



Ep. 04: Personal Jurisdiction: Not what you learned in law school

June 29, 2020

How is it that we are, in 2020, discussing personal jurisdiction? Wasn't this all ironed out and pretty well decided in the last century? What has changed? In this podcast, we will tee up these questions, all of which have become increasingly relevant as we await what promises to be a landmark ruling on these issues from the U.S. Supreme Court.

Rasch Brown:

Hi, I'm **Rasch Brown**. I'm joined today by my McGlinchey Stafford colleagues **Gary Hebert** and **Brian LeCompte**. Each of us is primarily involved with the representation of multinational manufacturers in product liability matters. We've been doing this for decades. We routinely defend manufacturers in Louisiana, across the firm's footprint and throughout the country. Today, we're going to talk about personal jurisdiction, which has become increasingly relevant to our client base because of recent, significant changes in the law. I think I've assembled the right team to cover this topic. Gary and Brian, first, I want to congratulate you on a string of recent successful, personal jurisdictional challenges for our clients. Brian, your recent win in the Louisiana Supreme Court seems particularly significant.

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Brian LeCompte:

Thanks, Rasch. I think it could be. In the *Chevalier* case, we defended a non-domestic automobile manufacturer that was sued on an airbag non-deployment claim. The vehicle was designed, manufactured, and assembled overseas, but the trial court found personal jurisdiction based, at least in part, on the foreign manufacturer's relationship with its US distributor. The appellate court denied writs, but the Louisiana Supreme Court granted our writ application. It summarily reversed the lower court's finding of personal jurisdiction and dismissed our client with prejudice. Unfortunately, the one-page *per curiam* opinion doesn't discuss the facts of case. So we don't have much guidance on what kind of precedential value we might have here. But this ruling is



significant, because it marks the first time the Louisiana Supreme Court has acknowledged and applied recent United States Supreme Court precedent that compels a much more restrictive definition of personal jurisdiction. Look, in our practice over the last five or six years, we've seen an accelerating trend in courts restricting personal jurisdiction. We've had a growing number of successes for clients in other jurisdictions, but Louisiana courts hadn't gotten on board until right about now. That's why I think the *Chevalier* decision is significant. It brings Louisiana in line with the greater national trend toward taking a more restrictive view of personal jurisdiction.

Rasch Brown: Before we go any further, why don't we define personal jurisdiction?

Gary Hebert: Personal jurisdiction refers to the power that a court has to make a decision regarding the parties that are before it. Before a court can exercise power over a party, the Due Process clause from the 14th Amendment to the United States Constitution requires that the party have certain "minimum contacts" with the forum in which the court sits. If the court does not have the required authority over that defendant, then the court must dismiss that defendant. So personal jurisdiction really is the most basic issue in every case. For this reason, it sometimes gets overlooked, I suppose.

There are really two types of personal jurisdiction: general and specific. General jurisdiction is sometimes referred to as "all-purpose jurisdiction." It happens when the defendant's contacts with the forum are so extensive that no relationship is needed between the defendant's contacts and the claim at issue in order for the court to exercise personal jurisdiction. If a defendant is subject to the forum's general jurisdiction, then that defendant can be sued in that forum on any matter, regardless of whether the claim bears any relationship to that forum.

An example might illustrate if a Texas company has its principal place of business in Baton Rouge, then that Texas company can be sued in Louisiana for just about anything, with little concern for the court's authority. But if that same company were to be sued, say, in a Florida court, it's a different ball game.

Specific jurisdiction, on the other hand is a much narrower concept, and it's getting narrower by the day. Specific jurisdiction requires a relationship between the defendant's contacts in the forum state, and the claims asserted in the lawsuit. And it is this concept that's becoming the focus of the trend to which Brian referred, with results that have been surprising to many.

Rasch Brown: Well that's right. We three attended law school in the last century when personal jurisdiction rarely came up. In the context of multinational companies, what's changed? And why is this topic even on the table today?

Brian LeCompte: Well, Rasch, this is that trend that we started talking about. We've had a lot of success recently for our clients. But for a long time, the proposition that a large, multinational corporation could be sued in just about any state, for just about anything, was taken as a given. In our products liability practice, in particular, just a decade ago, if a product allegedly injured someone within a particular forum, jurisdiction was almost automatic.

This was particularly true of larger corporations who sold and marketed products nationwide. The sea change really started with the *Goodyear* decision in 2011. The unanimous United States Supreme Court limited general jurisdiction to only those forums where a defendant is fairly regarded at home. Then a few years later, the Court, in *Daimler*, didn't just confirm the *Goodyear* limitation; the Court went decidedly further, emphasizing that a corporation is ONLY at home in two places with very few exceptions: one, its state of incorporation, and two, the state of its principal place of business. Taken together, these two cases greatly limited the concept of general jurisdiction, and by restricting the reach of general jurisdiction, I think these cases brought greater focus on specific jurisdiction. Courts had been confusing the tests for general and specific jurisdiction for a long time, but *Goodyear* and *Daimler* started to make it more difficult to do so. Or at least that's my take.

