

# TRAVEL LAW: PERSONAL JURISDICTION OVER FOREIGN TRAVEL SUPPLIERS AFTER THE *DAIMLER* CASE

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A. Dickerson]

By Thomas A. Dickerson

I have been writing about travel law for 38 years including my annually updated law books, *Travel Law*, Law Journal Press (2014) and *Litigating International Torts in U.S. Courts*, Thomson Reuters Westlaw (2014), and over 300 legal articles many of which are available at [www.nycourts.gov/courts/9jd/taxcertatd.shtml](http://www.nycourts.gov/courts/9jd/taxcertatd.shtml).

In this article we return to the important subject of asserting personal jurisdiction over foreign travel suppliers, tour operators and ground operators [see our earlier ETN article *Jurisdiction and the Internet* (January 22, 2014)]. This area of the law is, particularly, important for travelers who are injured while traveling in a foreign country and who seek to sue one or more foreign corporations in U.S. courts [see Dickerson, *Travel*

*Abroad, Sue At Home*, 32 Pace Law Review 407 (2010)]. The concept of jurisdiction involves the authority of a given court to entertain and resolve disputes involving a foreign corporation or entity while complying with the latest pronouncements from the U.S. Supreme Court on the limits imposed by federal due process. And in that regard the U.S. Supreme Court's recent decision in *Daimler AG v. Bauman*, 134 S. Ct. 2014 (January 14, 2014) may have a profound impact upon the threshold necessary to assert general personal jurisdiction over foreign corporations. The Supreme Court held in *Daimler* that "general jurisdiction may only exist over a corporation when 'that corporation's 'affiliations with the State are so 'continuous and systemic' as to render [it] essentially at home in the forum State'". Stated, simply, the *Daimler* decision raises the threshold of activities necessary to establish "'general jurisdiction, originally known as 'presence' jurisdiction...its theory was that a foreign defendant corporation could be held subject to a court's personal jurisdiction based on the defendant's overall contacts with the state...even though the particular claim on which the suit is based arose entirely outside the United States" [*Siegel's Practice Review January 2014*].

## "Presence" Or General Jurisdiction

Prior to *Daimler* a traditional jurisdictional analysis based upon "presence" within the forum would go as follows. If a foreign corporation had an office with a staff, a bank account and local telephone number in the forum then it was considered present and subject to personal jurisdiction. In addition, a foreign corporation without an office, staff or a local phone number could still be found present in the forum if it conducted business through an agent [see *Chrobak v. Hilton International* (alleged rape at Costa Caribe Hotel in Dominican Republic; franchise agreement provided that Hilton Hotels serves as Costa Caribe's agent in New York having the authority to make binding reservations; jurisdiction proper)], alter-ego [see *Conley v. MLT, Inc.*, (plaintiff seriously injured at a Mexican resort and was seriously injured; jurisdiction over two Dutch management companies based upon alter ego theory arising from relationship with Florida based marketing company)], a wholly owned subsidiary [see *Paneno v. Centres For Academic Programmes Abroad Ltd.* (college student fell from balcony at Florence, Italy hotel and was paralyzed; student overseas study program organized by British company over which there is jurisdiction through activities of U.S. based subsidiary which "performs a function that is compatible with and assists the parent in the pursuit of,

the parent's own business"), a mere department [see *Dorfman v. Marriott International Hotels, Inc.*, (slip and fall in elevator in Marriott Hotel in Budapest; jurisdiction over Hungarian subsidiary [Otis Felvano] as a mere department of U.S.-based Otis Elevator)], a parent corporation [see *Huang v. Marriott International, Inc.* (time share owner's wife and mother drown while snorkeling off of Baby Beach; The Aruba Surf Club as "a foreign subsidiary of Marriott International, Inc.")], a partner [see *Meyer v. Carnival Corp.* (cruise passenger injured during shore excursion of volcanic formations; jurisdiction over St. Lucian ground operator based on "partnering with a major cruise line such as Carnival")], piercing "the corporate veil" [see *Matthews v. Kerzner International Limited* (water slide accident at Atlantis Resort in Bahamas; insufficient evidence to pierce corporate veil and find jurisdiction)], a franchisor [see *Wronikowski v. General Hotels Corp.* (slip and fall in Indiana hotel; jurisdiction over franchisor in Michigan based on presence of franchisee in Michigan)], an affiliate [see *St. Jean v. Orient-Express Hotels* (sexual harassment alleged based upon a kiss on the beach in St. Maarten; jurisdiction over a Netherland Antilles company which was a subsidiary of a Bermuda company affiliated with the defendant U.S. hotel)] or joint venturer [see *Dorfman, supra* (Hungarian and U.S. elevator companies joint venturers)].

