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Daimler Turns Two: Personal Jurisdiction Over Out-Of-State Mass Tort Defendants In The Wake Of Daimler AG v. Bauman

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Commentary

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Before 2014, most courts and litigants assumed that corporations are subject to general personal jurisdiction – that is, jurisdiction over any case, even one having nothing to do with the forum state – in every state where they had continuous and systematic business contacts. That meant that large corporations could be sued in essentially any state on any claim. And that, in turn, sharply exacerbated the problem of forum-shopping in mass tort litigation, as it enabled plaintiffs from across the country to file large numbers of lawsuits in a few favored courts.

On January 14, 2014, however, the U.S. Supreme Court issued its decision in *Daimler AG v. Bauman*, 134 S. Ct. 746, which held that corporations generally are subject to general jurisdiction in only two states – their state of incorporation and the state of their principal place of business. This article analyzes the extent to which, over the past two years, courts have implemented *Daimler* to restrict the scope of general jurisdiction and thereby limit lawsuits to states with a genuine connection to the parties' dispute. It also examines various arguments that mass tort plaintiffs have made in an effort to evade *Daimler*'s geographic limitations.

1. The *Daimler* Decision

There are two types of personal jurisdiction – general and specific. “When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant’s contacts with the forum, the State has been said to be exercising ‘general jurisdiction’ over the defendant.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 n.9 (1984). By contrast, “when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant’s contacts with the forum, the State is exercising ‘specific jurisdiction’ over the defendant.” *Id.* at 415 n.8.

Before *Daimler*, most courts understood the law to be that “[a] defendant is subject to general jurisdiction when it has ‘continuous and systematic general business contacts’ with the forum state.” *uBID, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421, 425 (7th Cir. 2010) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-16 (1984)).¹

In *Daimler*, however, the Supreme Court held (in an opinion joined by eight Justices) that “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there” and that, “[w]ith respect to a corporation, the place of incorporation and principal place of business are ‘paradig[m] . . . bases for general jurisdiction.’” 134 S. Ct. at 760 (citations omitted). The Court declared that subjecting a corporation to general jurisdiction in every state in

which it engages in “a substantial, continuous, and systematic course of business” would be “unacceptably grasping.” *Id.* at 761. The Court also made clear that a company may be subject to general jurisdiction in a state other than its state of incorporation and principal place of business only in an “exceptional case,” if ever. *Id.* at n.19 (citing *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 447-49 (1952)).

As many courts have recognized, *Daimler* has substantially curtailed the scope and use of general jurisdiction.² Over the past two years, many courts – in mass tort litigation and elsewhere – have limited general jurisdiction to a defendant corporation’s place of incorporation and principal place of business,³ and routinely held that even “continuous and systematic” business in the forum state is no longer sufficient to establish general jurisdiction.⁴ Indeed, some courts have held that *Daimler* changed the law so much that defendants cannot be deemed to have waived a *Daimler*-based personal jurisdiction defense through conduct occurring before *Daimler* was issued.⁵

2. Plaintiffs’ Efforts to Circumvent *Daimler*

At first, plaintiffs sought to narrow or distinguish *Daimler*. Thus, some plaintiffs sought to limit *Daimler* to cases involving overseas, non-American plaintiffs, an overseas corporate defendant, or both. Other plaintiffs tried to squeeze into *Daimler*’s “exceptional case” exception, by arguing that a defendant’s business activities in the forum state were so substantial as to render it “at home” there. But courts have repeatedly held that the fact that *Daimler* involved plaintiffs and/or a defendant from outside the United States was simply “not material” to the Supreme Court’s analysis in *Daimler*.⁶ And almost all courts have found that evidence or allegations that the defendant did substantial business in the forum state does not make the case an exceptional one.⁷

As a result, more recent efforts to evade *Daimler*’s geographic limitations focus on two different kinds of arguments. First, plaintiffs have tried to persuade courts to expand the scope of specific personal jurisdiction. And second, litigants also have argued that by registering to do business in the forum state, corporate defendants have thereby effectively “consented” to jurisdiction, independent of *Daimler*’s due process limitations.

A. Efforts to Expand the Scope of Specific Jurisdiction

A number of plaintiffs have sought to limit *Daimler*’s impact by trying to expand the scope of specific jurisdiction. In some product liability cases, for example, plaintiffs allegedly injured by exposure to a defendant’s product outside the forum state have argued that specific jurisdiction exists because the defendant also sold the same product in the forum state, theorizing that the plaintiff’s claim “relates to” those sales because it involves the same product.

