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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

High Court's Sleight Of Hand In Bankruptcy Jurisdiction

Mark Broude
Latham & Watkins LLP

Wayne Flick
Latham & Watkins LLP

Law360, New York (August 15, 2014, 1:18 PM ET) -- Recently, much of the bankruptcy bar was focused on the U.S. Supreme Court and a pending decision in Executive Benefits Insurance Agency v. Arkison,[1] which raised an important jurisdictional issue regarding whether parties may consent to bankruptcy court jurisdiction over noncore claims. However, the Supreme Court frustrated the bar's expectations, sidestepping the issue. Then while attention was riveted on Executive Benefits, the Supreme Court handed down its decision in Daimler AG v. Bauman,[2] addressing the parameters of personal jurisdiction.

Daimler, decided on Jan. 14, 2014, received no attention in the bankruptcy press, but could have far-reaching implications for bankruptcy courts' ability to adjudicate claims against defendants not located in the United States and perhaps even against U.S. defendants located outside of the state where a bankruptcy case is pending. In particular, after Daimler, a plaintiff seeking to bring an action against a foreign defendant, and maybe even an out-of-state defendant — including to recover fraudulent conveyances and preferences — may need to meet a high standard to show that a bankruptcy court may exercise personal jurisdiction over the foreign defendant. Indeed, debtors may be forced to pursue such actions in the forum where the defendant is located rather than in the court where the debtor's bankruptcy case is pending.

Background

In general, service of process in a bankruptcy case is governed by Federal Rule of Bankruptcy Procedure 7004(b), which allows for service of process by mailing to a defendant anywhere in the United States.[3] Under Rule 7004(f), service of process consistent with Rule 7004(b) "is sufficient to confer personal jurisdiction over any defendant in a civil proceeding related to a case under the Bankruptcy Code so long as the exercise of jurisdiction is consistent with the constitution and laws of the United States."[4]

District and circuit courts have held that personal jurisdiction may be determined based on a defendant's U.S. contacts when a plaintiff's claim stems from a federal statute that authorizes nationwide service of process.[5] In particular, prior to Daimler, the relevant inquiry for assessing whether a defendant is subject to personal jurisdiction has been whether the defendant has minimum contacts with the United States as a whole.[6]

"Where the relevant forum is the United States as a whole, rather than a particular state, service of process on the defendant anywhere in the United States confers jurisdiction over the defendant without regard to the defendant's particular contacts with the state where the court is located or the burden imposed on the defendant in litigating in that forum."[7]

Courts have concluded that a federal minimum contacts test for bankruptcy jurisdiction supported congressional intent to create "one forum for adjudicating almost all disputes arising in or out of a particular case ... and [r]equiring the trustee to litigate his fraudulent transfer claims in numerous other jurisdictions would run counter to the bankruptcy policy interests in administering the consolidated estate in a single forum."[8]

As the Eighth Circuit explained, the Bankruptcy Code is not the only federal scheme in which a federal minimum contacts test is used; "Congress has in fact quite frequently exercised its authority to furnish federal district courts with the power to exert personal jurisdiction nationwide. See, e.g., § 22 of the Securities Act of 1933 ...."9 Until Daimler, courts had routinely found that a nationwide minimum contacts test was constitutional under the Fifth Amendment and did not violate the due process clause.

The Daimler Decision

In 2004, 22 Argentinian residents filed a complaint in federal court in Northern California against DaimlerChrysler Aktiengesellschaft, a German public company, alleging that during the Argentinian "Dirty War" between 1976 and 1983, a subsidiary of Daimler collaborated with state security forces to kidnap, torture and kill certain employees. The complaint alleged damages against Daimler for human rights violations under California, U.S. and Argentinian law.

The question before the Supreme Court was whether the due process clause of the 14th Amendment allowed the district court to exercise jurisdiction over Daimler, despite the fact that California was not connected to the victims, the perpetrators or any of the atrocities described. Plaintiffs claimed that California had general jurisdiction over Daimler. The Supreme Court held that the due process clause precluded the exercise of general jurisdiction over the defendants.

