So Now What Do We Do?

General Jurisdiction Challenges and Jurisdictional Discovery Post *Daimler AG v. Bauman*

By John Isaac Southerland, Jeremy Gaddy, and Elizabeth Davis

Some uncertainty will remain until courts apply *Bauman* uniformly and it becomes clear which exceptional circumstances will support exercising general jurisdiction, but attorneys do have strategies in the meantime.

In 2014, the Supreme Court of the United States issued *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), purportedly to clarify and reaffirm the law on the often-overlooked concept of general personal jurisdiction.

While a majority of lower courts have followed *Bauman*'s clear directive, thus creating some predictability about when and where a corporate defendant may be haled into court, others have strayed from Supreme Court precedent, leading to even greater inconsistency across forums and resulting in additional and increasingly burdensome jurisdictional discovery. Although seeking dismissal for lack of general jurisdiction post-*Bauman* should be fairly straightforward, because of this divergence, almost three years after *Bauman*, some uncertainty remains.

Bauman reaffirmed that general jurisdiction over foreign corporations may only be asserted "when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum state." *Id.* at 754, 761 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). The Court



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made clear that the paradigm bases for a corporation being at home are the principal place of business and the place of incorporation, which are the same, in theory, as an individual's domicile. *Id.* at 760. Otherwise, the Supreme Court noted, only in the "exceptional case" should a court look beyond the paradigm examples of where a corporation is at home when undertaking a general jurisdiction analysis. *Id.* at 761 n.19.

Concurring with the majority opinion, Justice Sotomayor admonished that *Bauman* would "lead to greater unpredictability by radically expanding the scope of jurisdictional discovery." *Id.* at 770 (Sotomayor, J., concurring). Justice Ginsburg disagreed with this proposition, noting that "it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home." *Id.* at 762 n.20. Yet, plaintiffs continue to issue jurisdictional discovery, attempting to establish general personal jurisdiction over foreign corporations on a regular basis. Whether jurisdictional discovery will taper as Justice Ginsburg opined, or whether Justice Sotomayor is correct that the floodgates are only now opening, is yet to be determined. In light of *Bauman* and those opinions regarding general personal jurisdiction that have been issued in its wake, it is worthwhile to reevaluate the manner in which defendants challenge general jurisdiction and to examine some strategies that we can use to combat jurisdictional discovery when it is issued.

General Personal Jurisdiction Before *Bauman*

Over time, dispute-blind jurisdiction, or what we refer to as general personal jurisdiction, admittedly took a back seat role to specific jurisdiction in the volume and specificity of judicial analysis. *Bauman*, 134 S. Ct. at 755. Only a handful of opinions from the Supreme Court over the last 135 years have addressed general jurisdiction, and such an absence of meaningful guidance created a great deal of uncertainty regarding the boundaries of the doctrine. *See* Mary Twitchell, *The Myth of General Jurisdiction*, 101 Harv. L. Rev. 610, 631–32 (1988).

In *Pennoyer v. Neff*, 95 U.S. 714 (1878), the Supreme Court limited a tribunal's jurisdiction to the geographic bounds of the forum state in which the court was established. There, the Court relied upon "well-established principles of public law" to reach its holding; however, it indicated in dicta that the recently enacted Fourteenth Amendment similarly prohibited extraterritorial jurisdiction. *Id.* at 722, 733. The Supreme Court followed the rule outlined in *Pennoyer* in a series of subsequent decisions. *See, e.g., Wilson v. Seligman*, 144 U.S. 41, 46 (1892); *New York Life Ins. Co. v. Dunlevy*, 241 U.S. 518, 522 (1916). However, the strict geographical ties to jurisdiction outlined there gradually eroded with the "constantly increasing ease and rapidity of communication and the tremendous growth of interstate business activity.…" *Hanson v. Denckla*, 357 U.S. 235, 260 (1958) (Black, J., dissenting).