The California Supreme Court will be addressing this issue in *Bristol-Myers Squibb Co. v. Superior Court*, 175 Cal. Rptr. 3d 412 (Cal. App. 2014), *review granted and opinion depublished*, 180 Cal. Rptr. 3d 99 (Cal. 2014). There, 84 California residents and 575 residents of other states filed eight lawsuits against Bristol-Myers in San Francisco Superior Court, alleging injury resulting from exposure to the drug Plavix. Bristol-Myers argued that the court lacked personal jurisdiction over Bristol-Myers with respect to the claims of the non-California residents. The appeals court conceded that Bristol-Myers was not subject to general jurisdiction under *Daimler*, given that “we cannot effectively distinguish BMS’s extensive sales and research activities in California from the extensive sales activities of MBUSA in California as discussed in *Daimler*.” *Id.* at 424. But the appeals court instead held nonetheless that the Superior Court had *specific* jurisdiction over Bristol-Myers – even as to the non-California residents’ claims. Specifically, the court said that the “relatedness” test for specific jurisdiction was satisfied because “plaintiffs allege BMS’s Plavix sales in California have led to injuries to California residents that are the same as those suffered by the” non-resident plaintiffs – in other words, because “BMS sold [Plavix] to both resident plaintiffs and the [non-resident plaintiffs] as part of the distribution of Plavix in many states.” *Id.* at 434. The California Supreme Court has granted Bristol-Myers’ petition for review of that decision, and that appeal is pending.⁸

By contrast, an Illinois Circuit Court judge reached the opposite conclusion in *In re Plavix Related Cases*, 2014 Ill. Cir. LEXIS 1 (Ill. Ct. Aug. 11, 2014). In that matter, 16 Illinois residents and 486 residents of other states filed suits against Bristol-Myers and Sanofi alleging injury as a result of exposure to Plavix. The court held that, for specific jurisdiction to exist, “the plaintiff’s claim ‘must directly arise out of the contacts

between the defendant and the forum.” *Id.* at *25. And applying that Illinois test, the court held that “[w]hile Defendants established a large business network to facilitate the distribution of Plavix in Illinois, Plaintiffs have failed to establish any causal or logical link between their claims and Defendants’ Illinois operations.” *Id.* at *27.

Likewise, in *Robinson v. Johnson & Johnson*, No. BC531848 (Cal. Super. Ct. June 22, 2015), the Los Angeles Superior Court dismissed the claims of the numerous out-of-state plaintiffs alleging injury from trans-vaginal mesh products, finding that “the claims of the non-California plaintiffs have no logical connection with California.” The court reasoned that “defendant’s relationship with this forum can and should be tested plaintiff-by-plaintiff, and the motion [to dismiss] is only brought as to the non-California plaintiffs. . . . That the products and their disclosure warnings were the same or similar and that the product approval process with the federal Food and Drug Administration was common to all plaintiffs is not enough to make the jurisdictional facts relevant to a California plaintiff applicable to a non-California plaintiff.” Slip op. 13-14.⁹

In our view, it is highly unlikely that plaintiffs ultimately will succeed in establishing specific jurisdiction over claims arising from the defendant’s out-of-state conduct based on the argument that the defendant also engaged in the same conduct in the forum state, and that is true with respect to both single-plaintiff cases (like the Illinois cases) and multi-plaintiff cases (like the California lawsuits). Taken together, the Supreme Court’s decisions in *Walden v. Fiore*, 134 S. Ct. 1115 (2014), *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011), and *Daimler* itself make clear that, for specific jurisdiction to exist, the plaintiff’s claim must be directly based on conduct by the defendant occurring in, or targeted at, the forum state. In *Walden*, the Court held that “[t]he inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant ‘focuses on the relationship among the defendant, the forum, and the litigation,’” and thus “[f]or a State to exercise jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum State.” 134 S. Ct. at 1121 (citation omitted). In *Goodyear*, the Supreme Court explained that, under the doctrine of specific jurisdiction, jurisdiction “could be

