



PLAINTIFFS CANNOT SKIRT *DAIMLER AG v. BAUMAN* WITH “PENDENT JURISDICTION” THEORY

by Eric L. Alexander

The U.S. Supreme Court’s decisions in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), and *Walden v. Fiore*, 134 S. Ct. 1115 (2014), have significantly curtailed plaintiffs’ ability to file suit in a state where the defendant allegedly caused an injury or is “at home.” In response, plaintiffs’ lawyers have pursued a variety of novel legal theories to skirt those decisions, including “pendent jurisdiction.” Under that theory, plaintiffs ask the court to append a defendant’s qualifying state contacts in relation to one plaintiff’s claims to the other plaintiffs’ claims, thus creating specific jurisdiction over the defendant for the claims of all plaintiffs regardless of their domicile. A federal Multidistrict Litigation (MDL) court recently rejected such an argument in a situation where the plaintiffs combined cases in order to defeat removal to federal court on diversity-jurisdiction grounds. *In re Testosterone Replacement Therapy Prods. Liab. Litig.*, ___ F. Supp. 3d ___, 2016 WL 640520 (N.D. Ill. Feb. 18, 2016).

Plaintiffs from nine states, including one from Missouri, brought suit in a Missouri state court against Abbott Laboratories and AbbVie alleging the companies’ AndroGel product caused personal injuries. Likely in anticipation of the suit being removed to federal court and then transferred to an MDL court in the Eastern District of Illinois, the plaintiffs’ lawyers added an Illinois resident in their group of plaintiffs. The defendants removed the suit to a Missouri federal court, and they then filed a motion to dismiss for lack of personal jurisdiction. The plaintiffs countered with a motion to remand to state court.

Before ruling on those motions, the Missouri federal court transferred the suit to the Illinois-based MDL. The MDL judge first decided that under *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 587-88 (1999), the court could consider the issue of personal jurisdiction when ruling on whether diversity existed among the properly-joined parties—an issue of subject-matter jurisdiction. 2016 WL 640520, **3-4. The plaintiffs did not contend that the Missouri court had general jurisdiction over the Illinois defendants under the standards articulated in *Bauman*. Instead, they claimed that the uncontested specific jurisdiction that the court had over the Missouri resident’s claim allowed jurisdiction to append to the claims of the other plaintiffs, including the one from Illinois who was included in the suit for purposes of defeating diversity. Under that rationale, complete diversity would not exist, requiring remand to the original state court.

Relying on *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the court held that “the specific personal jurisdiction inquiry in this case must be conducted separately for the claims of each individual plaintiff.” *Id.* at *4. The Illinois plaintiff did not suggest his claims arose from the defendant’s conduct in Missouri, so he argued that the Missouri plaintiff’s specific jurisdiction could still be imputed to him if their claims were properly joined and arose “out of the same series of transactions or occurrences.” *Id.* at *5. *Walden* and other specific-jurisdiction authority did not “suggest[] that a court may exercise jurisdiction over

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a plaintiff's claims against a defendant where those claims are unrelated to the defendants' activities within the forum state." 2016 WL 640520, *5. The court rejected the notion that a "pendent jurisdiction" doctrine existed in this area, relying on circuit court decisions that require personal jurisdiction for each claim on its own. *Ibid.*

"Even if such a doctrine of pendent specific personal jurisdiction existed," the court posited, "it is far from clear that plaintiffs' claims—which involve different consumers in different states suffering different injuries after receiving prescriptions from different doctors for a drug used for varying time periods—arise from the same transaction or occurrence." *Id.* at *6. It added:

Under the theory plaintiffs propose, the alleged sale and promotion of AndroGel within Missouri, which allegedly caused a Missouri plaintiff's injury, would subject defendant to general personal jurisdiction in Missouri for claims brought by any plaintiff who allegedly suffered injury by purchasing and using AndroGel anywhere in the country. Such a result would be plainly contrary to 'traditional notions of fair play and substantial justice.'

Ibid (quoting *International Shoe*, 326 U.S. at 316). The court's conclusion is reminiscent of the *Bauman* Court's rejection of "grasping" and "exorbitant" personal-jurisdictional arguments. 134 S. Ct. at 761. In addition, because the "plaintiffs' claims are likely to be tried separately," it "would thus be unfair and contrary to the rationale underlying the minimum contacts doctrine to allow plaintiffs to use the Missouri plaintiff's claims as a hook to reel defendants into a series of separate trials in a distant and inconvenient forum to try issues unrelated to their conduct within the forum." 2016 WL 640520, *6. The court dismissed the Illinois plaintiffs' claim for lack of personal jurisdiction. With that plaintiff out of the case, complete diversity of citizenship existed and the court thus denied the remaining plaintiffs' motion to remand back to the Missouri state court.

The rationale of this decision could apply to many of the multi-plaintiff tort cases brought in jurisdictions where neither the defendant nor most of the plaintiffs reside. Such cases have long been a staple of mass-tort and product-liability litigation, designed to maximize the chance that the suit will remain before plaintiff-preferred state-court judges and juries. For years, defendants in such cases have generally fought losing battles, employing a range of procedural mechanisms to break up and move these cases to more appropriate and favorable jurisdictions. The tightening of the requirements of personal jurisdiction in *Bauman* and *Walden* has provided defendants with a powerful tool to use going forward. *In re Testosterone* may prove to be persuasive authority for courts, particularly MDL courts, faced with the argument that "pendent jurisdiction" allows for personal jurisdiction over the claims of all the plaintiffs joined together in an effort to defeat removal, dismissal, and transfer.