Shifting from the importance of geographical sovereignty in *Pennoyer*, the Court's often-cited decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), outlined that

> due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'

Id. at 315 (citing *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

International Shoe distinguished what we now identity as specific jurisdiction from general jurisdiction. *Id.* at 317–18. General personal jurisdiction, the Court explained, exists in those cases in which a foreign corporation's "continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Id.* at 318.

Subsequent to *International Shoe*, however, the Court provided little guidance regarding general jurisdiction, deciding only two cases in the following 66 years. *See Helicopteros Nacionales De Columbia v. Hall*, 466 U.S. 408 (1984) (*Helicol*); *Perkins v. Benquet Consolidated Mining Co.*, 342 U.S. 437 (1952). As one commentator noted, by failing to explain the boundaries of general jurisdiction, the Supreme Court permitted lower courts to interpret general jurisdiction broadly and often to provide a strong basis for creating jurisdiction over defendants where those gaps in jurisprudence existed. *See* Alan Trammell, *A Tale of Two Jurisdictions*, 68 Vand. L. Rev. 501, 511–12 (2015). Interestingly, soon after *Helicol*, some argued that the scope of general jurisdiction should be reined in and limited to a corporation's "home base." Twitchell, *supra,* at 667–70. Two decades later, the Supreme Court took that step. *See Goodyear*, 564 U.S. at 915 (2011).

Whether jurisdictional discovery will taper as Justice Ginsburg opined, or whether Justice Sotomayor is correct that the floodgates are only now opening, is yet to be determined.

After performing relatively straightforward jurisdictional analyses in *Perkins* and *Helicol*, the Court revisited general jurisdiction in *Goodyear* in 2011. *See Id.* at 918–19. There, the Court noted that the lower court had merged specific and general jurisdiction in its analysis. *Id.* at 927. In rejecting such a broad analysis of general jurisdiction, the Court explained that general jurisdiction for "any and all claims against [corporations exist] when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Id.* at 919. The paradigm forum for the exercise of general jurisdiction under this analysis is the equivalent to an individual's domicile, one "in which the corporation is fairly regarded as at home." *Id.* at 924. Importantly, the Court explained that connections supporting an exercise of specific jurisdiction "do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant." *Id.* at 2855 (emphasis in original). The Court further noted that a corporation's continuous activity within a state is not enough to support general (dispute-blind) jurisdiction. *Id.* at 927.

Bauman and Subsequent Decisions

Despite *Goodyear*'s relatively straightforward standard, it largely failed to alter significantly the lower courts' application of the Due Process Clause when they conducted general jurisdiction analyses. Therefore, the Court took the opportunity in *Bauman* to clarify and to reaffirm its holding in *Goodyear*, despite the fact that the issues addressed may not have been squarely responsive to the narrow issue upon which certiorari was granted. 134 S. Ct. at 760 n.16.

The Court did 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."

In *Bauman*, Argentinian plaintiffs filed suit in the Northern District of California against Daimler, a German corporation, alleging that Daimler's Argentinian subsidiary committed human rights violations in Argentina. *Id.* at 750–51. Although they conceded that Daimler's contacts in California would not support specific personal jurisdiction, the plaintiffs claimed that general personal jurisdiction was proper in California based on the California contacts of Daimler's wholly owned subsidiary, Mercedes-Benz USA, LLC, which was incorporated in Delaware and had its principal place of business in New Jersey. *Id.* at 751. The plaintiffs argued that MBUSA's multiple facilities in California, its 10 percent of total sales derived from California, and the fact that MBUSA was the largest supplier of luxury vehicles to California were sufficient for California courts to exercise general jurisdiction over both MBUSA and Daimler. *Id.* at 761–62. Although the district court allowed jurisdictional discovery before ruling on Daimler's motion to dismiss for lack of personal jurisdiction, the jurisdictional discovery was limited to the plaintiffs' agency allegations—specifically, whether an agency relationship between Daimler and MBUSA existed that would allow the court to attribute MBUSA's California contacts to Daimler. *Id.* at 752. After finding that such an agency relationship did not exist, the district court held that it did not have general personal jurisdiction over Daimler because Daimler's own affiliations with the state were clearly insufficient to support the exercise of general jurisdiction in California. *Id.* at 752. While the Ninth Circuit originally affirmed the district court, it withdrew this opinion, ultimately holding that the agency test was satisfied and that considerations of reasonableness did not bar the exercise of jurisdiction. *Id.* at 753.