asserted where the corporation’s *in-state activity* is ‘continuous and systematic’ and *that activity* gave rise to the episode in suit.” 131 S. Ct. at 2853. Indeed, *Goodyear* emphasized that even “regularly occurring sales of a product in a state do not justify the exercise of jurisdiction over a claim *unrelated to those* sales.” *Id.* at 2853 n.6 (emphasis added). And applying these principles to the case before it, the Court in *Goodyear* held that *Goodyear* was not subject to specific jurisdiction in North Carolina over a claim arising from its sales of tires overseas, even though it had also sold tens of thousands of tires in North Carolina. And in *Daimler*, the Court reiterated that “specific jurisdiction . . . can be asserted where a corporation’s in-state activities are not only ‘continuous and systematic, but also give rise to the liabilities sued on.” 134 S. Ct. at 761.

Indeed, the theory that a manufacturer is subject to specific jurisdiction for claims arising from out-of-state sales simply because it also made in-state sales is really just a thinly-disguised effort to evade the recent decisions restricting the scope of general jurisdiction. But *Goodyear* unequivocally rejected this “sprawling view of general jurisdiction” that “any substantial manufacturer or seller of goods would be amenable to suit, on any claim for relief, wherever its products are distributed.” 131 S. Ct. at 2856. And in *Daimler*, the Supreme Court held that, except perhaps in an “exceptional case,” general jurisdiction over a corporation exists only in its state of incorporation and principal place of business (*i.e.*, where it is “at home”), not in each state where it engaged in “substantial, continuous, and systematic course of business.” 134 S. Ct. at 761. Given these rulings, there is little reason to think that the court will countenance an exception where those in state sales involved the same product at issue in the lawsuit ? an exception that, in an age of nationwide corporations selling the same product in many states, would swallow the *Daimler* rule.

B. Arguments for Jurisdiction Based on “Consent-by-Registration”

The second way that plaintiffs have sought to circumvent *Daimler* is by arguing that a corporation’s compliance with the forum state’s business registration statute operates as a “consent” to general jurisdiction, independent of *Daimler*’s due process limitations. The corporate laws of every state require foreign corporations to register and appoint an agent for service of process before transacting certain kinds of business. Before

Daimler, numerous courts had reached conflicting decisions as to whether a corporation's compliance with such statutes, by itself, constitutes "consent" to personal jurisdiction. And those conflicting decisions have continued post-*Daimler*. Thus, a number of courts have held that *Daimler* now makes it clear that compliance with a business registration statute cannot, standing alone, be construed as consent to general jurisdiction.¹⁰ But other courts have held to the contrary that *Daimler* did not address, and thus does not preclude, construing registration as consent to general jurisdiction.¹¹

In our view, plaintiffs' argument for general jurisdiction by "consent" based on state registration is unlikely to prevail in the long run. As the Supreme Court has instructed, "[a] state court's assertion of jurisdiction exposes defendants to the State's coercive power, and is therefore subject to review for compatibility with the Fourteenth Amendment's Due Process Clause." *Good-year*, 131 S. Ct. at 2850. Accordingly, every exercise of general jurisdiction over a foreign corporation must be examined in terms of the limitations established by *Daimler*. *Daimler* held that subjecting a corporation to general jurisdiction simply because it did business in the forum state violates due process. Given *Daimler*'s holding that it would be "unacceptably grasping" for a state to assert general jurisdiction over a company simply because it is engaged in a regular course of business in the state, it would be just as unacceptably grasping" for a state to require a company to consent to general jurisdiction as a condition for doing business in the state.¹²

Moreover, the "unconstitutional conditions" doctrine compels precisely that conclusion. Under that doctrine, a state may not "require a corporation, as a condition precedent to obtaining a permit to do business within the State, to surrender a right and privilege secured to it by the Constitution." *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2596 (2013). Thus, it would be an unconstitutional condition for a state to require a corporation, as a condition of obtaining authorizing to do business, to give up its due process right against being subjected to general jurisdiction outside its principal place of business and state of incorporation.¹³

A case presently on appeal to the Supreme Court of Delaware, *Genuine Parts Company v. Cepec*, may be an important appellate bellwether for the post-*Daimler*

viability of this theory of "consent" jurisdiction. In that case, the Delaware Superior Court relied on its recent order in another case which held that, notwithstanding *Daimler*, "express consent – by registering to do business in a state in accordance with state statutes – remains a valid basis for jurisdiction."¹⁴ The Superior Court also refused to certify that order for immediate review, holding that its "decision applied settled Delaware law."¹⁵ But the Delaware Supreme Court accepted the defendant's petition for such review, explaining that "this interlocutory appeal raises an important issue regarding the application of the law of personal jurisdiction in a situation this Court has not addressed on a prior occasion." Del. Sup. Ct. No. 528, 2015, Slip op. at 2 (Oct. 13, 2015). The Delaware Supreme Court recently held oral argument, during which it raised substantial questions about the plaintiffs' position, and a decision is expected shortly.

