



BY ERIC J. MUÑOZ

GE May Bring Good Things to Life, but It Does Not Bring Personal Jurisdiction in Illinois

IF IT'S BEEN A FEW YEARS SINCE A PERSONAL JURISDICTION ISSUE HAS COME across your desk, you may want to take note of a recent decision by the first district involving General Electric Co. (GE). The case of *Campbell v. Acme Insulations, Inc.*¹ powerfully illustrates how Illinois courts are continuing a clear legal trend in limiting the availability of general or “all-purpose” personal jurisdiction over nonresident defendants who are sued in Illinois courts. The *Campbell* case shows how non-Illinois-based companies, with significant and longstanding business and financial contacts in Illinois, like GE, may be unamenable to general jurisdiction in the state. Counsel on both sides of potential litigation would be well-served to appreciate the implications of this important legal trend in personal jurisdiction caselaw and to be prepared to aggressively incorporate these developments into their litigation and defense practices.

Factual allegations in *Campbell*

In *Campbell*, the plaintiff sought personal injury damages from GE and other companies

1. *Campbell v. Acme Insulations, Inc.*, 2018 IL App (1st) 173051.



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TAKEAWAYS >>

- Illinois and U.S. Supreme Court precedents have sharply curtailed the ability of plaintiffs to sue national and global brands in Illinois for claims having little, if any, connection to Illinois.

- Several strategies and counter strategies may be used to challenge or test these precedents. For example, plaintiffs may assert that general jurisdiction exists for a foreign parent that is essentially an alter-ego of an Illinois-based, at-home subsidiary.

- To forestall discovery leading to a jurisdictional finding, defense counsel may consider informally providing opposing counsel information and other materials that fairly address the defendant's business and other forum-related contacts.

resulting from his alleged exposure to GE-manufactured industrial furnaces located at a Chicago steel company where he worked from 1964 to 1965. At the time of the lawsuit, GE was a New York-based corporation with its principal place of business in Massachusetts. GE also had been licensed to conduct business in Illinois since 1897. GE employed some 3,000 employees at 30 facilities that it owned, leased, or operated throughout the state, and had six business units located here. Annual sales from its Illinois operations exceeded \$1 billion, with a claimed economic impact in Illinois of \$4.8 billion. Like many sizeable foreign corporations doing business in Illinois, GE had a registered agent for service of process in the state and throughout the years had filed (and defended against) various unrelated lawsuits.

Ten years ago, these would be the kind of jurisdiction-rich facts that would have given any plaintiff confidence in defeating a motion to dismiss filed by a nonresident defendant on the basis that a court in Illinois lacked general jurisdiction over the defendant. However, as *Campbell* reminds us, the venerable “continuous and systematic” contacts test of *International Shoe*² for conferring general jurisdiction has become, by modern legal lights, an exceptionally difficult standard to meet.³

Revamped standard for general jurisdiction

The contours of the general jurisdiction standard are well known: Where general or all-purpose jurisdiction exists over a defendant, the plaintiff may, consistent with federal due process, pursue a claim against that defendant even if the conduct of the defendant giving

rise to the claim took place outside the forum.⁴ Echoing the U.S. Supreme Court's recent pronouncements in *Daimler AG v. Bauman*,⁵ which rejected general jurisdiction over the German carmaker Daimler in California state court, the *Campbell* court explained that “general jurisdiction does not automatically arise in every State in which a corporation engages in a substantial, continuous, and systematic course of business.”⁶ Rather, under the current legal order, the determination of whether a corporate defendant is amenable to general jurisdiction requires that its “affiliations with the forum state . . . be so continuous and systematic as to render it essentially *at home* in the forum State.”⁷ Paradigmatic examples of a corporation being “at home” for purposes of general jurisdiction are its state of incorporation and principal place of business; although, in “exceptional” cases, a corporation may be “at home” elsewhere.⁸

Despite record facts showing that GE had significant and continuous business operations and a sizeable employee presence in Illinois, the *Campbell* court nevertheless

2. *International Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945).

3. See *Campbell*, 2018 IL App (1st) 173051, ¶¶ 19-20.

4. *Id.* at ¶ 14 (citing *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶ 14).

5. *Daimler AG v. Bauman*, 571 U.S. 117, 137-38 (2014).

6. *Campbell*, 2018 IL (1st) 173051, ¶ 14 (internal quotation marks omitted).

