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PRODUCT LIABILITY LAW & STRATEGY

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General Personal Jurisdiction in Aviation Cases After *Daimler*

By Steven R. Pounian and Justin T. Green

In its 2014 landmark decision *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the U.S. Supreme Court held that a corporation is only subject to general jurisdiction when it has such constant and pervasive affiliations with the state where the suit is brought that it can be deemed “at home” in that state. The Supreme Court held that a corporation’s “paradigm” homes are its place of incorporation and principal place of business and noted that “in an exceptional case” a corporation’s operations elsewhere “may be so substantial and of such a nature as to render the corporation at home in that State.” *Id.* at 760-61 & n.19.

Daimler has had a profound effect on aviation cases because they usually involve multi-jurisdictional contacts. Aviation accidents often occur in fortuitous locations and involve plaintiffs and defendants from different states or nations. A typical case may involve a crash in one jurisdiction, a pilot from a second, passengers from a third, an aircraft maintenance outfit from a fourth and an aircraft manufacturer from a fifth. Even before *Daimler*, it was frequently impossible to join all defendants in one action, but post- *Daimler* aviation cases invariably require plaintiffs to file multiple “protective actions” to guard against jurisdictional dismissals.

Daimler has increased the complexity and costs of the typical aviation case and the risk that multiple defendants may not be subject to jurisdiction in a single forum or, in the case of foreign defendants, any U.S. jurisdiction.

Daimler v. Bauman

Before *Daimler*, it was commonly understood that defendants were subject to general jurisdiction where they were “doing business” by having “continuous and systematic general business contacts with the forum state.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-16 (1984). In aviation cases, this jurisdictional test would usually be met in a state where an airline or manufacturer maintained offices or facilities, engaged in flight operations, or otherwise conducted continuous and

systematic business. After *Daimler*, an aviation plaintiffs' lawyer cannot confidently rely on these types of substantial contacts to confer jurisdiction.

Daimler is a corporate-friendly decision. The Supreme Court overturned the previous standard of "doing business" jurisdiction, which it deemed as "unacceptably grasping." *Daimler*, 134 S.Ct. at 761. While *Daimler* does not restrict general jurisdiction over an individual who happens to be served with process while on a trip away from his or her home, a corporation can be regularly present and conduct substantial business in a state yet completely evade jurisdiction for torts arising elsewhere. See *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1068 (9th Cir. 2014) (describing how "tag jurisdiction" applies to natural persons, but not corporations); see also *Burnham v. Superior Court of California*, 495 U.S. 604 (1990) (personal service of nonresident person in state is sufficient to confer jurisdiction.).

In *Daimler*, residents of Argentina brought suit in the Northern District of California against Daimler AG, a German company with its principal place of business in Germany. The suit alleged that Daimler AG was liable for the actions of its subsidiary Mercedes Benz Argentina, which allegedly collaborated with Argentine state security forces to kidnap, detain, torture and kill plaintiffs and their relatives during Argentina's "Dirty War" between 1976-1983. *Daimler*, 134 S. Ct. at 748. The plaintiffs argued that Daimler AG was present in California and that, alternatively, jurisdiction could be founded upon Mercedes Benz USA's (MBUSA) contacts, which allegedly acted as Daimler AG's agent. *Id.*

The district court granted Daimler AG's motion to dismiss for lack of jurisdiction, but the U.S. Court of Appeals for the Ninth Circuit reversed, holding that MBUSA was Daimler AG's agent and that MBUSA was subject to general jurisdiction in California, rendering Daimler AG subject to the jurisdiction of California courts. *Id.* at 752. The Supreme Court reversed, holding that Daimler AG is not amenable to suit in California.

Daimler surprised most practitioners by stating that the general jurisdiction test was not whether a defendant conducted substantial "continuous and systematic" business — the test that the Supreme Court itself had previously employed in its decision *Helicopteros Nacionales De Columbia, S.A. v. Hall*, 466 U.S. 408, 416 (1984) (The court examines defendants contacts with Texas to determine whether they are "the kind of continuous and systematic general business contacts" that justifies the exercise of general jurisdiction.). *Daimler* instead defined its "at home" test. *Daimler*, 134 S.Ct. at 761.

The court reasoned that a corporation operating in many places could hardly be deemed "at home" in all of them. It considered Daimler AG's contacts with California and compared them with its contacts in all of its other worldwide locations, and concluded that the California contacts were insufficient to make California its "home." The court held that even were MBUSA's substantial contacts to California attributable to Daimler, including MBUSA's multiple California-based facilities and substantial sales, it would not justify the court exercising jurisdiction because that would mean that general jurisdiction "would presumably be available in every other State in which MBUSA's sales are sizable." *Id.*

Decisions After *Daimler*

Daimler's impact is seen in a growing number of decisions where courts have dismissed actions because they found that the corporate defendants' business connections to the jurisdictions were not sufficient to justify general jurisdiction.

In *Brown v. Lockheed Martin*, 914 F.3d 619 (2d Cir. 2016), the U.S. Court of Appeals for the Second Circuit relied on *Daimler* in dismissing asbestos-related claims. The court found that even though Lockheed Martin was registered to do business in Connecticut, leased four business locations in Connecticut and employed numerous employees in that state, these “continuous and systematic” contacts with Connecticut were not sufficient to justify general jurisdiction. Lockheed Martin, the court found, was not “at home” in Connecticut. *Id.* at 623.