At bottom, because *Daimler* itself did not directly address the question of consent jurisdiction, and because both state and federal courts appear irreconcilably split on the question, it may well take another Supreme Court decision to resolve the issue. Until then, courtroom battles over consent-by-registration jurisdiction will likely continue.

3. Conclusion

Daimler has led to a substantial reduction in the assertion of general jurisdiction over corporate defendants, and this is true in mass tort as well as other kinds of cases. To be sure, efforts to narrow or even eviscerate *Daimler* are by no means quashed. Given that most large corporations sell the same products in many if not all states, arguments to expand specific jurisdiction to any lawsuit that is, in some broad sense, "related" to the defendant's in-state conduct likewise would, if accepted, reintroduce general jurisdiction under a different name. Moreover, given the ubiquity of state laws requiring non-resident companies to register and/or to appoint an agent for service of process, "consent" arguments threaten as a practical matter to undo *Daimler*'s core rejection of the "continuous and systematic business contacts" test for general jurisdiction. Yet because those arguments lack a firm legal foundation, and because the Supreme Court is unlikely to look favorably on arguments that effectively would nullify its *Daimler* decision, those efforts will likely fail as the post-*Daimler* caselaw becomes more firmly settled.

Endnotes

1. See also, e.g., *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1171 (9th Cir. 2006) (“In the context of general jurisdiction, minimum contacts exist where a defendant has ‘substantial’ or ‘continuous and systematic’ contacts with the forum state, even if the case is unrelated to those contacts.”); *In re Asbestos School Litig.*, 1990 U.S. Dist. LEXIS 2675, at *25-26 (E.D. Pa. Mar. 2, 1990) (“a court may exercise general personal jurisdiction over a nonresident corporation when it conducts the carrying on of a continuous and systematic part of its general business within the Commonwealth, even if the cause of action is unrelated to the defendant’s activities in the Commonwealth”) (citations omitted).
2. See, e.g., *Brown v. Lockheed Martin Corp.*, 2016 U.S. App. LEXIS 2763, at *15 (2d Cir. Feb. 18, 2016) (although they might have sufficed under the more forgiving standard that prevailed in the past, Lockheed’s contacts fail to clear the high bar set by *Daimler* to a state’s exercise of general jurisdiction”); *In re Asbestos Products Liab. Litig. (No. VI)*, 2014 WL 5394310, at *3 (E.D. Pa. Oct. 23, 2014) (*Daimler* “substantially curtailed the application of general jurisdiction over corporate defendants”); *Robinson v. Johnson & Johnson*, No. BC531848 (Cal. Super. Ct. June 22, 2015) (“[I]t seemed settled law that a large multi-state corporate entity with a substantial physical presence in a given state would itself be subject to the assertion of general jurisdiction. But all of these long accepted assumptions as to the nature of in-personam jurisdiction analysis were set off kilter when the United States Supreme Court issued its decision in *Daimler*.”); *Neeley v. Wyeth LLC*, 2015 WL 1456984, at *2 (E.D. Mo. Mar. 30, 2015) (*Daimler* “does require a tighter assessment of the standard than perhaps was clear from *Goodyear*”).