7. *Id.* (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal quotation marks and brackets omitted; emphasis added)).

8. The “exceptional” case noted by the *Daimler* Court was *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), in which the Supreme Court held that a Philippines-based corporation, Benguet, was amenable to general jurisdiction in Ohio because, due to the exigencies of World War II, the company was forced to temporarily move its president out of the Philippines to Ohio where he kept an office, maintained the company's files, and oversaw the company's activities. *Daimler*, 571 U.S. at 129-30 and n.19.

A SAMPLING OF RECENT DECISIONAL AUTHORITY FROM ILLINOIS COURTS HIGHLIGHTS THE CLEAR LEGAL TREND, REFLECTED IN *CAMPBELL*, IN REJECTING GENERAL JURISDICTION OVER NONRESIDENT CORPORATE DEFENDANTS DESPITE SIGNIFICANT, CONTINUOUS BUSINESS CONTACTS IN ILLINOIS.

rejected the plaintiff's contention that GE was "at home" in Illinois and that general jurisdiction existed over it. Following direction from *Daimler* and a recent Illinois Supreme Court decision⁹ (discussed briefly below), the first district in *Campbell* analyzed GE's contacts with Illinois in the broader context of GE's "activities in their entirety, nationwide and worldwide" and concluded that this was not the "exceptional" case in which a nonresident defendant who was neither incorporated in Illinois nor had its principal place of business in Illinois nonetheless qualified for general jurisdiction.¹⁰

In rejecting general jurisdiction over GE, the court in *Campbell* stated that in the overall context of "GE's national and worldwide operations," its business in Illinois "constitutes a relatively small portion of its total operations."¹¹ After

listing GE's extensive business and economic footprint nationwide, the court held that GE's contacts with Illinois did not render it "essentially at home" in Illinois for jurisdictional purposes, noting that only 2 percent of GE's income from its U.S. operations came from Illinois and only 2.4 percent of its U.S. workforce was employed in Illinois.¹² The *Campbell* court further held that, under Illinois law, having a registered agent for service of process and periodically participating in litigation in Illinois are actions that do not, by themselves, effect a waiver of a defendant's due process rights or render it amenable to personal jurisdiction in Illinois.

Curtailing general jurisdiction

A sampling of recent decisional authority from Illinois courts highlights the clear legal trend, reflected in *Campbell*, in rejecting general jurisdiction over nonresident corporate defendants despite significant, continuous business contacts in Illinois. The leading Illinois Supreme Court case, decided in 2017, is *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, which affirmed the dismissal of a negligence and breach-of-contract suit against an Indiana-based warehouse operator for damages arising out of a collapsed roof at one of the defendant's warehouses in Michigan.¹³ After noting that *Daimler* "raised the bar" for general jurisdiction and made it "incredibly difficult" to establish general jurisdiction over a defendant in a forum

other than its place of incorporation or principal place of business, the *Aspen* court rejected general jurisdiction over the Indiana company in Illinois state court even though the corporate defendant had both continuously operated a warehouse in Joliet, Illinois, and been registered to do business in Illinois since 1988.¹⁴ Concluding that the defendant was not "at home" in Illinois—meaning Illinois was neither the defendant's state of incorporation, its principal place of business, nor a "surrogate home" so as to meet the "exceptional" circumstances qualification—the Illinois Supreme Court followed *Daimler* and rejected general jurisdiction over the defendant.¹⁵ Similarly, a recent decision by the third district dismissed a defamation case against Washington, D.C.-based Georgetown University because the court concluded that the university was not "at home" in Illinois and therefore not subject to general jurisdiction¹⁶ even though Georgetown had a significant presence in Illinois, including conducting substantial recruiting and alumni fundraising efforts throughout the state and having an alumni chapter in Chicago.

In a recent investment-fraud suit brought against Washington-based Costco Wholesale Corp. in the Northern District of Illinois, the court ruled that Costco, despite its considerable, ongoing presence in Illinois, was not amenable to general jurisdiction here because its ten Illinois warehouse stores comprised just 2 percent of its more than 700 warehouses worldwide.¹⁷ Similarly, in a motor-vehicle negligence suit filed in the Northern District, the court refused general jurisdiction over non-Illinois-based

ISBA RESOURCES >>

- Michael Cortina, *Illinois Shoe Just Got the Boot*, Bench & Bar (Aug. 2018), law.isba.org/2EzmmEg.
- Steven L. Baron & Dale R. Kurth, *Seventh Circuit: Personal Jurisdiction Over a Defendant Cannot Be Established Merely by an Allegation of Deliberate Infringement of a Trademark Owned by a Forum Entity*, Intellectual Property (June 2018), law.isba.org/2NuM5R5.
- Daniel Ritter, *Limiting Personal Jurisdiction: The Impact of Tyrell, Bristol-Myers Squibb, and Aspen American*, 106 Ill. B.J. 32 (Feb. 2018), law.isba.org/2Eedqm5.