In *Siswanto v. Airbus S.A.S.*, 153 F. Supp. 3d 1024 (N.D. Ill. 2015), plaintiffs filed wrongful death claims in Illinois federal court against defendant aircraft manufacturer Airbus, a French company with its principal place of business in France, arising from the crash of Air Asia Flight 8591 into the Java Sea. Plaintiffs relied on Fed. R. Civ. P. 4(k)(1) (C), which permitted the court to consider Airbus’ contacts throughout the United States as opposed to only in the forum state. In their attempt to justify general jurisdiction, the plaintiffs noted that Airbus made substantial sales to companies in the United States and that its subsidiaries maintained a tremendous presence in the United States.

The court held that despite having contracts that “may show that Airbus has extensive contacts with the U.S. in the aggregate, they do not establish that the company is ‘essentially at home’ here.” *Id.* at 1028. While only a district court decision, *Siswanto* signals that the doors of U.S. courts may be closed in many circumstances to claims against foreign manufacturers, like Airbus, that do not arise in the United States.

In *Merritt v. Airbus Americas*, 202 F. Supp. 3d 294 (E.D.N.Y. 2016), a Brooklyn federal court found that neither Airbus S.A.S. nor Airbus Americas, Inc., a Delaware corporation with its principal place of business in Virginia, were subject to jurisdiction in New York in a case arising from personal injuries sustained on a flight between Boston and Washington, DC. *Id.* at 297. The court rejected the plaintiff’s jurisdictional arguments relating to the defendants’ advertising and business activities in New York and found that plaintiff had failed to demonstrate a nexus between those contacts and the injury. *Id.* at 301.

In *Lubin v. Delta Airlines*, No. 3:14-cv-648, 2015 WL 4611759 (S.D. Mich. July 31, 2015), the plaintiff was seriously injured while descending the stairs of a small jet aircraft that started to shake, causing her to fall. *Id.* at *1. She brought suit in Mississippi federal court naming Bombardier, the Canadian manufacturer with its principal place of business in Canada, asserting that Bombardier does frequent business in Mississippi in the form of marketing and advertising, flying planes in and out of Mississippi, and increasing its sales presence in Mississippi. The court found, however that Bombardier “at most, has limited passive connection with the state of Mississippi” and that there was no basis for asserting jurisdiction over Bombardier. *Id.* at *3.

The Ninth Circuit decision in *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1066 (9th Cir. 2014), is yet another post-*Daimler* decision where a U.S. court declined to find general jurisdiction over a foreign manufacturer. In *Martinez*, the plaintiff was a passenger on an airplane that crashed in Cuba, killing everyone aboard. ATR, a French company with its principal place of business in France, designed and manufactured the airplane. Plaintiffs sued ATR in federal court in California, alleging that ATR’s defective design and construction of the airplane caused the crash. To support general jurisdiction in California, the plaintiff exhibited: 1) defendant’s contracts “worth between \$225 and \$450 million” to sell airplanes to Air Lease Corp., a California corporation; 2) the sending of representatives to California to attend industry conferences to promote ATR products and meet with suppliers; and 3) the use of ATR airplanes on California routes. *Id.* at 1070.

The court dismissed the case based on *Daimler*, finding that ATR was not “essentially at home” in California because its California contacts are minor compared with its other worldwide contacts. *Id.* at 1071.

Impact on Aviation Practice

Daimler’s “at home” rule has limited litigation options for plaintiffs, increased the cost of litigation and is a boon to corporate defendants. Courts have begun to routinely dismiss cases against foreign aircraft manufacturers that arise from accidents outside the United States.

Daimler is likely the final step in the trend in personal jurisdiction analysis favoring specific over general jurisdiction. The constriction of general jurisdiction shows the reluctance of courts to hear claims that do not arise in the jurisdiction or otherwise have little connection to the jurisdiction. But the “doing business” test long provided a common sense rule that allowed a single forum for all claims arising from an accident, particularly in cases involving large multinational corporate defendants that conduct substantial business in the United States.

The *forum non conveniens* doctrine, which allowed an action to be dismissed in favor of an alternate forum, was available as a stopgap to protect defendants from abuse. But now, in cases involving foreign accidents and foreign defendants, it may be impossible for a plaintiff, barring the defendant’s consent to the jurisdiction, to establish personal jurisdiction over the defendant in a U.S. court even where the foreign defendant derives substantial benefits from its business activities in the jurisdiction. (Plaintiffs have argued, with varying success, that foreign defendants consented to general jurisdiction in a state when they registered to do business in the state. *See, e.g., The Rockefeller Univ. v. Ligand Pharm.*, 581 F. Supp. 2d 461, 466 (S.D.N.Y. 2008) (“This Court concludes that Ligand’s unrevoked authorization to do business and its designation of a registered agent for service of process amount to consent to personal jurisdiction in New York.”).)

Aviation cases have always faced unique jurisdictional challenges. *Daimler* has increased those challenges and has also increased the procedural complexity of the typical aviation case. Today, a relatively straightforward aviation case may need to go to the Judicial Panel on Multi-District Litigation so that the various filings around the United States may be joined before one court for consolidated pre-trial proceedings. *See* 18 U.S.C. § 1407. The need to file in various different jurisdictions necessarily creates complex conflicts of law questions and a likelihood that different liability and damages laws will apply in the same case. It is uncertain whether the *Daimler* court considered the consequences of its decision on aviation and other cases that inevitably involve multiple jurisdictions.

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