3. See, e.g., *Barron v. Pfizer, Inc.*, 2015 U.S. Dist. LEXIS 136020, *3-4 (E.D. Mo. Oct. 6, 2015); *Keeley v. Pfizer Inc.*, 2015 U.S. Dist. LEXIS 85282, at *4 (E.D. Mo. June 1, 2015) (“The Supreme Court has limited general jurisdiction for a corporation to its place of incorporation or principal place of business except in an ‘exceptional case.’”); *Clark v. Lockheed Martin Corp.*, 2016 U.S. Dist. LEXIS 1000 (S.D. Ill. Jan. 6, 2016) (dismissing asbestos plaintiffs’ claims against numerous out-of-state defendants for lack of personal jurisdiction).
4. See, e.g., *Lanham v. Pilot Travel Ctrs., LLC*, 2015 U.S. Dist. LEXIS 117497, at *5-6 (D. Ore. Sept. 2, 2015) (“A corporation’s ‘continuous activity of some sort’ in the forum state is insufficient to subject the corporation to general jurisdiction.”); *Clarke v. Pfizer, Inc.*, 2015 U.S. Dist. LEXIS 118850, at *4 (E.D. Mo. Sept. 8, 2015) (“Even if Defendants marketed and sold Zolofit in Missouri, that does not make their connections with the state ‘continuous and systematic as to render them essentially at home’ here.”); *Neeley, supra*, 2015 WL 1456984, at *3 (“*Daimler* clearly rejects [the] proposition” that “every foreign corporation transacting business in the state of Missouri would be subject to general jurisdiction here”); *Kraft v. Johnson & Johnson*, 2015 U.S. Dist. LEXIS 45650, at *15 (S.D.W. Va. Apr. 8, 2015) (“the argument that the defendants market and sell large amounts of products in the forum is unavailing for the purposes of general jurisdiction”); *Manley v. Premium Spray Prods., Inc.*, 2015 U.S. Dist. LEXIS 42485, at *7 (E.D. Pa. Mar. 31, 2015) (“the sale of a company’s products in a particular state does not, in and of itself, establish general jurisdiction over the company in that state”).
5. See *Gucci Am., Inc. v. Bank of China*, 768 F.3d 122, 136 (2d Cir. 2014) (personal jurisdiction defense was not waived because prior to *Daimler*, defendants were deemed subject to general jurisdiction if they had engaged in a “continuous and systematic course of doing business in New York”); *7 W. 57th St. Realty Co., LLC v. Citigroup, Inc.*, 2015 WL 1514539, at *4-7 (S.D.N.Y. Mar. 31, 2015) (“*Daimler* effected a change in the law, providing defendants . . . with a personal jurisdiction defense that was previously unavailable to them.”); but see *American Fid. Assur. Co. v. Bank of N.Y. Mellon*, 2016 U.S. App. LEXIS 892 (10th Cir. Jan. 20, 2016) (holding that Tenth Circuit caselaw had already employed the standard articulated in *Daimler*).
6. *Lanham*, 2015 U.S. Dist. LEXIS 117497, at *7-8; accord *Brown*, 2016 U.S. App. LEXIS 2763, at *24-25 (“We perceive no sound basis for restricting *Daimler*’s (or *Goodyear*’s) teachings to suits brought by international plaintiffs against international corporate defendants.”); *Hid Global Corp. v. Isonas, Inc.*, 2014 U.S. Dist. LEXIS 56024, at *9-10 (C.D. Cal. Apr. 21, 2014) (“Although HID argues that *Daimler* is inapposite because it refers to an international corporation being sued in the United States, this distinction is

immaterial. The *Daimler* opinion makes clear that a ‘foreign’ corporation is one either outside the United States or a sister state to the forum state.”); *Young v. Daimler AG*, 228 Cal. App. 4th 855, 865 (Cal. App. 2014) (rejecting argument that *Daimler* “should be confined to its particular facts ? that is, to cases involving foreign parties based on events occurring entirely outside the United States”). Indeed, Justice Sotomayor’s concurring opinion in *Daimler* expressly recognized that “the principle announced by the majority would apply equally to preclude general jurisdiction over a U.S. company that is incorporated and has its principal place of business in another U.S. State.” 134 S. Ct. at 773 n.12 (Sotomayor, J., concurring).

