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Birgit Kurtz
Director, Business & Commercial
Litigation Department
D +1 (212) 613 2009
F +1 (212) 554 9618
bkurtz@gibbonslaw.com

Gibbons P.C.
One Pennsylvania Plaza,
37th Floor
New York, NY 10119
www.gibbonslaw.com



Jurisdiction of U.S. Courts: A Positive Trend Continues – Mostly...

After decades of U.S. courts exercising ever-expanding jurisdiction over foreign defendants, the pendulum is now swinging back. Numerous recent U.S. high court decisions have considerably limited jurisdiction over foreign companies. German companies should be aware of this development in order to properly structure their U.S. business dealings.

General Jurisdiction

“General jurisdiction” results in a U.S. court having the power to adjudicate any and all claims against a German company, wherever in the world the claim may have arisen. Ever since the U.S. Supreme Court’s 1945 *International Shoe* decision, U.S. courts had assumed general jurisdiction over out-of-state defendants when the defendants had “certain minimum contacts” with the forum state.

But in its 2014 *Daimler v. Bauman* decision, the Supreme Court abandoned the traditional contacts analysis and instead emphasized that a court had general jurisdiction over a defendant only if that defendant was “essentially at home” in the state. The Court explained that, for a company to be “essentially at home” in a state, the company typically had to either be incorporated in the state or have its principal place of business there. Under this new rule, in most cases, a U.S. court would not have general jurisdiction over a company that is incorporated under German law and has its principal place of business in Germany. (General jurisdiction is different from specific jurisdiction, where the court has jurisdiction over an out-of-state defendant when the plaintiff’s claim “arises out of” a particular contact or relationship.)

Consent to Jurisdiction

All U.S. states have statutes that require corporations doing business in the state to register with the state. If a corporation does business in the state without registering, it risks fines and other penalties. Many states also have statutes that provide for jurisdiction where the defendant has consented to be sued in the state.

Reading these registration statutes and consent statutes together, plaintiffs often argue that defendant companies have consented to being sued in the courts of a particular state because they have registered to do business in that state. After *Daimler*, however, that argument has recently been rejected by at least two courts. In a February 2016 decision, the Second Circuit Court of Appeals (the federal appeals court responsible for New York, Connecticut, and Vermont) held that the Connecticut registration statute could not be



Birgit Kurtz
Director, Business & Commercial
Litigation Department
D +1 (212) 613 2009
F +1 (212) 554 9618
bkurtz@gibbonslaw.com

Gibbons P.C.
One Pennsylvania Plaza,
37th Floor
New York, NY 10119
www.gibbonslaw.com



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deemed proper consent to the jurisdiction of Connecticut courts. The court explained that the Connecticut statute “nowhere expressly provides that foreign corporations that register to transact business in the state shall be subject to the ‘general jurisdiction’ of the Connecticut courts.”

In April 2016, the Delaware Supreme Court similarly held that the Delaware registration statute cannot be read as broad consent by the defendant company to general jurisdiction, because the statute “on its face does not refer explicitly to personal jurisdiction, much less to consent to personal jurisdiction.” The court reasoned:

In our republic, it is critical to the efficient conduct of business, and therefore to job- and wealth-creation, that individual states not exact unreasonable tolls simply for the right to do business. . . . An incentive scheme where every state can claim general jurisdiction over every business that does any business within its borders for any claim would reduce the certainty of the law and subject businesses to capricious litigation treatment as a cost of operating on a national scale or entering any state’s market.

New York Legislation

In response to the *Daimler* decision, proposed legislation is currently pending in the New York State Legislature that would amend New York’s registration statute in order to “reaffirm” the consequences of registering to do business in New York. New York’s registration statute previously had been construed by numerous courts to confer general jurisdiction. While banks and large corporations raised strong opposition to the bill based on, *inter alia*, constitutional grounds, proponents of the bill argue that a company’s “consent provides the certainty of a forum with open doors for the enforcement of obligations of New York-licensed corporations without the expense and burden of proving jurisdiction on a case-by-case basis.”

Conclusion

German companies choosing or required to register to do business in a particular state should take the time to review the exact wording of the registration statute and make a case-by-case educated decision as to the risks involved.



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Susanne Gellert, LL.M.
Rechtsanwältin | Attorney at Law
Director Legal Department & Business Development Consulting

80 Pine Street, Floor 24 | New York, NY 10005
+1 (212) 974-8846 | +1 (212) 974-8867
legalservices@gaccny.com

www.gaccny.com