

Advocate's VIEW

General jurisdiction and the search for an exceptional case

If a defendant is subject to general jurisdiction in New York, it may be sued in New York regardless of whether the plaintiff's claims have anything to do with the defendant's New York contacts. In a series of recent decisions, the U.S. Supreme Court significantly limited the scope of general jurisdiction by holding that asserting such jurisdiction over entities not "essentially at home in the forum State" violates constitutional due process. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

Daimler held that even a billion-dollar multinational corporation is "essentially at home" in one or two states: where it is incorporated, and where it has its principal place of business. New York decisions have extended this reasoning to LLCs, finding they are "essentially at home" in their states of organization and principal place of business. See *Haidon v. Budlong & Budlong, LLC*, 318 F. Supp. 3d 568, 578 (W.D.N.Y. 2018). Individuals are "essentially at home" in their state of domicile: "the place where one always intends to return to from wherever one may be temporarily located." *Chen v. Guo Liang Lu*, 144 A.D.3d 735, 737 (2d Dept. 2016).

In a footnote, the *Daimler* court announced it would not "foreclose the possibility that in an exceptional case, a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." *Daim-*



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ler, 571 U.S. at 139 n.19. As an example of an "exceptional case," the court referred to a mining company that temporarily moved its principal place of business from the Philippines to Ohio (where its president lived) during World War II. *Id.* (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)).

Due to this footnote, most cases addressing general jurisdiction mention the theoretical possibility that, in an "exceptional case," a court could apply general jurisdiction to a corporation where it is not incorporated or principally based, *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 629 (2d Cir. 2016), or to an individual where he is not domiciled, *Reich v. Lopez*, 858 F.3d 55, 63 (2d Cir. 2017); *IMAX Corp. v. Essel Group*, 154 A.D.3d 464, 465-66 (1st Dept. 2017). Time and again, however, courts have rejected arguments that particular defendants represent an "exceptional case."

A recent Supreme Court decision based on *Daimler* held that a Montana court lacked general jurisdiction over a railway company even though it had "over 2,000 miles of track and employ[ed] more than 2,000 workers" there. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1554 (2017). Consistent with this holding, courts have refused to find an "exceptional case" based on a

defendant's transaction of business, maintenance of branches or facilities, or employment of personnel in New York. See *In re Del Valle Ruiz*, 2018 WL 5095672, at *5 (S.D.N.Y. Oct. 19, 2018); *Wilderness USA, Inc. v. DeAngelo Bros., LLC*, 265 F. Supp. 3d 301, 310 (W.D.N.Y. 2017).

Inventive plaintiffs will surely continue searching for the elusive "exceptional case" that provides an exception to *Daimler's* hard and fast rule of general jurisdiction. But they should not be optimistic about finding it. The Supreme Court's example of an exceptional case, *Perkins*, arguably is not exceptional at all, as it involved a corporation whose principal place of business was located in the forum state. *Perkins* is unusual because it involves a corporation relocating its headquarters to the United States due to war. These circumstances do not support finding an exceptional case based on a defendant's significant business presence in the forum state.

The Supreme Court's "exceptional case" footnote has taken on a life of its own, just one unlikely to lead any New York court toward imposing general jurisdiction over a defendant not incorporated, organized, principally based or domiciled in New York.

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