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## **PERSONAL JURISDICTION**

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## PERSONAL JURISDICTION

A client’s first question to her lawyer is often about forum choice: “Can I sue at home?” To answer that question, the lawyer must first consider whether the defendant is subject to personal jurisdiction in the state where the plaintiff seeks to file suit.

Because states (including Texas) have enacted long-arm statutes that reach as far as Due Process, the question of personal jurisdiction in a particular case is almost always a constitutional one.<sup>1</sup> And the United States Supreme Court’s jurisdictional jurisprudence has led to narrow, fact-based decisions that defy predictability. Thus, the answer to the client’s threshold question of whether the defendant can be sued in a particular state is often astonishingly difficult to answer.

The United States Supreme Court has issued six personal jurisdiction opinions in the last six years, after a hiatus of over 30 years. In three of these opinions, *Goodyear Dunlop Tires Operations, S.A. v. Brown*,<sup>2</sup> *Daimler AG v. Bauman*,<sup>3</sup> and *BNSF Railway Co. v. Tyrrell*,<sup>4</sup> the Court addressed general (or “all-purpose”) jurisdiction and substantially limited the circumstances under which a state may constitutionally exercise general jurisdiction over non-resident corporations to instances in which the corporation is “at home”—i.e. where it is incorporated and where its principal place of business is located. As a result, it has become fairly easy to predict general jurisdiction cases, and there are fewer of them.

The other three cases addressed specific (or “case-linked”) jurisdiction, where the defendant does not have general contacts with the state, but the suit arises out of or relates to the defendant’s contacts with the forum. Specific jurisdiction is especially contentious in tort cases where a foreign defendant’s out-of-state tortious conduct injures forum plaintiffs. Lawyers, judges and academics held high hopes that the Supreme Court would provide some guidance in these three opinions, but it did not. *J. McIntyre Mach., Ltd. v. Nicaastro*<sup>5</sup> leaves us with no agreed upon analysis for stream-of-commerce jurisdiction. *Walden v. Fiore*<sup>6</sup> suggests the “effects” theory of specific personal jurisdiction may be more limited than some had interpreted it to be. And *Bristol Myers Squibb Co., v. Superior Court of California*<sup>7</sup> rejects the “sliding scale” approach but provides no guidance as to the proper approach for the “nexus” requirement in the specific jurisdiction analysis. The Supreme Court granted certiorari in two cases that raise the nexus requirement—*Ford Motor Co. v. Montana Eighth Judicial District Court*<sup>8</sup> and *Ford Motor Co. v. Bandemer*.<sup>9</sup> These cases were to be argued together in April 2020, but due to COVID-19, argument has been postponed until sometime next Term. So, for now, the specific jurisdiction opinions provide little guidance for future cases, leaving many questions unanswered.

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<sup>1</sup> TEX. CIV. PRAC. & REM. CODE § 17.042; see *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 412-413 (1984) (“[T]he Texas Supreme Court first held that the State’s long-arm statute reaches as far as the Due Process Clause of the Fourteenth Amendment permits.”).

<sup>2</sup> 564 U.S. 915 (2011).

<sup>3</sup> 134 S. Ct. 746 (2014).

<sup>4</sup> 137 S. Ct. 1773 (2017).

<sup>5</sup> 564 U.S. 873 (2011).

<sup>6</sup> 134 S. Ct. 1115 (2014).

<sup>7</sup> 137 S. Ct. 1773 (2017).

<sup>8</sup> Case No. 19-368.

<sup>9</sup> Case No. 19-369.

The Texas Supreme Court has also been busy with appeals of special appearance orders involving personal jurisdiction issues. In 2016, the court decided three specific jurisdiction cases. *TV Azteca, S.A.B. de C.V. v. Ruiz*,<sup>10</sup> and *Searcy v. Parex Resources, Inc.*<sup>11</sup> involve *Walden*'s "effects" theory for defendants with indirect contacts with Texas; and *Cornerstone Healthcare Group Holding, Inc. v. Nautic Management VI, L.P.*,<sup>12</sup> involves jurisdiction over parent and subsidiary corporations. In 2017, the court decided one more, *M&F Worldwide Corp. v. Pepsi-Cola Metropolitan Bottling Company, Inc.*,<sup>13</sup> where the court found no specific jurisdiction in a complex factual situation where defendants entered a settlement agreement with Texans to settle a New York lawsuit. In 2020 the court heard oral argument in *Luciano v. Sprayfoampolymers.com, LLC*<sup>14</sup> which raised issues of stream of commerce. That case has been abated and removed from the court's docket, however.

## I. A BRIEF HISTORY OF PERSONAL JURISDICTION JURISPRUDENCE.

Traditionally, defendants could be sued in the state of their domicile, and in any state in which they were "present."<sup>15</sup> *Pennoyer*'s limitation on a states' assertions of jurisdiction over nonresidents was justified under notions of sovereignty—a state had to respect the rights of its sister states as co-equal sovereigns in a federal system.<sup>16</sup> Over time, however, the notions of "presence" expanded, and notions of sovereignty were replaced by notions of fairness. Under the fairness notions of *International Shoe*, non-resident defendants could be sued in the forum state if they had "certain minimum contacts ... such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"<sup>17</sup>

Ultimately, the Court developed two subsets of personal jurisdiction under the *International Shoe* rubric—"specific" and "general."<sup>18</sup> General or "all-purpose" jurisdiction permits a court to assert jurisdiction over a defendant based on forum contacts unrelated to the cause of action (such as domicile). Specific or "case-linked" jurisdiction requires that the cause of action "arise from" or be "related to" the defendant's forum contacts. As the Court most recently said, specific jurisdiction requires an "affiliatio[n] 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."<sup>19</sup> When a court exercises general jurisdiction, the court may entertain *any* claim filed against the defendant. The jurisdictional inquiry is

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<sup>10</sup> *TV Azteca, S.A.B. de C.V. v. Ruiz*, 494 S.W.3d 109 (Tex. App.—Corpus Christi-Edinburg 2014) (mem. op.), affirmed, 490 S.W.3d 29 (Tex. 2016)

<sup>11</sup> 496 S.W.3d 58 (Tex. 2016).

<sup>12</sup> 493 S.W.3d 65 (Tex. 2016).

<sup>13</sup> 512 S.W.3d 878 (Tex. 2017).

<sup>14</sup> No. 18-0350.

<sup>15</sup> See *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877).

<sup>16</sup> *Id.*

<sup>17</sup> *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

<sup>18</sup> *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, nn.8, 9 (1984).

<sup>19</sup> *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915, 919 (2011), quoted in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1780 (2017).

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