In reiterating *Goodyear*'s holding, the United States Supreme Court stated that a corporate defendant must be "at home" in the forum to be subject to general jurisdiction, and the Court reaffirmed the place of incorporation and principal place of business as the paradigm bases for general jurisdiction for a corporation. *Id.* at 760 (citing *Goodyear*, 564 U.S. at 735). The Court noted that the standard announced in *Goodyear* created predictability about where a corporate defendant may be sued, while affording plaintiffs "at least one clear and certain forum in which a corporate defendant may be sued on any and all claims." *Id.* at 760. However, the Court stated that "*Goodyear* did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business: it simply typed those places as paradigm all-purpose forums." *Id.* at 760 (emphasis in original). Therefore, the Court did 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." *Id.* at 761 n.19 (emphasis added) (citing *Perkins*, 342 U.S. at 447-48).

The *Bauman* plaintiffs interpreted this "exceptional" case to encompass the previous *International Shoe* standard, thus creating general jurisdiction in any forum in which a corporation engaged in the "substantial, continuous and systematic course of business." *Id.* at 760. However, the Court rejected this attempt to ignore its recent jurisprudence, finding this interpretation "unacceptably grasping" because it would subject large corporations to general jurisdiction in every state in which it was "doing business." *Id.* at 761. Rather, in its only attempt to identify the limited exception that it announced, the Court cited *Perkins* as the "textbook" case. *Id.* at 755.

In *Perkins*, the defendant was incorporated and had its principal place of business in the Philippines. 342 U.S. at 439. During the Japanese occupation of the Philippines in World War II, the defendant ceased operations, and its president moved to Ohio, where he kept an office, maintained the company's files, and oversaw the company's activities. *Id.* at 448. Although Ohio was neither the defendant's place of incorporation nor its principal place of business, the Court held that an Ohio court could exercise general jurisdiction over the defendant because "Ohio was the principal, if temporary, place of business." *Bauman*, 134 S. Ct. at 753 (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 n. 11 (1984)).

The *Bauman* Court clarified that unlike specific jurisdiction, general jurisdiction does not look solely at the scope of a defendant's contacts with the forum state; rather, the proper inquiry is the "corporation's activities in their entirety, nationwide and worldwide." *Id.* at 762 n.20. By focusing on a corporation's activities as a whole, the Court expressly intended to prevent large national and global corporations from being subject to general jurisdiction in all states. *Id.* Ultimately, the Court held that the facts did not present the exceptional circumstances required for a California court to assert general jurisdiction over Daimler. *Id.* at 761–62. Even if the Court could attribute MBUSA's California contacts to Daimler, MBUSA's California activities "plainly [did] not approach that level." *Id.* at 761 n.19.

Beyond this, the *Bauman* Court provided little guidance about which excep-

tional circumstances might support a finding of general jurisdiction in forums other than a corporation's state of incorporation or principal place of business. However, it did add teeth to the *Goodyear* "at home" standard, and in the three years since *Bauman* was decided, it has been cited by lower courts over 1,250 times. With the two paradigm bases for general personal jurisdiction settled by *Goodyear* and *Bauman*, lower court decisions focus on finding the "exceptional case" to support general jurisdiction. While some courts have taken liberties in finding the exceptional circumstances necessary for such a finding of general jurisdiction, most courts of appeals have reserved the "exceptional case" designation for cases that are truly exceptional. *See Kipp v. SKI Enter. Corp. of Wis.*, 783 F.3d 695 (7th Cir. 2015) ("While *Goodyear* and *Daimler* may have left some room for the exercise of general jurisdiction in the absence of incorporation or principal place of business in the forum state, this is not one of those rare situations."); *Magill v. Ford Motor Co.*, 379 P.3d 1033 (Colo. 2016); *Genuine Parts Co. v. Cepec*, 137 A.3d 123 (Del. 2016); *Sioux Pharm, Inc. v. Summit Nutritionals Int'l, Inc.*, 859 N.W.2d 182 (Iowa 2015).