7. In fact, *Daimler* itself specifically held that “*Daimler*’s activities in California plainly [did] not approach that [‘exceptional’] level” even though *Daimler* annually did billions of dollars of business in California. 134 S. Ct. at 761 n.9; see, e.g., *Xilinx, Inc. v. Papst Licensing GmbH & Co. KG*, 2015 U.S. Dist. LEXIS 90730, at *15 (N.D. Cal. July 9, 2015) (noting *Daimler* holding); *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (no personal jurisdiction despite hundreds of millions of dollars in business).
8. In *Waite v. AII Acquisition Corp.*, Case No. 15-62359 (S.D. Fla. Mar. 10, 2016), the court held that defendant Union Carbide was subject to specific jurisdiction in Florida, even though the plaintiff’s alleged exposure to asbestos-containing products occurred in Massachusetts, because Union Carbide had sold the same asbestos-containing products in Florida and the plaintiff’s injury did not manifest itself until after the plaintiff had moved to Florida. Union Carbide has filed a motion for reconsideration, which is pending. (Notably, the court’s ruling on specific jurisdiction came in an order in which the court reversed its prior ruling that Union Carbide was subject to general jurisdiction in Florida – a ruling that Union Carbide had challenged in an earlier reconsideration motion.)
9. In a similar vein, some plaintiffs have argued that courts can adjudicate claims by additional out-of-state plaintiffs based on the idea of “pendent” specific jurisdiction. Specifically, they have argued that because the court has specific jurisdiction over the defendant with respect to the claims of in-state plaintiffs, the court has “pendent” specific jurisdiction over the additional claims in the same case filed on behalf of out-of-state plaintiffs – even

though the court would not have specific jurisdiction over the defendant if those out-of-state plaintiffs’ claims were brought on their own. Although the courts in *Bristol-Myers* and *In re Plavix* did not adopt that reasoning, the court in *Tulsa Cancer Inst., PLLC v. Genentech, Inc.*, No. 15-CV-158 (N.D. Okla. Oct. 6, 2015), initially did. In that case, the Oklahoma plaintiffs sought to add six additional plaintiffs from other states. The court held that because it had specific jurisdiction over the defendant with respect to the Oklahoma plaintiffs’ claims, it had “pendent” personal jurisdiction over the out-of-state plaintiffs’ claims because they arose “from the same nucleus of operative facts” as the Oklahoma plaintiffs’ claims. Slip op. at 7. On reconsideration, however, the court changed its mind, holding that although the plaintiffs shared common facts, “such commonality between claims is not sufficient to support the exercise of specific jurisdiction.” 2016 U.S. Dist. LEXIS 3512, at *9 (N.D. Okla. Jan. 12, 2016) (also citing other cases). See also *DeMaria v. Nissan North Am., Inc.*, 2016 U.S. Dist. LEXIS 11295 (N.D. Ill. Feb. 1, 2016) (rejecting argument for pendent personal jurisdiction over out-of-state plaintiffs based on in-state plaintiff).

Alternatively, in at least one pending case, *BNSF Railway Co. v. Superior Court*, 185 Cal. Rptr. 3d 391 (Cal. App. 2015), plaintiffs have argued further that, as a matter of judicial efficiency, they should be able to sue BNSF as well as all other allegedly responsible defendants in a single forum, even though BNSF is not subject to general jurisdiction in California under the ordinary *Daimler* principles and their claims against BNSF arose in Kansas. The Court of Appeal disagreed, holding that “the due process rights of defendants cannot vary with the types of injury alleged by plaintiffs. Our analysis must focus on ‘the relationship among the defendant, the forum, and the litigation’, and that relationship here is simply not enough to render petitioner ‘at home’ in California such that the exercise of general jurisdiction over actions unrelated to petitioner’s forum activities is warranted.” 185 Cal. Rptr. 3d at 401 (citation omitted). The California Supreme Court has granted review but deferred any further action pending the disposition of *Bristol-Myers v. Superior Court*. See *BNSF Railway Co. v. Kralovetz*, 189 Cal. Rptr. 3d 854 (Cal. 2015). Elsewhere, however, this theory has been rejected. See also *Weisblum v. Prophase Labs, Inc.*, No. 14-CV-3587 (S.D.N.Y. Feb. 20, 2015) (dismissing consumer class action fraud claims by California residents for lack of general jurisdiction over defendant while retaining such claims by New York residents).

