

Establishing General Jurisdiction Post-*Daimler* Using Waiver or Consent



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Related Practice Areas

- Subrogation & Recovery

Determining where to file suit in a subrogation claim can have implications both monetarily and for convenience. Courts must have jurisdiction over a defendant for the case to proceed. The easiest path to jurisdiction is typically specific jurisdiction where actions by the defendant relating to the actionable conduct occurred in the jurisdiction. Before 2014, plaintiffs also used general jurisdiction to keep defendants, typically manufacturers, in a jurisdiction of plaintiff's choosing. After a U.S. Supreme Court decision in 2014, however, things have changed, and plaintiffs need to be much more careful in determining where jurisdiction can be obtained.

In 2014, the U.S. Supreme Court evaluated general personal jurisdiction in *Daimler AG v. Bauman*, 134 S.Ct. 746, 187 L.Ed. 2d 624 (2014). Essentially, the Supreme Court narrowed the ability of plaintiffs to use general jurisdiction to haul a defendant into a foreign jurisdiction. The Court did so by restricting general personal jurisdiction over a foreign corporation to where the corporation was "essentially at home." In the Court's opinion, a corporation is generally "at home" in its principal place of business and its place of incorporation.

Two recent decisions, one from the Supreme Court of Colorado and the other from the Eastern District of Pennsylvania, reflect how state and federal courts and litigants are dealing with the effects of the Supreme Court's opinion. In *Magill v. Ford Motor Co.*, 2016 Colo. LEXIS 933 (Col. September 12, 2016), the Colorado Supreme Court concluded that the record before it did not support a finding that Ford Motor Company was essentially at home in Colorado and therefore was not subject to general personal jurisdiction in Colorado. The court did not reach the issue whether Ford was subject to specific jurisdiction, which is typically the primary method by which a plaintiff seeks to establish jurisdiction over the defendant. Nevertheless, the decision in *Magill* is interesting as it is difficult to imagine that many foreign manufacturers could be considered at home in Colorado if a manufacturer such as Ford is not.

A federal district court judge sitting in the Eastern District of Pennsylvania recently concluded, in *Bors v. Johnson & Johnson*, 2016 U.S. Dist. LEXIS 128259 (E.D. Pa. September 20, 2016), that a defendant was subject to general jurisdiction in Pennsylvania. The issue in *Bors* was whether registering as a foreign corporation in Pennsylvania was sufficient to establish jurisdiction. Judge Kearney observed that courts can find personal jurisdiction in three ways: consent to general jurisdiction, general jurisdiction, or specific jurisdiction. The court found that under Pennsylvania law the act of registering as a foreign corporation imposed the basis for personal jurisdiction because the Pennsylvania statute regarding foreign registration specifically notifies registrants of the effect of qualifying as a foreign corporation. 42 Pa. C.S.A. § 5301. The court specifically held that the Supreme Court ruling in *Daimler* did not eliminate consent to general personal jurisdiction over a corporation registered due to do business in Pennsylvania.

The issue of consent was not discussed in *Magill*. The court did discuss whether venue was appropriate under the facts in a certain county in Colorado but never addressed whether the Colorado statute regarding registration would have placed a foreign corporation on notice as Pennsylvania's statute did.

Determining whether a potential defendant can be sued in a particular jurisdiction involves an analysis of several factors before deciding exactly where the suit can be filed and jurisdiction maintained. For international defendants, Cozen O'Connor is uniquely positioned to assess filing suit in their country of incorporation. The decisions in *Magill* and *Bors* reveal that the landscape is still shifting and settling following the Supreme Court's decision in *Daimler*.