9. *Aspen American Insurance Co.*, 2017 IL 121281.

10. *Campbell*, 2018 IL (1st) 173051, ¶ 14.

11. *Id.* at ¶ 15.

12. *Id.* at ¶ 15.

13. *Aspen American Insurance Co.*, 2017 IL 121281.

14. *Id.* at ¶¶ 8, 19, 22.

15. *Id.* at ¶¶ 19, 20.

16. *Wesly v. National Hemophilia Foundation*, 2017 IL App (3d) 160382, ¶¶ 12, 29-30.

17. *Ritchie Capital Management, LLC v. Costco Wholesale Corp.*, 2018 WL 1565593, at *4 (N.D. Ill. Mar. 30, 2018).

vacation and travel-service providers because, although it was uncontested that these defendants did significant business in Illinois and solicited and advertised to Illinois consumers via the internet and targeted sales calls, such conduct was deemed insufficient under *Daimler* to find that these defendants were “at home” in the state.¹⁸

The rejection of general or all-purpose jurisdiction for national companies in nonresident forums is not likely to change. In 2017, the U.S. Supreme Court ruled that BNSF Railway Company, a major national rail entity with more than 2,000 miles of track throughout Montana and that employed more than 2,000 employees there, was not subject to general jurisdiction in Montana state court for torts occurring outside that state.¹⁹ The *BNSF Railway* court concluded that BNSF’s in-state business contacts with Montana, although significant if specific jurisdiction were at issue (which was not the case), did “not suffice to permit the assertion of general jurisdiction over” the railroad in a Montana state court regarding the plaintiff’s nonforum-related injuries.²⁰

Considerations for counsel

It is clear that nonresident corporate defendants being sued in Illinois courts, despite having sizeable economic and business interests in this state, are consistently being found not amenable to general jurisdiction under the *Daimler* due-process analysis described above. In light of this clear judicial shift away from general jurisdiction, litigation counsel and their clients would be well-served to consider some obvious practical issues:

Is there a good-faith basis to assert general jurisdiction? In light of the shift away from general jurisdiction by Illinois courts, if a corporate defendant is not headquartered in Illinois or does not have its principal place of business located in Illinois, a court probably will not conclude that a nonresident defendant is “at home” in Illinois and thus amenable to general jurisdiction here. Thus, plaintiffs should

be prepared to articulate a good-faith basis for claiming that a non-Illinois-based defendant, despite having a *quantum* of undisputed continuous business and economic contacts in Illinois, is amenable to general jurisdiction in Illinois.

Are there alternative grounds for jurisdiction besides general jurisdiction?

In light of the substantially reduced availability of general jurisdiction, one can expect that plaintiffs will aggressively seek alternative grounds for personal jurisdiction, such as some variant of specific jurisdiction. In this regard, counsel would do well to review the U.S. Supreme Court’s latest pronouncements on the constitutional requirements for specific jurisdiction over nonresident defendants.²¹

Can contacts of an Illinois-based subsidiary be imputed to a foreign parent?

Let’s say the facts in *Campbell* were different; for example, the defendant is a GE-owned subsidiary headquartered in Illinois. Would the court be able to impute the contacts of the Illinois-based subsidiary to the foreign parent to find general jurisdiction? In light of *Daimler*, the answer, probably, is no. Although the *Daimler* court did not address the merits of whether the contacts of Daimler’s American subsidiary could be imputed to the German parent, the court did state that, even assuming the car maker’s U.S. subsidiary was at home in California and that such contacts were imputable to Daimler, “there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler’s slim contacts with the State hardly render it at home there.”²²

Will allegations of alter ego become more prevalent? If the likelihood of personal jurisdiction against a foreign parent is dubious, plaintiffs may try to argue that an Illinois-based subsidiary (unquestionably subject to personal jurisdiction in Illinois) and its foreign parent are essentially “one and the same” under an alter-ego theory. Assuming the various factors of alter-ego liability are met (unity of interest, disregard of