Some courts continue to misinterpret Bauman, finding general jurisdiction in situations that clearly do not present exceptional circumstances.

In particular, the Ninth Circuit recognized the narrow scope of the "exceptional case" and applied Justice Ginsburg's guidance in limiting jurisdictional discovery. *See Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (denying the plaintiffs' requests for additional jurisdictional discovery, finding that "nothing plaintiffs could discover about [the defendant's] contacts with California would make [the defendant] 'essentially at home' in California."). Similarly, the Second Circuit has applied *Bauman* narrowly, declining to permit jurisdictional discovery when "it is clear from the facts that general jurisdiction" does not exist. *Cont'l Indus. Group v. Equate Petrochemical Co.*, 586 Fed. Appx. 768, 768–70 (2d Cir. 2014). The Fifth Circuit took a similarly narrow approach. *Whitener v. Pliva, Inc.*, 606 Fed. Appx. 762, 765 (5th Cir. 2015) ("Nothing in the record shows that [the defendant's] contacts with Louisiana are 'continuous and systematic enough' to make this such an 'exceptional case.' Furthermore, because the [plaintiffs] identify no evidence that they would likely discover that would call our lack of personal jurisdiction into question, the district court did not abuse its discretion in denying [their] motion for additional jurisdictional discovery.").

Nonetheless, some courts continue to misinterpret *Bauman*, finding general jurisdiction in situations that clearly do not present exceptional circumstances. For example, in *Moore v. States Dairy Center*, the Appellate Court of Illinois held that it had general jurisdiction over an Indiana defendant, based on the defendant's contracts with Illinois schools. 2014 Ill. App. (1st) 140149-U (Ill. App. 2014). Specifically, although the defendant maintained no offices or agents in Illinois, it solicited business from Illinois by advertising in Illinois and entering into contracts with Illinois schools to host students at its Dairy Adventure facility located in Indiana. Calling the defendant "a serial contractor that repeatedly and systematically enters into contracts with Illinois schools," the court found that these contacts with Illinois were substantial enough to make the defendant at home in Illinois, thus allowing Illinois courts to exercise general personal jurisdiction. *Id.* at 25. The court reasoned that this assertion of jurisdiction conformed to the Supreme Court's decision in *Bauman*, finding that the defendant's contacts represented the "exceptional case." *Id.* at 26.

The Appellate Court of Illinois continued to apply this expansive interpretation of *Bauman* in *Aspen American Insurance Company v. Interstate Warehousing, Inc.*, 57 N.E.3d 656 (Ill. App. 2016). The defendant corporation was incorporated and had its principal place of business in Indiana, but the plaintiff presented evidence that the defendant had two warehouses in Illinois (although it had warehouses in other states) and was registered to do business in Illinois. The court found that these contacts alone constituted a prima facie showing that the defendant was at home in Illinois, and this shifted the burden to the defendant to prove that it was not, in fact, at home in Illinois. *Id.* at 657. Because the defendant failed to present any evidence about the volume of business that it conducted in Illinois, the court found that it failed to overcome the plaintiff's prima facie showing of jurisdiction, and the appellate court upheld the lower court's denial of the defendant's motion to dismiss. *Id.* at 668.

In addition, the Supreme Court of Appeals of West Virginia took an expansive, and similarly misguided, approach to *Bauman* in *Ford Motor Co. v. McGraw*, 788 S.E.2d 319 (W. Va. 2016). Although Ford's contacts in West Virginia consisted of its contracts with independently owned Ford dealerships located in West Virginia, the lower courts held that Ford was subject to general personal jurisdiction based on a finding that Ford was "doing business" in West Virginia. Although the Supreme Court of Appeals of West Virginia corrected the lower court's application of the "doing business" standard in finding general jurisdiction, the court ultimately remanded the case to allow jurisdictional discovery, finding that the case was distinct from the facts in *Bauman*. Specifically, the court noted that unlike *Bauman*, *Goodyear*, and *Helicol*, the facts did not involve international considerations. Therefore, the court allowed the plaintiff to conduct jurisdictional discovery to show that Ford's contacts with the state of West Virginia made it at home in West Virginia.

Is Help on the Way?

In January 2017, the Supreme Court granted certiorari in two general jurisdiction cases: *BNSF Railway Company v. Tyrrell* and *Bristol-Myers Squibb Company v. Superior Court*. In *Tyrrell*, the plaintiff sued BNSF under the Federal Employers Liability Act (FELA) in Montana. 373 P.3d 1, 2 (Mont. 2016), *cert. granted*, 85 U.S.L.W. 3344 (U.S.

Jan. 13, 2017)(No. 16-405). Although BNSF is a Delaware corporation with its principal place of business in Texas, the Montana Supreme Court held that it could exercise general personal jurisdiction over BNSF because *Bauman* did not overrule previous Supreme Court case law holding that FELA conferred jurisdiction to state courts in all states where a railroad is "doing business." *Id.* at 6. This case presents an opportunity for the Supreme Court to clarify *Bauman*'s effect on other statutes.

In *Bristol-Myers Squibb*, out-of-state plaintiffs sought to hold Bristol Myers Squibb liable in California for drugs manufactured outside of the state, but Bristol Myers Squibb claimed that the California courts lacked personal jurisdiction over it. 377 P.3d 874, 878 (Cal. 2016), *cert. granted*, 85 U.S.L.W. 3352 (U.S. Jan. 19, 2017)(No. 16-466). Bristol Myers Squibb is incorporated in Delaware, headquartered in New York, and maintains "substantial operations" in New Jersey, including major research and development campuses. *Id.* at 879. However, the plaintiffs relied on Bristol Myers Squibb's operations in California, including its five research and laboratory facilities located in California and employing approximately 164 California residents, its 250 sales representatives located in California, its sales revenue of almost $918 million in California over six years, its office in Sacramento, and the fact that the company is registered to do business in the state. *Id.* Although both the California Superior Court and the California Court of Appeal found that California had general personal jurisdiction over Bristol Myers Squibb before *Bauman* was decided, the California Court of Appeal held post-*Bauman* that general personal jurisdiction did not exist, instead exercising specific personal jurisdiction over Bristol Myers Squibb. *Id.* The California Supreme Court affirmed, holding that while Bristol Myers Squibb conducted substantial ongoing activities in California, these activities fell "far short of establishing that it is at home" in California. *Id.* at 883. This presents yet another opportunity for the Court to clarify the bounds of general personal jurisdiction and thus limit the scope of jurisdictional discovery. In particular, this case invites more analysis into the "exceptional case"; the California Supreme Court implied that Bristol Myers Squibb could be regarded as "at home" in Delaware, New York, and New Jersey. *Id.*

Considerations When Asserting a Challenge to General Jurisdiction Under *Bauman*

When asserting a challenge to general jurisdiction under *Bauman*, it is important (1) to understand how the forum jurisdiction or state applies *Bauman*; (2) to make the "exceptional" case the exception; and (3) to evaluate using traditional considerations.