## "Long Arm" Or Specific Jurisdiction

As the U.S. Supreme Court made clear in *Helicopteros Nacionales de Columbia v. Hall* "when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising 'specific jurisdiction' over the defendant". The jurisdictional threshold for long arm or specific jurisdiction is less rigorous because the claims "arise out of or are connected with... activities within the state".

In that regard many States have enacted long arm statutes including New York [see *McCran v. RIU Hotels, S.A.* (horse back riding accident in Aruba; no jurisdiction over foreign hotel unless New York sales entities have authority to book reservations), Massachusetts [see *Metcalf v. Bay Ferries Limited* (slip and fall on a ferry; jurisdiction found); *Weinberg v. Grand Circle Travel, LCC* (tourists killed in hot air balloon crash in the Serengeti; no jurisdiction over two Tanzanian corporations)], New Jersey [see *D'Elia v. Grand Caribbean Company, Ltd.* (slip and fall at Mexican time share unit; no jurisdiction)], Michigan [see *Conley v. MLT, Inc.* (hotel guest injured "when one of the support poles of the hammock upon which he was laying broke"; jurisdiction found)] Florida [see *E&H Cruises, Ltd. v. Baker* (accident on mock pirate ship excursion in

Cayman Islands; no jurisdiction)], California [see *Mahsoul v. StudentCity.com, Inc.*, (student on ski trip assaulted and robbed by other trip participants; jurisdiction found) and the Virgin Islands [see *Clarke v. Marriott International, Inc.*, (slip and fall in bathtub in St. Kitts hotel; jurisdiction found)].

### **Possible Impact Of Daimler On Traveler Claims**

It is clear that the *Daimler* decision dealt with the assertion of general personal jurisdiction since the claims asserted in *Daimler* did not arise out of any contacts with the U.S. Precisely how *Daimler* is interpreted by the Courts in travel accident cases, of course, remains to be seen. However, an example of the type of travel accident which might be impacted by *Daimler* would be an accident during a cruise shore excursion. If the shore excursion were purchased through the cruiseline, as many are, then jurisdiction over the local ground operator might be easier to establish [see *Meyer v. Carnival Corp.* (cruise passenger injured during shore excursion of volcanic formations; jurisdiction over St. Lucian ground operator based on "partnering with a major cruise line such as Carnival") but compare *Ash v. Royal Caribbean Cruises Ltd* (no jurisdiction over St. Maarten ground operator Dutch Tours even though conducting business with cruiseline for 35 years)] than if the passenger purchased the

shore excursion independently after arriving at a given destination.

In addition *Daimler* may make it even more difficult to establish personal general jurisdiction in travel accidents arising from intra-country transportation by air [see *Esheva v. Siberia Airlines*, (While 79 passengers and crew members survived the crash, 124 died. Sixteen of the passengers were residents of countries other than Russia but none were U.S. residents); *Barkanic v. General Administration of Civil Aviation* (intra-country airline crash; recoverable damages limited to \$20,000 under Chinese law) ] and rail [see *Reers v. Deutsche Bahn, AG*, 320 F. Supp. 2d 140 ( S.D.N.Y. 2004 ) ( 12 passengers, some U.S. citizens, died in a German owned railcar on a French train because an attendant "assigned to Railcar 120 that night started a fire and failing to extinguish it, abandoned his post without warning the sleeping passengers; no jurisdiction over French or German rail companies)].