

Mullenix on Reach of American Courts

Linda Mullenix (University of Texas School of Law) has posted Personal Jurisdiction Stops Here: Cabining the Extraterritorial Reach of American Courts on SSRN.

In this 2013-14 term the Supreme Court will again return to its personal jurisdiction jurisprudence in two interesting cases: DaimlerChrysler AG v. Bauman, and Walden v. Fiore. While the Walden appeal asks the Court to revisit its “effects” and “purposeful direction” tests for a state’s ability to assert jurisdiction over a non-resident defendant, DaimlerChrysler’s appeal raises the sexier and more compelling issue of personal jurisdiction in the context of so-called F-cubed cases: lawsuits brought in an American court by foreign plaintiffs suing foreign defendants, based on events that took place in some foreign country.

In recent years the Court twice has manifested its distaste for F-cubed litigation in American courts, repudiating such litigation based on a lack of subject matter jurisdiction of the U.S. courts to adjudicate such disputes. If the combined Kiobel and Morrison decisions have not completely destabilized the reach of American courts over transnational disputes, then the Court this term has the opportunity to hammer a final nail in this coffin by addressing subject matter jurisdiction’s twin doctrine: that of personal jurisdiction.

This term’s DaimlerChrysler case, the third time in as many years where the Court will evaluate whether American courts may assert personal jurisdiction over non-resident foreign defendants for injuries occurring either in the United States, or on foreign soil. Based on the Court’s general trend declining to allow the extraterritorial reach of American courts over foreign nationals as a matter of subject matter jurisdiction, it seems unlikely that the Court will reverse course and embrace an expansive doctrine of extraterritoriality in the guise of personal jurisdiction jurisprudence.

Nonetheless, the Court’s personal jurisdiction doctrine has been so muddled and fractured over several decades that one can never predict with certainty

where the Court will wind up. This article suggests that while the Court's consideration of the DaimlerChrysler appeal most likely will look to the Court's 2011 Goodyear decision relating to general jurisdiction, the Court's companion opinions in McIntyre Machinery may offer a seductive analytical paradigm that diverts the Court into the ongoing debate between sovereignty and fairness theories of personal jurisdiction. Thus, in deciding the DaimlerChrysler appeal, although the Court's Goodyear decision is the reigning precedent concerning general personal jurisdiction, it may well turn out that the Court's McIntyre decision asserts more hydraulic pull with the Court.

The article is forthcoming in the *University of Toledo Law Review*.