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Gary Hebert:

No, I think that's exactly right, Brian. Before *Goodyear* and then *Daimler*, courts often conflated the concepts of general and specific jurisdiction, and certainly the factors relevant to each. In courts throughout the country, the concept of general jurisdiction had previously been so broad, that detailed analyses of specific jurisdiction just rarely took place. Because neither *Goodyear* nor *Daimler* say very much about specific jurisdiction, lower courts since then have interpreted specific jurisdiction in ways that, quite frankly, have resulted in sweeping -- in fact, expansive -- findings of personal jurisdiction, in what many regard as questionable circumstances. But then in 2017, the concept of specific personal jurisdiction was substantially narrowed by the United States Supreme Court's decision in the *Bristol Myers Squibb* case. For the first time in many years, the concept of specific jurisdiction was front and center. No longer was specific jurisdiction hiding behind the cloak of general jurisdiction, because the general jurisdiction concept had been so substantially narrowed by the earlier two cases.

Brian LeCompte:

That's right, Gary. In *Bristol Myers*, you had almost 600 plaintiffs who resided outside of California join together with about 90 California residents to sue Bristol Myers in California. They brought product defect claims arising out of their use of Plavix, a blood thinning drug. *Bristol Myers* moved to dismiss the out-of-state plaintiffs' claims for lack of personal jurisdiction. It argued that California lacked specific jurisdiction because none of its suit-related conduct had anything to do with California. The plaintiffs didn't purchase the drug in California. They didn't ingest the drug in California. The drug wasn't marketed to them in California. It wasn't designed or manufactured in California. But the California Supreme Court, nevertheless, found jurisdiction. It held that specific jurisdiction doesn't require that the plaintiffs' claims arise directly from a defendant's forum contacts or that they be causally linked to those contacts in any way. Instead, the court held that it was enough that the in-state and out-of-state plaintiffs' claims were both based on the same allegedly defective product, and the same allegedly misleading marketing and promotion of that product. The court said this was all part of a common, nationwide course of distribution, and that was enough for personal jurisdiction.

Gary Hebert:

That's what the California Supreme Court had to say on it. But when the issue reached the United States Supreme Court, it was a completely different outcome. The United States Supreme Court started its analysis by summarily rejecting general jurisdiction. And then it zeroed in on specific jurisdiction. In the end, the Court reversed both of the California courts' finding of specific jurisdiction, finding that "what is needed, and what is missing here, is a connection between the forum and the specific claims at issue."

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And keep in mind what the United States Supreme Court found here: that the California courts have jurisdiction over Bristol Myers in some matters, but not in others. The notion that a court might have jurisdiction over a defendant in one case, but not in another, has taken many courts and litigants by surprise. And I think it really is the source of a lot of confusion in this area for many practitioners. For a lot of us, this has been a watershed moment. And what we've seen in the wake of these three decisions is, except in the narrowest of instances like Brian referred to, general jurisdiction is not even something that is litigated in the courts. In most instances, the courts are now going directly to the specific jurisdiction analysis. Unfortunately, the *Bristol Myers Squibb* decision left little guidance for future cases on the concept of specific jurisdiction. The policy rationale is clear: the Court says that a defendant who's not "at home" in the forum state can only be sued if its conduct is related to its purposeful contacts with the forum. This ruling, when combined with the previous decisions that had so limited the concept of general jurisdiction, really constitutes the sea change that brings us here today.

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Brian LeCompte:

And thus far, the United States Supreme Court has left intact a fairly untethered body of case law interpreting what it means for a claim to arise out of, or relate to, a defendant's forum contacts. Since *Bristol Myers*, courts have split over exactly what this means, but a bright line test for determining this "relatedness requirement" is presently before the United States Supreme Court. Earlier this year, the court granted writs in two consolidated cases involving Ford vehicles. Focusing on the split among the courts below, Ford petitioned the court to determine whether this "arising out of or relating to" mandate requires a causal connection test. Ford argues that the relatedness requirement should be determined by whether a defendant's purposeful contacts with the forum actually caused a plaintiff's injuries. This is essentially a tort standard of causation. We're watching these cases very closely. I want to talk about them in the detail they deserve, but it looks like we're out of time.

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- Gary Hebert:** We are. And we were really just getting to the meat of the matter. We'll come back soon with an additional episode on this, but before we sign off for today, one final cautionary note for the defense practitioner. In some courts, the lack of personal jurisdiction is an issue that's considered waived if not asserted in the first responsive pleading. So keep that in mind as you evaluate new cases that land on your desk, especially given the trends that we're seeing now, and how courts are viewing personal jurisdiction. When in doubt, assert that personal jurisdiction defense.
- Rasch Brown:** That's it for today. I'm **Rasch Brown**.
- Gary Hebert:** I'm **Gary Hebert**.
- Brian LeCompte:** And I'm **Brian LeCompte**.
- Rasch Brown:** Until next time.

Thanks for tuning into this episode of "More with McGlinchey." If you have a question or would like to propose a topic, we'd love to hear from you at podcast@mcglinchey.com. For additional resources on this topic, please visit mcglinchey.com. On behalf of the law firm that brings you more, we hope you'll join us next time.



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