10. See, e.g., *Public Impact, LLC v. Boston Consulting Group, Inc.*, 2015 U.S. Dist. LEXIS 101398, at *13-14 (M.D.N.C. Aug. 4, 2015) (noting that *Daimler* held that continuous and systematic business contacts with a state are not sufficient to establish general jurisdiction and that “[a]t least some courts have interpreted *Daimler* to mean that a defendant’s mere conformance with a State’s business registration statute ‘cannot constitute consent to jurisdiction’ and therefore is not sufficient for general jurisdiction”); *Astrazeneca AB v. Mylan Pharms., Inc.*, 2014 U.S. Dist. LEXIS 156660, at *14 (D. Del. Nov. 5, 2014) (“In light of the holding in *Daimler*, the court finds that Mylan’s compliance with Delaware’s registration statutes – mandatory for *doing business* within the state – cannot constitute consent to jurisdiction.”); *Smith v. Union Carbide Corp.*, No. 1422-CC00457, Slip op. at 5 (Mo. Cir. Ct. Jan. 12, 2015) (“The Court also notes that service on a foreign corporation’s registered agent in Missouri . . . does not automatically establish general personal jurisdiction. Plaintiff still must show that the exercise of general personal jurisdiction over the foreign corporation complies with the Due Process Clause of the United States Constitution.”); *Surita v. AM Gen. LLC*, No. 15-C-7164, Slip op. at 5 (N.D. Ill. Nov. 4, 2015) (asbestos plaintiffs’ argument for jurisdiction based on defendant’s registration to do business “is unavailing, especially in light of *Daimler*”).
11. See, e.g., *Otsuka Pharmaceutical Co. v. Mylan, Inc.*, 2015 U.S. Dist. LEXIS 35679, at *34 (D.N.J. Mar. 23, 2015) (“Mylan Inc. and Mylan Pharma consented to the Court’s jurisdiction by registering to do business in New Jersey, by appointing an in-state agent for service of process in New Jersey, and by actually engaging in a substantial amount of business in this State”); *Mitchell v. Eli Lilly & Co.*, 2016 U.S. Dist. LEXIS 10675, at *24 (E.D. Mo. Jan. 29, 2016) (“by registering to do business in Missouri and maintaining an agent for service of process here, GlaxoSmithKline has ‘consent[ed] to the jurisdiction of [Missouri’s] courts for any cause of action, whether or not arising out of activities within the state.”). In *Acorda Therapeutics, Inc. v. Mylan Pharms., Inc.*, 2015 U.S. Dist. LEXIS 4056, at *15 (D. Del. Jan. 14, 2015), the district court held that “*Daimler* does not eliminate consent as a basis for a state to establish general jurisdiction over a corporation which has appointed an agent for service of process in that state, as is required as part of registering to do business in that state.” On appeal, however, the Federal Circuit upheld the decision on the basis of specific jurisdiction without reaching the issue of consent jurisdiction, although a concurring judge agreed with the district court that Mylan was subject to general jurisdiction on the basis of consent. 2016 U.S. App. LEXIS 4942 (Fed. Cir. Mar. 18, 2016).
12. In espousing the view that registration to do business constitutes consent to general jurisdiction, some litigants and judges have cited the Supreme Court’s 1917 ruling in *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), as binding precedent. But that case was decided long before the Supreme Court expressly held that “all assertions of state-court jurisdiction must be evaluated according to the [due process] standards set forth in *International Shoe* and its progeny” and that “[t]o the extent that prior decisions are inconsistent with this standard, *they are overruled.*” *Shaffer v. Heitner*, 433 U.S. 186, 212 & n.39 (1977) (citing *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)) (emphasis added).
13. Put otherwise, compliance with a registration statute cannot properly be viewed as “consent.” See, e.g., Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343 (2015). An alternative argument that some plaintiffs have made post-*Daimler* is that the defendant had waived any objection to general jurisdiction by appearing in and defending earlier cases in the same forum. Courts have rejected this argument, which has no plausible basis. See, e.g., *Jacobs v. A-C Prod. Liab. Trust*, 2014 U.S. Dist. LEXIS 33768, at *28 (E.D. Pa. Mar. 11, 2014) (“[P]laintiffs have not produced any *case-specific* evidence of record identifying which defendants *in the instant cases* actually elected to make the strategic legal decision to waive the defense of lack of personal jurisdiction.”) (emphases added); *In re Asbestos Litig.*, 2015 WL 556434, at *5 (Del. Super. Jan. 30, 2015) (“[F]amiliarity with the court system [from litigating prior cases] is insufficient to render a defendant at home in Delaware.”).
14. *Cepec v. Advance Auto Parts, Inc.*, No. N15C-02-184 (Del. Super. Ct. Aug. 31, 2015), citing *Hudson v. Int’l Paper Co.*, 2015 WL 5016493 (Del. Super. Ct. Aug. 25, 2015).
15. *Cepec*, *supra* note 15, Order of Sept. 24, 2015, Slip op. at 5. ■

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