Plaintiffs sought to hold Daimler vicariously liable for the actions of MB Argentina, a wholly owned subsidiary of a predecessor of Daimler. Plaintiffs argued that Daimler had enough of a presence in California for jurisdictional purposes, and if not, then MBUSA, a U.S.-based subsidiary but distinct corporate entity from Daimler, could be treated as Daimler's agent for jurisdictional purposes.

MBUSA is a Delaware limited liability corporation, and acts as Daimler's exclusive importer and distributor of Mercedes-Benz automobiles from Daimler in Germany. MBUSA has many California-based facilities, and is the largest supplier of luxury vehicles to California residents. Through a general distributor agreement, MBUSA is an independent contractor working for Daimler and has no authority to bind or to act on behalf of Daimler. The district court granted Daimler's motion to dismiss for lack of general jurisdiction and the plaintiffs' failure to demonstrate that MBUSA acted as Daimler's agent.

The Ninth Circuit first affirmed the trial court's decision, but then reversed itself, finding that the agency theory of jurisdiction was satisfied and that MBUSA's contacts in California could be imputed to Daimler. The Supreme Court ultimately reversed.

First, the Supreme Court reviewed its jurisprudence on jurisdiction, and noted that the "canonical opinion in this area remains International Shoe [Co. v. Washington]." That case held that, for a court to exercise jurisdiction over a foreign person or entity, the defendant must have certain minimum contacts with the forum such that the maintenance of the suit does not "offend 'traditional notions of fair play and substantial justice.'"[10]

International Shoe defined two types of personal jurisdiction: general jurisdiction — which permits a defendant to be subject to suit for all claims arising against it in a particular forum, and specific jurisdiction — which permits a defendant to be subject to suit only for claims relating to the particular actions it took in the forum.[11] General jurisdiction exists where a foreign corporation's "affiliations with the state are so 'continuous and systematic' as to render them essentially at home in the forum state."[12]

The Supreme Court specifically considered its 2011 decision in Goodyear Dunlop Tires Operations SA v. Brown, in which it reversed a North Carolina Court of Appeals decision and found that foreign subsidiaries of a U.S. corporation were not subject to suit in a state court on claims unrelated to the activity of those subsidiaries in the forum state. Specifically, the Supreme Court found that placement of products in the "stream of commerce" may support specific jurisdiction, but not general jurisdiction.[13] Because the foreign subsidiaries could in no way be considered at home in the forum state, those subsidiaries could not be required to submit to the general jurisdiction of the North Carolina courts.[14]

Turning to the facts before it in Daimler, the Supreme Court then noted that it had not yet addressed whether a foreign corporation could be subject to general jurisdiction because of the contacts of an in-state subsidiary. Rejecting the Ninth Circuit's agency finding, which rested primarily on the observation that "MBUSA's services were 'important' to Daimler"[15] as "stack[ing] the deck, for it will always yield a pro-jurisdiction answer," the Supreme Court held that Daimler may not be subject to general jurisdiction in California because its "slim contacts" there mean it is not at home there.[16]

To be subject to general jurisdiction, the Goodyear inquiry requires a finding that a foreign corporation's "affiliations with the state are so continuous and systematic as to render [it] essentially at home in the forum state."[17] For an individual, the "paradigm forum" for general jurisdiction is the individual's domicile, and Goodyear clarified that, for a corporation, the place of incorporation and principal place of business are its place(s) of domicile for general jurisdiction purposes.[18]

The Supreme Court was careful to note that a corporation may be subject to general jurisdiction in fora beyond those in which it is domiciled or has its principal place of business, but the test requires a showing that the "corporation's affiliations with the state are so continuous and systematic as to render

it essentially at home in the forum state."[19] Only "in an exceptional case ... [may] a corporation's operations in a forum other than its formal place of incorporation or principal place of business ... be so substantial and of such a nature as to render the corporation at home in that State."[20]

