recent developments nationally and in Illinois, the article shows that the battle over personal jurisdiction is far from over.

Background

Personal jurisdiction in brief. Personal jurisdiction concerns the court's power over the parties.¹ A court will always have power over the plaintiff, who submits to the court's jurisdiction by filing the case. A court will not, however, always have power over the defendant.

1. See *People v. Castleberry*, 2015 IL 116916, ¶ 12 (acknowledging that personal jurisdiction "refers to the court's power...to bring a person into its adjudicative process").

To determine whether a court has personal jurisdiction over the defendant, one must determine whether the court's exercise of jurisdiction under the law of the state in which it sits comports with the Due Process Clause of the Fourteenth Amendment, which provides: "[no] State [shall] deprive any person of life, liberty, or property without due process of law..."²

To comport with the Due Process Clause, the defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"³ While there are easy cases where a court will have personal jurisdiction over the defendant, plaintiffs persistently develop strategies to expand personal jurisdiction.

Prior plaintiff strategies to expand personal jurisdiction. The U.S. Supreme Court recognizes two types of personal jurisdiction: general and specific. Under general jurisdiction, a court can adjudicate all claims against a defendant – including those that do not arise from that defendant's contact with the forum.⁴ To be subject to general jurisdiction, the defendant must be domiciled in a forum. A corporation is domiciled in its state of incorporation and the state of its principal place of business.

Under general jurisdiction, all claims can be adjudicated against a defendant even if they do not arise from a defendant's in-forum contacts. But under specific jurisdiction, "the suit" must "aris[e] out of or relat[e] to the defendant's contacts with the forum."⁵ Indeed, there must be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the

State's regulation."⁶

If a corporation is not domiciled in the forum or its in-forum contacts do not relate to the plaintiff's claims, then a plaintiff must get innovative. Below are a few of their earlier strategies to expand jurisdiction, and a look at how a seminal U.S. Supreme Court case affected those efforts.

Daimler's impact

Expansive general jurisdiction before

Daimler. Before 2014, most plaintiffs that wanted to file a claim in a particular location used general jurisdiction to attain personal jurisdiction. The plaintiffs' bar developed a theory that as long as the defendant had continuous and systematic business contacts in the forum state, general jurisdiction was established. For practitioners, this meant that if their clients had a substantial business presence nationwide, then the client could be sued in every state.

But in 2014, the U.S. Supreme Court in *Daimler AG v. Bauman* limited this theory by explaining that a corporation is subject to general jurisdiction *normally*⁷ in two places: 1) the state of incorporation and 2) the state where the corporation has its principal place of business. The Court explained that allowing jurisdiction anywhere the defendant

2. U.S. Const. amend XIV, § 1.

3. *International Shoe Co. v. State of Wash., Office of Unemployment Compensation & Placement*, 326 U.S. 310, 316 (1945).

4. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011).

5. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014).

6. *Goodyear*, 131 S. Ct. at 2851.

7. In an "exceptional case," a corporate defendant's activities in a forum "may be so substantial and of such a nature as to render the corporation at home in that State." See *Daimler*, 134 S. Ct. at 761 n.19.

TAKEAWAYS >>

- To determine whether a court has personal jurisdiction over the defendant, one must determine whether the court's exercise of jurisdiction under the law of the state in which it sits comports with the Due Process Clause of the Fourteenth Amendment. The U.S. Supreme Court recognizes two types of personal jurisdiction: general and specific.

- In 2014, the U.S. Supreme Court in *Daimler AG v. Bauman* explained that a corporation is subject to general jurisdiction normally in two places: (1) the state of incorporation; and (2) the state where the corporation has its principal place of business.

- In the 2017 case of *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, the Illinois Supreme Court held "that in the absence of any language to the contrary, the fact that a foreign corporation has registered to do business under the [Illinois Business Corporation] Act does not mean that the corporation has thereby consented to general jurisdiction over all causes of action, including those that are completely unrelated to the corporation's activities in Illinois."

IN THE PAST FIVE MONTHS, THREE CASES – TWO FROM THE FEDERAL COURT AND ONE FROM ILLINOIS – HAVE CHANGED HOW PLAINTIFFS WILL ESTABLISH PERSONAL JURISDICTION IN ILLINOIS.

engaged in a substantial, continuous, and systematic course of business violated due process.⁸

Since *Daimler*, a majority of lower courts have adhered to the Supreme Court's ruling. But *Daimler* did not stop plaintiffs from developing new strategies.

Consent to jurisdiction after *Daimler*.

Daimler did not address situations where a defendant consents to jurisdiction. Instead, the jurisdiction asserted in *Daimler* was nonconsensual. The plaintiffs' bar began arguing that if corporations register to do business in a state and establish an agent for service of process, they have consented to general jurisdiction.

The problem is that all 50 states and the District of Columbia require corporations to register and establish

an agent for service of process prior to doing business in a state. Still, lower courts bought this theory and extended the scope of jurisdiction to include states where a business registers to do business.⁹ However, as discussed below, the Illinois Supreme Court found that when a corporation registers to do business it does not consent to general jurisdiction.¹⁰

Expansive specific jurisdiction after *Daimler*. Also, plaintiffs have tried to expand specific jurisdiction. As a quick refresher, under specific jurisdiction, there must be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation."¹¹

To expand specific jurisdiction, nonresident plaintiffs who neither purchased nor used the product in the state latch on to the claims of resident plaintiffs who did, arguing that specific jurisdiction is appropriate in the forum state because of the similarity of the claims. But, as discussed below, the courts have declined to embrace this theory.

Declining to extend general, specific, and consent to jurisdiction: *Tyrrell*, *Bristol-Myers Squibb*, and *Aspen American*

In the past five months, three cases – two from the U.S. Supreme Court and one from the Illinois Supreme Court –

have changed how plaintiffs will establish personal jurisdiction in Illinois. They can no longer rely on prior strategies to extend general, specific, and consent to jurisdiction.

***Burlington Northern & Santa Fe Railway Co. v. Tyrrell*: SCOTUS reinforces *Daimler*'s general jurisdiction requirements.** In *Tyrrell*, the plaintiffs sued BNSF Railway Company in Montana under FELA.¹² But the plaintiffs, nonresidents of Montana, allegedly sustained injuries outside of Montana during their employment with BNSF, a Delaware corporation with its principal place of business in Texas.

While the action was unrelated to Montana, the Montana Supreme Court exercised personal jurisdiction over BNSF by relying on FELA section 56. This statute provides that a cause of action may be brought in a district "in which the defendant shall be doing business at the time of commencing such action"¹³ and that the jurisdiction of the federal courts is concurrent with that of the state courts.

The U.S. Supreme Court rejected the Montana Supreme Court's application of section 56. Then the Supreme Court reasserted the holdings in *Daimler* and *Goodyear* that courts may exercise general jurisdiction over corporations only when they are "at home" in the forum state.¹⁴ To be "at home" in the forum state, the corporation must be incorporated in the state or have their principal place of business in the state.

Because BNSF was neither incorporated nor maintained its principal place of business in Montana, Montana courts could not exercise personal jurisdiction over BNSF. While BNSF has a presence and performs numerous activities in Montana, those activities are merely sufficient to subject BNSF to personal jurisdiction

ISBA RESOURCES >>

- Sara M. Davis, *Revisiting Long-Arm Jurisdiction: Kowal v. Westchester Wheels, Inc.*, Trial Briefs (Nov. 2017), <https://www.isba.org/sections/civilpractice/newsletter/2017/11/revisitinglong>.
- Kimberly Glasford, *Restoring Lost Jurisdiction: The Revestment Doctrine*, 103 Ill. B.J. 42 (Sept. 2015), <https://www.isba.org/ibj/2015/09/restoringlostjurisdictionrevestment>.
- Mathew Hector, *Subject Matter Jurisdiction: The State Constitution Trumps the UCCJEA*, 103 Ill. B.J. 10 (May 2015), <https://www.isba.org/ibj/2015/05/lawpulse/subjectmatterjurisdictionstateconst>.

8. *Daimler*, 134 S. Ct. at 761.

9. See, e.g., *Forest Laboratories, Inc. v. Amneal Pharmaceuticals LLC*, 2015 WL 880599, at *4 (D. Del. Feb. 26, 2015).

10. *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281.

11. *Goodyear*, 131 S. Ct. at 2851.

12. *Burlington Northern & Santa Fe Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017).

13. *Id.* at 1555.

14. *Id.* at 1558.

on related claims. They do not support personal jurisdiction for the plaintiffs' unrelated claims, which had "no relationship to anything that occurred or had its principal impact in Montana."¹⁵

***Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*: SCOTUS declines to extend specific jurisdiction.** In *Bristol-Myers Squibb*, a group of plaintiffs – consisting of 592 nonresidents and 86 California residents – allegedly suffered injuries from their use of Bristol-Myers' blood-thinning drug Plavix.¹⁶ "[Bristol-Myers] is incorporated in Delaware, headquartered in New York, and maintains substantial operations in both New York and New Jersey."¹⁷ Plaintiffs sued Bristol-Myers in California.

Bristol-Myers moved to dismiss the nonresidents' claims for lack of personal jurisdiction. Specifically, Bristol-Myers argued that California lacked specific jurisdiction over these plaintiffs' claims because none of the events relevant to their claims occurred in California:

- The nonresident plaintiffs were not prescribed Plavix in California;
- They did not purchase Plavix in California;
- They did not ingest Plavix in California; and
- They were not injured by Plavix in California.

The Supreme Court accepted Bristol-Myers' arguments, explaining that "specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction."¹⁸ Therefore, specific jurisdiction requires "a connection between the forum and the specific claims at issue."¹⁹ The Court then applied these principles to the case, noting that "all the conduct giving rise to the nonresidents' claims occurred elsewhere."²⁰

***Aspen American Insurance Co. v. Interstate Warehousing, Inc.*: Illinois Supreme Court reinforces Daimler's general jurisdiction requirements and narrows consent to jurisdiction.** In *Aspen American*, the plaintiff, an insurance company, brought the claims of its insured after the roof of a Michigan

warehouse owned by defendant, Interstate Warehousing, collapsed, causing the plaintiff's insured to lose over \$2 million worth of stored goods.²¹ Interstate is incorporated in Indiana, has its principal place of business in Indiana, and has "a warehouse in Joliet, Illinois, two warehouses in Indiana, and the other warehouses in Colorado, Ohio, Tennessee, and Virginia."²²

Despite the incident happening in Michigan and Interstate being domiciled in Indiana, the plaintiff brought suit in Illinois. To establish personal jurisdiction, plaintiff argued that a state may exercise general jurisdiction over a defendant "where the defendant has continuous and systematic general business contacts with the forum state."²³ Additionally, the plaintiff maintained that Interstate had consented to general jurisdiction because it registered to do business in Illinois under the Business Corporation Act of 1983 and has a registered agent in Illinois for service of process.

Interstate moved to dismiss the nonresident claims for lack of personal jurisdiction. Specifically, Interstate argued that while it did business in Illinois through its Joliet warehouse, Illinois lacked general jurisdiction over the plaintiff's claims because the "[Joliet warehouse] was insufficient to subject it to general personal jurisdiction in Illinois."²⁴

The Illinois Supreme Court began its analysis by evaluating Illinois' "long-arm" statute and acknowledging that the statute allows a court to exercise personal jurisdiction over a nonresident defendant on any "basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States."²⁵ Thus, to exercise general jurisdiction the "plaintiff must show that defendant is incorporated or has its principal place of business in Illinois or that defendant's contacts with Illinois are so substantial as to render this an exceptional case."²⁶ Because Interstate is incorporated in Indiana and has its principal place of business in Indiana, the court held that the plaintiff "has failed to show that

THE ASPEN COURT HELD "THE FACT THAT A FOREIGN CORPORATION HAS REGISTERED TO DO BUSINESS [IN ILLINOIS] DOES NOT MEAN [IT] HAS THEREBY CONSENTED TO GENERAL JURISDICTION...."

defendant's contacts with Illinois render it at home in this state...[and] [t]o subject defendant to general personal jurisdiction would therefore deny it due process of law."²⁷

The court next analyzed the plaintiff's consent to jurisdiction argument, noting that none of the provisions in the Business Corporation Act of 1983 require foreign corporations to consent to general jurisdiction as a condition of doing business in Illinois. It further found that none of the provisions "indicate that, by registering in Illinois or appointing a registered agent, a corporation waives any due process limitations on this state's exercise of general jurisdiction."²⁸

As a result, the court held "that in the absence of any language to the contrary, the fact that a foreign corporation has registered to do business under the Act does not mean that the corporation has thereby consented to general jurisdiction over all causes of action, including those

15. *Id.* at 1559, n. 4.

16. *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1778 (2017).

17. *Id.* at 1775.

18. *Id.* at 1780 (citing *Goodyear*, 131 S. Ct. at 2846).

19. *Id.* at 1781.

20. *Id.* at 1782.

21. *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶ 1.

22. *Id.* at ¶¶ 5-7.

23. *Id.* at ¶ 15.

24. *Id.* at ¶ 6.

25. *Id.* at ¶ 13 (citing 735 ILCS 5/2-209(c)).

26. *Id.* at ¶ 18.

27. *Id.* at ¶ 20.

28. *Id.* at ¶ 24.

that are completely unrelated to the corporation's activities in Illinois."²⁹

The next battle: The standard for evaluating specific jurisdiction

The battle over personal jurisdiction is far from over. *Tyrrell*, *Bristol-Myers Squibb*, and *Aspen American* left a number of open questions for courts to consider.

For example, practitioners have pointed out that in *Bristol-Myers Squibb* and *Aspen American*, the claims of the nonresident plaintiffs had no connection to the states where the suits were brought. As a result, the courts did not address what standard should be used to determine when a corporation's in-state actions and plaintiff's claims permit the assertion of specific jurisdiction.

However, in *M.M. ex rel. Meyers v. GlaxoSmithKline LLC* ("GSK"), the Illinois Appellate Court, First District applied the "lenient and flexible," "arising from," and "related to" standard to evaluate whether a defendant's in-state actions and plaintiff's claims establish specific jurisdiction.³⁰

In *GSK*, a group of plaintiffs – 12 non-Illinois and four Illinois residents – allegedly suffered injuries from using defendant's Paxil. GlaxoSmithKline is incorporated in Delaware, maintains its principal place of business in Delaware, and "has corporate and administrative headquarters in Pennsylvania and North Carolina."³¹ But the plaintiffs sued GlaxoSmithKline in Illinois.

GlaxoSmithKline moved to dismiss the nonresidents' suit for lack of specific jurisdiction. Specifically, GlaxoSmithKline

argued that Illinois lacked specific jurisdiction over these plaintiffs' claims because none of the events relevant to their claims occurred in Illinois:

- Plaintiffs did not serve as study subjects in Illinois;
- They did not receive Paxil prescriptions in Illinois;
- They did not ingest Paxil in Illinois; and
- They were not injured by Paxil in Illinois.

The court held that Illinois had specific jurisdiction over plaintiffs' claims because GlaxoSmithKline has purposeful contacts with Illinois, the plaintiffs' claims "arose from" acts or omissions by GlaxoSmithKline during clinical trials for the prescription drug Paxil, and that Illinois had an "indisputable interest in resolving litigation stemming, in part, from clinical trials held in Illinois, run by Illinois doctors on Illinois subjects."³²

Note that in a typical product liability case, specific jurisdiction is established because the product at issue was obtained, used, or manufactured in the forum state. Here, only 5 percent of GlaxoSmithKline's Paxil trials occurred in Illinois. But under the "lenient and flexible" standard, the court in *GSK* held that plaintiffs' claims "directly arose from or [were] related to" GlaxoSmithKline's Paxil trials in Illinois.³³ Specifically, the court noted that plaintiffs' injuries arose out of the deficiencies in the clinical trials and the inadequate warning label was "informed, in part, by the results of the Illinois clinical trials."³⁴

Other plaintiffs have followed suit and

are now making the case that courts have jurisdiction based on where defendants conduct their clinical drug studies or other actions, like an in-state distributor's activities.³⁵ If courts accept this reasoning, it would arguably contradict *Daimler* because corporations with nationwide operations would effectively be subject to jurisdiction for any claim that is "related to" their in-forum contacts.

Conclusion

Tyrrell, *Bristol-Myers Squibb*, and *Aspen American* reinforced *Daimler*'s general jurisdiction requirements, declined to extend specific jurisdiction, and narrowed consent to jurisdiction in Illinois. But these decisions left a number of open questions for courts, including the standard to be used when determining whether a defendant's in-state actions and plaintiff's claims establish specific jurisdiction.

GSK's petition for review was before the U.S. Supreme Court, but on October 2, 2017, the Supreme Court denied GSK's petition.³⁶ Thus, the next battle over personal jurisdiction could be the standard used in evaluating specific jurisdiction. ■

29. *Id.* at ¶ 27.

30. *M.M. ex rel. Meyers v. GlaxoSmithKline LLC*, 2016 IL App (1st) 151909, ¶ 56.

31. *Id.* at ¶ 6.

32. *Id.* at ¶ 75.

33. *Id.* at ¶ 51.

34. *Id.* at ¶ 52.

35. Robert Channick, *Supreme Court Ruling Could Make It Harder to File Class-Action Lawsuits Against Companies*, Chicago Tribune (June 22, 2017), available at <http://www.chicagotribune.com/business/ct-supreme-court-ruling-mass-actions-illinois-0625-biz-20170622-story.html>.

36. *GlaxoSmithKline LLC v. M.M. ex rel. Meyers*, No. 16-1171, 2017 WL 1153625 (U.S. Oct. 2, 2017).

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