

Client Alert

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Don't Bet On Finding Personal Jurisdiction Where the Injury Is Felt; the Supreme Court Further Restricts the Scope of Specific Personal Jurisdiction: *Walden v. Fiore*

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On February 25, 2014, the Supreme Court decided *Walden v. Fiore*, No. 12-574. The unanimous opinion reversed the Ninth Circuit's holding that Nevada had specific personal jurisdiction over an out-of-state defendant who had known the alleged harm would affect residents of Nevada.

Walden is the latest in a string of recent Supreme Court decisions that have curtailed attempts to expand personal jurisdiction. Prior to this recent activity, the Supreme Court had not significantly addressed personal jurisdiction for almost a quarter century, since the Court issued a splintered decision in *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102 (1987). During the 2010 Term, however, the Supreme Court decided two cases that effectively limited the ability of state courts to assert personal jurisdiction over foreign defendants: *Goodyear Dunlop Tires Operations v. Brown* and *J. McIntyre Machinery v. Nicastro*. Earlier this year, the Court decided *Daimler AG v. Bauman*, which addressed whether the in-state contacts of a corporate subsidiary can be imputed to a foreign parent corporation for purposes of exercising general jurisdiction over the parent, even though the parent does not itself conduct any business in the forum State. The Supreme Court held that the subsidiary's in-state contacts could not support general jurisdiction over the parent corporation. Our client alert on *Bauman* is available [here](#).

In *Walden*, the Court addressed the "minimum contacts" necessary to give a State specific personal jurisdiction over an alleged intentional tortfeasor. The Supreme Court clarified that the effect on the in-forum plaintiff is not a sufficient contact to support the exercise of specific personal jurisdiction by that forum. The Court emphasized that the existence of "minimum contacts" turns on an assessment of the defendant's contacts with the forum that the defendant created, not on the defendant's contacts with forum residents.

BACKGROUND

The plaintiffs in *Walden* are two professional gamblers. After hitting it big in Puerto Rico casinos, their luck ran out when they were detained in an Atlanta, Georgia airport by a DEA agent on their way home to Las Vegas, Nevada. The DEA agent suspected that the significant cash the plaintiffs possessed—approximately \$97,000—was evidence of illegal narcotics transactions, rather than the legitimate proceeds of legal gambling. The DEA agent seized the money, and the plaintiffs went home empty handed.

The plaintiffs later sent documentation to the DEA agent in an attempt to recover the funds, but were unsuccessful. The DEA agent subsequently filed a probable cause affidavit for the forfeiture of the funds. Ultimately, the United States Attorney's office determined there was no probable cause for the forfeiture, and returned the money to plaintiffs.

In 2007, plaintiffs brought suit against the DEA agent in the United States District Court for the District of Nevada. The DEA agent subsequently moved to dismiss for lack of personal jurisdiction. He cited his complete lack of contacts with

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the State: he never contacted anyone in Nevada, owned no property in Nevada, and conducted no personal business in Nevada. The district court agreed, and dismissed the case for lack of personal jurisdiction.

In a divided opinion, the Ninth Circuit reversed. The court held that Nevada had specific personal jurisdiction over the DEA agent because the agent had committed an intentional act that was expressly aimed at the forum State where the plaintiffs resided—the filing of an allegedly false probable cause affidavit with knowledge that it would affect Nevada residents. Rehearing en banc was denied, with eight judges dissenting.

THE SUPREME COURT'S DECISION

The Supreme Court reversed. In a unanimous opinion authored by Justice Thomas, the Supreme Court held that due process did not permit a Nevada court to exercise jurisdiction over the DEA agent. Slip op. 4-5.

The Court emphasized that although a defendant's physical presence within a forum State is not required, a nonresident defendant must have "minimum contacts" with the forum sufficient to support specific jurisdiction. The Court explained the Ninth Circuit erred because it "shifted the analytical focus from [the defendant's] contacts with the forum to his contacts with [the plaintiffs]." Slip op. 11.

Explaining the correct inquiry, the Court made two observations. First, a defendant's minimum contacts with the forum State "must arise out of contacts that the 'defendant *himself*' creates with the forum State." Slip op. 6 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). The Court explained it has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." Slip op. 6.

Second, the "minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." Slip op. 7. The Court explained that "[d]ue process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other person affiliated with the State." Slip op. 6.

The Court also held that its analysis does not change in the context of intentional torts. The Court explained that *Calder v. Jones*, 465 U.S. 783 (1984), "made clear that mere injury to a forum resident is not a sufficient connection to the forum." Slip op. 12. In *Calder*, the Court held that California could exercise jurisdiction over an out-of-state reporter and editor who wrote an allegedly libelous story for a national weekly newspaper, because the defendants created contacts with California by writing the story. The defendants relied on California sources and the cause of action arose from the publication in California, where the story was widely circulated. Slip op. 9. Thus, "[t]he crux of *Calder* was that the reputation-based 'effects' of the alleged libel connected the defendants to California, not just to the plaintiff." Slip op. 10. Where there is no such connection to the forum, as in *Walden*, there can be no personal jurisdiction.

Finally, in a footnote, the Court left for another day whether the "minimum contacts" inquiry might differ in suits brought by victims of Internet fraud, where the defendant's activity might give rise to "virtual contacts" with a forum.

CONCLUSION

Walden's clarification of the "minimum contacts" test for personal jurisdiction will make it more difficult for resident plaintiffs to bring suit against out-of-state defendants. Under *Walden*, the plaintiff cannot be the only link between the defendant and the forum State. It is not sufficient that the plaintiff resides in the forum State, that an injury was suffered

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by a resident of the forum State, or that it was foreseeable that harm could occur in the forum State. Rather, the defendant's conduct must have given rise to "minimum contacts" with the forum State, connecting the defendant to the forum in a *meaningful* way.

In the end, these gamblers lost more than an argument; they squandered six years in procedural wrangling that could have been avoided by simply filing suit in Georgia, where the defendant was unquestionably subject to personal jurisdiction. Litigants who pick the right court to resolve their disputes at the outset are not guaranteed a jackpot, but they will certainly save on the ante.

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