Decisions After Daimler

Subsequent to Daimler, in April 2014, the Second Circuit reversed a decision by the Southern District of New York denying defendant's motion to dismiss for lack of personal jurisdiction and directed the lower court to dismiss the action for lack of personal jurisdiction.[21]

In Sonera Holdings BV v. Cukurova Holdings AS, a Dutch holding corporation brought suit in New York to enforce a final arbitration award against the parent company of a large Turkish conglomerate. The underlying dispute arose from negotiations for the sale of shares of a Turkish company that owns a controlling stake in Turkey's largest mobile phone operator. An arbitration tribunal in Switzerland found the Turkish company liable for $932 million in damages for failing to deliver the shares to the Dutch holding company. The holding company then filed enforcement applications in jurisdictions across the world, including in New York.

Plaintiffs asserted general jurisdiction by pointing to the actions of the defendant and its affiliates in New York, which, according to the plaintiffs, could be imputed to the defendants. The Second Circuit found that "the agency theory of personal jurisdiction is incompatible with due process" in light of the Supreme Court's decision in Daimler.[22]

The court emphasized that Daimler and Goodyear do not hold that a company may be subject to general jurisdiction only where the company is incorporated or has its principal place of business, but "engagement in substantial, continuous, and systematic course of business alone is insufficient to render it at home in a forum."[23] Notably, the appeals court did not clarify what kind of engagement would be enough to subject a corporation to general jurisdiction in a forum in which it neither is incorporated nor has its principal place of business.

—By Mark A. Broude, Wayne S. Flick and Emily B. Menchel, Latham & Watkins LLP

Mark Broude is a partner in Latham & Watkins' New York office. Wayne Flick is a partner in the firm's Los Angeles office. Emily Menchel is an associate in New York.

[1] Exec. Benefits Ins. Agency v. Arkison (In re Bellingham Insurance Agency, Inc.,) 134 S. Ct. 2165 (2014).

[2] Daimler AG v. Bauman, 134 S. Ct. 746 (2014).

[3] Fed. R. Bankr. P. 7004(b).

[4] Zazzali v. 1031 Exch. Group LLC (In re DBSI, Inc.) 467, B.R. 309, 313 (Bankr. D. Del. 2012) (internal quotations and citations omitted).

[5] See, id. (quoting to numerous cases in the Third Circuit).

[6] Id.(reviewing cases on point).

[7] Id. at 314.

[8] Id. at 316.

[9] Warfield v. KR Entm't (In re Federal Fountain), 165, F.3d 600, 601(8th Cir. 1999).

[10] Int'l Shoe Co. v. Wash., 326 U.S. 310, 317 (1945) (citing Miliken v. Meyer, 311 U.S. 457, 463 (1940)].

[11] Daimler, 134 S.Ct. at 755. Given that the actions that formed the basis of the complaint in Daimler took place in Argentina, plaintiffs did not allege specific jurisdiction over Daimler in California.

[12] Daimler, 134 S.Ct. at 755-57 (quoting Goodyear Dunlop Tires Operations SA v. Brown, 131 S. Ct. 2846 (2011)).

[13] Goodyear Dunlop Tires Operations SA v. Brown, 131 S. Ct. 2846 (2011).

[14] Goodyear, 131 S.Ct. at 2846.

[15] Daimler, 134 S.Ct. at 749.

[16] Id. at 759.

[17] Id.

[18] Daimler, 131 S.Ct. 760.

[19] Id. at 761 (internal quotations and citations omitted).

[20] Id. at 761 n. 19.

[21] Sonera Holdings BV v. Cukurova Holdings AS, 750 F.3d 221, 227 (2d. Cir. 2014).

[22] Sonera, 750 F.3d at 224.

[23] Sonera, 750 F.3d at 226.

[24] Refco Group Ltd. LLC v Cantor Fitzgerald LP, 2014 WL 2610608 (S.D.N.Y. June 10, 2014)

[25] Refco Group Ltd., 2014 WL 2610608 at *8.

[26] Refco Group Ltd., 2014 WL 2610608 at *8 n.10.
