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Personal jurisdiction over non-resident class members: An overlooked defense in nationwide class actions?

Personal Jurisdiction Over Non-Resident Class Members: An overlooked defense in nationwide class actions? by Allen Garrett

Before the Supreme Court's landmark decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), courts frequently exercised general jurisdiction over nationwide class actions against non-resident corporate defendants, under the theory the non-resident corporate defendant's in-state contacts relative to the resident plaintiffs would be sufficient to exercise general jurisdiction over the nationwide class. Because *Daimler* significantly restricted general jurisdiction, essentially reducing it to the state of a defendant's incorporation or primary place of business, numerous courts have rejected the exercise of general personal jurisdiction over non-resident defendants.

Moreover, the same year it decided *Daimler*, the Supreme Court emphasized that specific jurisdiction focuses on a defendant's "suit-related conduct," as opposed to the plaintiff's relationship to the chosen forum. *Walden v. Fiore*, 134 S. Ct. 1115 (2014). Accordingly, this decision, combined with *Daimler*, forms a one-two punch in "multi-claimant" actions – cases where the claims of non-resident plaintiffs have been joined with similar claims of resident plaintiffs – potentially allowing a non-resident defendant to eliminate the claims of not only the non-resident named plaintiffs at the outset of the litigation, but the claims belonging to the non-resident class members, as well.

The Eastern District of Missouri, as the federal court encompassing the Circuit Court for the City of St. Louis (recently ranked by one commentator as the #1 Judicial Hellhole in the United States), handles a high number of multi-claimant cases. A number of recent decisions from this court have rejected claims of non-resident plaintiffs against non-resident defendants for a lack of jurisdiction. *See, e.g.*, *Keeley v. Pfizer Inc.*, No. 4:15-cv-00583-ERW, 2015 WL 3999488 (E.D. Mo. July 1, 2015); *Beard v. Smithkline Beecham Corp.*, No. 4:15-CV-1833 RLW, 2016 WL 1746113 (E.D. Mo. May 3, 2016). On October 25, 2016, yet another decision from this court rejected similar claims, ruling a non-resident plaintiff could not establish general or specific jurisdiction over a non-resident defendant. *Addelson v. Sanofi S.A.*, No. 4:16-cv-01277 ERW, 2016 WL 6216124 (E.D. Mo. Oct. 25, 2016).

Given these rulings, should a similar result obtain in nationwide class actions against non-resident defendants? Even before the Supreme Court's recent jurisdictional rulings in *Daimler* and *Walton*, commentators had questioned a single court's jurisdictional power to hear nationwide class actions, at least in cases not involving a federal statute providing for nationwide service of process. *See*, *e.g.*, Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action*

Fairness," 58 SMU L. Rev. 1313 (2005).

The Northern District of Illinois – another jurisdiction handling numerous class actions and other multi-claimant cases – recently granted a motion to dismiss the claims of non-resident plaintiffs against a non-resident defendant for lack of personal jurisdiction. *See Demaria v. Nissan North Am., Inc.*, No. 15 C 3321, 2016 WL 374145 (N.D. Ill. Feb. 1, 2016), *appeal dismissed*, No. 16-1761 (7th Cir. July 7, 2016). In *Demaria*, 17 named plaintiffs from 16 different states sought to press 5 claims on behalf of a nationwide class, as well as various state-law claims on behalf of a number of state classes.

Following *Daimler*, the *Demaria* court rejected general jurisdiction over the non-resident defendant. 2016 WL 374145, at *5-*6. Turning to specific jurisdiction, the court discussed *Walton* and held the non-resident's contact with the forum state provided jurisdiction over claims by resident plaintiffs but not claims by non-resident plaintiffs. *Id.* at *6-*7. The court further rejected the invocation of "pendent personal jurisdiction," finding it only applies where a claim under a statute providing for nationwide personal jurisdiction is joined with other claims sharing a common nucleus of operative facts. *Id.* at *7-*8. The *Demaria* court thus dismissed all of the state-specific claims asserted on behalf of non-resident plaintiffs, as well as the nationwide claims "to the extent they are brought on behalf of plaintiffs whose claims do not arise out of" the defendant's specific contacts with the forum state. *Id.* at *8.

Takeaway: Although corporate defendants quickly capitalized on *Daimler*'s limitations on general jurisdiction, nationwide class action defendants must also examine potential challenges to specific jurisdiction in cases where it is sued outside of its "home" state. These defendants may be able to significantly narrow the size of the putative class – and thus reduce the amount of potential exposure – through an early challenge to the court's specific jurisdiction over the claims of non-resident claimants, including non-resident class members.