NONRESIDENT CORPORATE DEFENDANTS BEING SUED IN ILLINOIS COURTS, DESPITE HAVING SIZEABLE ECONOMIC AND BUSINESS INTERESTS IN THIS STATE, ARE CONSISTENTLY BEING FOUND NOT AMENABLE TO GENERAL JURISDICTION UNDER THE *DAIMLER* DUE PROCESS ANALYSIS.

corporate formalities, etc.), there is at least some possibility that a plaintiff would assert—and a court could find—that general jurisdiction exists over the alter-ego foreign parent (with few to no forum contacts) of the “at home” subsidiary.²³

Are personal jurisdiction allegations sufficient? Assuming that specific and not general jurisdiction is at issue, plaintiffs should anticipate that defense counsel will closely scrutinize whether *specific* jurisdiction over a nonresident defendant has been properly asserted and, if necessary, move to dismiss for lack of personal jurisdiction. In this regard, at a minimum, counsel should make sure that a *prima facie* case of personal jurisdiction has been sufficiently alleged. If a complaint is challenged on personal jurisdiction grounds and the court is unable to find that even a *prima facie* or colorable basis exists for jurisdiction, a plaintiff risks losing the opportunity to conduct jurisdictional dis-

18. *Congdon v. Cheapcaribbean.com, Inc.*, 2017 WL 5069960, at *7-9 (N.D. Ill. Nov. 3, 2017).

19. *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017).

20. *Id.*

21. See, e.g., *Walden v. Fiore*, 571 U.S. 277 (2014).

22. *Daimler AG v. Bauman*, 571 U.S. 117, 136 (2014); see also *GoldenTree Asset Management LP v. BNP Paribas S.A.*, 64 F. Supp. 3d 1179, 1190-92 (N.D. Ill. 2014) (rejecting, under *Daimler*, general jurisdiction over a foreign parent with few ties to Illinois but with Illinois-based subsidiaries).

23. See, e.g., *In re Commodity Exch., Inc.*, 213 F. Supp. 3d 631, 680 (S.D.N.Y. 2016) (finding personal jurisdiction over non-resident company because the plaintiff had sufficiently demonstrated that said company was the alter ego of another entity with unquestioned jurisdictional contacts in the forum).

covery in order to respond to the jurisdictional challenge²⁴ and ultimately may have the complaint dismissed.

Will jurisdictional discovery be necessary? If general jurisdiction is the alleged basis for personal jurisdiction, there may be little, if any, need for discovery. This is because information about a company's principal place of business and/or state of incorporation usually is publicly available. But if personal jurisdiction is contested through a motion to dismiss, counsel should anticipate some discovery practice. Plaintiff's counsel will almost always seek jurisdictional discovery before responding to any such motion to dismiss—and defense counsel will seek to oppose or limit such discovery. To potentially forestall discovery altogether, or to set up an argument to oppose or sharply limit certain

requests that may be used later with the court, defense counsel may consider providing opposing counsel, on an informal basis, information and other materials that fairly address the defendant's business and other forum-related contacts (or lack thereof) in Illinois.

Conclusion

As explained above, the *Campbell* decision from the first district is a powerful reminder of how courts in Illinois are following a trend, dictated by recent precedents set by the U.S. and Illinois Supreme Courts, to sharply curtail the ability of plaintiffs to sue national and global brands in Illinois for claims having little, if any, connection to Illinois. Under the current state of the law, either doing business in or having

systematic and continuous contacts with Illinois is no longer sufficient to sustain general jurisdiction over a corporate defendant that is neither headquartered nor incorporated here. Counsel should consider how this change in the landscape of general jurisdiction may shape the choices they make for their clients when litigation is prosecuted in Illinois courts.

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24. *Central States, Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 946 (7th Cir. 2000) ("At a minimum, the plaintiff must establish a colorable or prima facie showing of personal jurisdiction before discovery should be permitted."). In Illinois state court, a party "may" obtain discovery on personal jurisdiction under Rule 201(l), although a court has wide discretion in controlling or limiting this discovery. See *Rokeby-Johnson v. Derek Bryant Insurance Brokers, Ltd.*, 230 Ill. App. 3d 308, 316-17 (1st Dist. 1992) (affirming trial court's denial of motion to compel jurisdictional discovery on relevance grounds).

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