Understand How the Forum Jurisdiction or State Applies *Bauman*

On its face, *Bauman*'s "at home" test appears to ease a defendant's burden in asserting a challenge to general jurisdiction when it has been haled into an improper court, and in doing so, the opinion provides good guidance so that most defendants should be able to make an educated decision about whether a general jurisdiction challenge will be successful. Luckily, most courts applying *Bauman* to date appear to apply it rigidly as well. *See, e.g., Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014) (finding no general jurisdiction over Cayman Islands defendant in Texas); *Gucci Am., Inc. v. Bank of China*, 768 F.3d 122, 135 (2d Cir. 2014) (finding no general jurisdiction over Chinese defendant in New York). In those jurisdictions, a defendant likely would need only present evidence indicating where it is "at home," or provide evidence of the corporation's global activities compared to those in the jurisdiction.

However, as explained earlier, some courts continue to hold fast to the familiar visages of the past by, for example, holding that *Bauman* is inapplicable to the case at hand, recognizing *Bauman* but continuing to apply it in conjunction with some amalgam of prior general jurisdiction tests, or creating new exceptions for specific jurisdiction to avoid *Bauman*'s clear directive. *See, e.g., Fabara v. GoFit, LLC*, 308 F.R.D. 380, 401–05 (D. N.M. 2015); *Bristol-Myers-Squibb*, 377 P.3d at 874; *Tyrrell*, 373 P.3d at 1. The prospect of a court's inconsistent application of *Bauman* erodes the certainty that should exist when deciding whether to incur the time and expense necessary to raise a jurisdictional challenge. Fortunately, these outlier jurisdictions appear few and far between, but because of their existence, it seems well worth a defendant's time to confirm each particular jurisdiction's interpretation of *Bauman* before proceeding with a challenge.

Make the "Exceptional" Case the Exception

Despite Justice Ginsburg's assertion that only in an "exceptional" (*i.e.*, unusual, atypical, rare) case will jurisdiction fall beyond those paradigm locations identified in *Bauman* and *Goodyear*, plaintiffs will argue that each case is the exception. Depending upon the particular jurisdiction's interpretation of *Bauman,* it is in this analysis where a dismissal will be won. Unfortunately, *Bauman* simply recites the facts in *Perkins*; it does not explain how the exceptional case should be defined. Until there is additional guidance in this area, defendants must rely upon the general tenets in *Bauman* to argue that the Supreme Court's choice of the word "exceptional" was not a mistake. In *Bauman*, for example, when analyzing whether Daimler was at home in California, the Court focused on whether the company was incorporated in California and whether it had its principal place of business there. 134 S. Ct. at 761. The Court made no protracted analysis that would remove Daimler from the exception. Instead, it saw no need to reach such an analysis. *Id.* at 761 n.19.

When appearing before a court that is determined to analyze both the paradigm jurisdictions and the exceptional case *in every case*, defendants must be prepared to present evidence of a corporation's activities in their entirety. As Justice Ginsburg explained, "the general jurisdiction inquiry does not 'focus solely on the magnitude of the defendant's in-state contacts." *Id.* at 762 n.20. For example in *Gucci*, 768 F.3d at 122, the Second Circuit found no general jurisdiction after only undertaking a short analysis during which it reasoned that the defendant was incorporated and headquartered elsewhere and had only a small portion of its worldwide business in New York. *Id.* at 135.

Evaluate Using Traditional Considerations

Nothing in *Bauman* alters many of the traditional considerations that influence whether a defendant should assert a chal-

lenge to general jurisdiction. Although jurisdiction certainly would be improper under *Bauman* in some cases, a defendant nevertheless voluntarily would waive its right to assert a challenge. For example, a challenge to general jurisdiction will not be productive if a specific jurisdiction analysis will deem jurisdiction proper. A defendant should also necessarily analyze the proper jurisdictions where the suit may proceed if the challenge is successful. Whether the potential jury composition, rules of procedure, or other considerations are more or less favorable than those in the jurisdiction at hand may alter a defendant's decision to proceed with a challenge. There is also an inherent cost in mounting a protracted fight over jurisdiction, particularly when the court permits jurisdictional discovery. In addition to the time and resources to respond to discovery, depending on the scope of discovery permitted, a corporate defendant may be required to produce sensitive, proprietary information that would otherwise be beyond the scope of the case. Stated simply, the value of a successful challenge to jurisdiction must be weighed against the cost incurred during the challenge.

