

## **Where will suit be filed? Personal jurisdiction considerations when engaging in joint development of autonomous vehicle technology**

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### **Introduction**

The idea of a network of fully autonomous vehicles zooming across roads and highways elicits visions of human passengers within casually reading the newspaper, playing cards, or even peacefully napping. Meanwhile, the autonomous technology tirelessly works to communicate with other vehicles and fixed infrastructure to operate the vehicle safely and without error – constantly measuring and calculating to ensure a level of safety unreachable under the hands of human guidance. After all, the National Highway Transportation and Safety Administration (NHTSA) estimates that 94 percent of fatal crashes result from human error or decision, and it cites this statistic as one of the primary reasons for its strong support in favor of autonomous technologies on American roadways.

However, despite the promise of revolutionizing the way the world travels, and simultaneously reducing the toll that automobile accidents levy on economies and human lives, the likelihood that even a fully autonomous network of vehicles will bring an end to *all* crashes and incidents seems far-fetched. Particularly during the lengthy transitional period away from human-navigated automobiles to a fully autonomous network of software-driven machines, in which we have even yet to enter, crashes will still occur, and these crashes will give rise to legal considerations which must be confronted by manufacturers, suppliers, consumers, and particularly, the courts.

In every case tried before an American court of law, the court must be able to assert both subject matter jurisdiction over the case, and personal jurisdiction over a respective defendant in order for that court to be legally empowered to enter a judgment in the controversy. Courts find subject matter jurisdiction over a case by examining the controversy at issue, i.e. federal courts generally have subject matter jurisdiction over matters involving federal questions or diversity. Personal jurisdiction over defendants is said to be either specific or general. Specific personal jurisdiction is generally found when alleged liability arises from or is related to an activity conducted within the chosen forum so long as conduct creates a substantial connection to the forum, e.g. the allegedly defective product was first sold in the chosen forum. Alternatively, general jurisdiction is asserted only when an out-of-state defendant's conduct giving rise to the lawsuit occurs outside of that forum, but the defendant's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." (*Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853)). As manufacturers and suppliers continue to work together to develop autonomous technology, they should consider the effect their joint development efforts may have on a court's assertion of personal jurisdiction in litigation.

## **Bauman clarified what constitutes “at home” contacts for general or “all-purpose” jurisdiction**

In 2014, the United States Supreme Court considered the case of *Daimler AG v. