

Daimler Ruling's Crucial Role in Recent Delaware Court Decision

November 30, 2016

Since the United States Supreme Court's decision in *Daimler AG v. Bauman* in 2014, general jurisdiction over a corporate defendant has become a [hot topic](#). See 134 S. Ct. 746 (2014). In most jurisdictions, it is no longer sufficient for a plaintiff to establish a corporate defendant was registered to do business in the jurisdiction at issue or that the corporate defendant had sales and/or derived revenue in the jurisdiction at issue. Rather, there is a heightened inquiry and heavier burden placed on a plaintiff.

The *Daimler* Court held that a corporate defendant is deemed "at home" for purposes of establishing general jurisdiction over it in the forum where it is incorporated and in the forum where it maintains its principal place of business. Outside of those two circumstances, a corporate defendant will be considered at home only in exceptional cases.

One such exceptional case, as noted by the *Daimler* Court, can be found in the *Perkins v. Benguet Consol. Mining Co.* case wherein a corporate defendant moved its operations to Ohio out of Japanese occupied Philippines during World War II. See 342 U.S. 437 (1952). In *Perkins*, the president of the corporate defendant company kept an office, maintained company files, and oversaw the company's activities in Ohio sufficient to render the defendant essentially at home in Ohio.

Many courts have interpreted the Court's opinion in *Daimler* to place a heavy burden on plaintiffs to present such an exceptional case. With such a heavy burden placed on plaintiffs, the question many defendants are asking is: what amount of discovery are plaintiffs entitled to take in order to establish general jurisdiction over a corporate defendant?

The Delaware Superior Court recently faced this very question. In April 2016, the Delaware Supreme Court issued a decision in *Genuine Parts Co. v. Cepec* limiting the circumstances in which a defendant is deemed to be subject to general jurisdiction in the State of Delaware pursuant to *Daimler*. 137 A.3d 123 (Del. 2016). Shortly thereafter, Defendant Union Carbide Corporation ("UCC") filed motions to dismiss for lack of personal jurisdiction pursuant to *Daimler* and *Cepec* in 211 cases pending in New Castle County, Delaware. The plaintiff in one of those cases – *Charles Kimble* – responded by serving written discovery requests and seeking the deposition of UCC's corporate representative. In addition, plaintiffs in six additional cases^[1] (out of the 211 with pending motions to dismiss) sought the deposition of The Dow Chemical Company ("Dow") alleging Dow, as a Delaware corporation and parent to UCC, held some information relevant to whether the Delaware Superior Court could exercise general jurisdiction over UCC.

UCC responded to written interrogatories and document requests providing its basic corporate information and publicly available documents detailing its limited contacts with Delaware and its relationship with Dow. However, UCC and Dow both filed separate motions to quash the depositions of their corporate representatives ("Motions"). In their Motions, UCC and Dow argued Plaintiffs failed to provide "some indication" of a plausible basis for their assertion that Delaware Superior Court could exercise general personal jurisdiction over UCC and Dow pursuant to *Daimler*.

Plaintiffs opposed UCC's and Dow's Motions and asserted a cross motion seeking to compel UCC to provide full and complete responses to interrogatories and document requests. The basis for Plaintiffs' opposition was that UCC's relationship with Delaware presented an exceptional case in that it is registered to do business in Delaware and substantially all of its revenue is derived through sales to its parent company, Dow, which is also a Delaware

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Corporation. Plaintiffs ignored the fact that UCC is neither incorporated in nor has its principal place of business in Delaware. Instead, it focused solely on the relationship UCC maintains with Dow to attempt to establish personal jurisdiction.

On October 1, 2016, the Special Master in Delaware Superior Court issued an opinion quashing the depositions of UCC's and Dow's corporate representatives and denying Plaintiffs' motion to compel. The Special Master relied on Delaware precedent requiring a plaintiff to establish an articulable, plausible theory by which the Delaware courts could exercise jurisdiction over UCC and determined Plaintiffs had put forth no such theory to entitle them to the discovery they sought.

In determining no additional discovery was warranted, the Special Master focused on the lack of exceptional circumstances present. It was undisputed that UCC's state of incorporation and principal place of business are outside of Delaware, UCC has no office or manufacturing facility in Delaware, and it does not own, operate or lease any real property in Delaware. The Special Master observed that Plaintiffs underestimated the rigorous test set forth in *Daimler* as Plaintiffs asserted only that UCC conducts business in Delaware through transactions with its parent company and Delaware corporation, Dow. Notably, the Special Master re-iterated the fact that *Daimler* essentially changed the landscape of the jurisdictional analysis by requiring more evidence than that necessary to simply establish a defendant conducted business in the forum state.

The Special Master's decision will hopefully help to pave the path in asbestos litigation. Despite a clear test to determine when a court may exercise general jurisdiction over a corporate defendant, plaintiffs continue to serve overbroad jurisdictional discovery seeking much of the information they already possess in an effort to seemingly conduct a fishing expedition into areas irrelevant to the personal jurisdiction analysis. The *Daimler* Court itself stated "it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home." 134 S. Ct. at 762 n. 20. Not only are plaintiffs' inquiries often irrelevant, but defendants are forced to expend significant costs engaging in such discovery in jurisdictions in which they do not legally belong.

[1] Plaintiffs *James Bailey, Francis Classon, James Davis, Susan Domino, Frank Dudley, and Kathleen Gloyne* filed one consolidated request to depose Dow's corporate representative on issues relating to whether Delaware courts could exercise personal jurisdiction over UCC.

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