Strategies for Challenging Jurisdictional Discovery

When contesting general jurisdiction, the greatest expense, by far, will be challenging and responding to jurisdictional discovery issued by a plaintiff or ordered by a court. Below are some tactics that may ultimately reduce the burden that discovery would create.

Place the Burden to Show Relevance on the Plaintiff

As surmised by Justice Sotomayor, the requesting party will likely issue expansive discovery requests seeking any information that bears on the defendant's forum-specific conduct. *Bauman*, 134 S. Ct. at 770 (Sotomayor, J., concurring). However, taking cues from Justice Ginsburg, jurisdictional discovery should not be too broad when focused on the relevant issues to be determined, *i.e.*, the defendant's place of incorporation and principal place of business, and potentially, whether this is the "exceptional" case. *Id.* at 762 n.20.

The recent amendments to the Federal Rules make clear that any discovery should be both relevant and proportional to the needs of the case, and it is the burden of the requesting party to make this showing. As such, throughout the discovery process, a defendant should reiterate that the primary question at hand is how the information requested will resolve the jurisdictional questions. Discovery seeking to establish, for example, that a defendant's activity is merely continuous in a jurisdiction or that a defendant places products into the stream of commerce in a jurisdiction are potentially irrelevant because they do not support a determination of general jurisdiction. *See, e.g., Bauman*, 134 S. Ct. at 757.

Narrow the Scope in Time

Defendants can also anticipate discovery to span a broad scope of time. Under this rationale, a plaintiff may attempt to argue that when a defendant's conduct is examined over a broad window of time, sufficient contacts exist to create general jurisdiction. As personal jurisdiction is generally assessed at the time that a complaint is filed, discovery that spans decades is irrelevant. It does not take a great stretch of the imagination to understand that limiting discovery to a relevant time period can quickly reduce the financial burden required to respond to jurisdictional discovery.

Include the "Denominator" Even if the Information Is Not Sought

Justice Ginsburg explained that a general jurisdiction analysis includes not only those contacts in the state, but also appraises those activities nationwide and worldwide. *Bauman*, 134 S. Ct. at 763 n. 20. When discovery requests seek only those in-state contacts (numerator), defendants should consider providing the same information in a nationwide or worldwide context (denominator). For instance, if a court were to allow discovery of the number of products sold in a particular forum, it is also imperative to compare this amount to national sales. By providing this additional information, the defendant can place the information sought in context to show that the local jurisdiction is not the corporation's home.

Ensure that Information Is Properly Protected from Dissemination

Finally, as with trade secret or proprietary information produced during typical discovery, it is important to ensure that the information that is produced in jurisdictional discovery is adequately protected from dissemination. Depending upon the scope of discovery, the information produced may be some of the most sensitive data available to a company, *i.e.*, annual revenues, advertising information, sales figures. A protective order should be tailored to the facts of the case and to the information to be produced.

Conclusion

It is without question that *Bauman* clarified the requirements necessary for a court to exercise general personal jurisdiction over a corporate defendant; however, three years after *Bauman*, it is also evident that courts throughout the country have not uniformly applied the "at home" standard outlined by Justice Ginsburg. In granting certiorari in two new cases this year, the Supreme Court has additional opportunities to clarify those "simple" rules to "promote greater predictability" in a jurisdictional analysis. *Bauman*, 134 S. Ct. at 760 (citing *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). However, until such time that *Bauman* is applied uniformly, and until the boundaries of the "exceptional" case under *Bauman* are explained, some uncertainty in a general jurisdictional analysis will remain. It also remains to be seen whether Justice Sotomayor or Justice Ginsberg will prove to be correct in interpreting the scope of jurisdictional discovery in the wake of *Bauman*. Nonetheless, in most cases *Bauman* and those lower courts following it should provide sufficient guidance for a successful jurisdictional challenge.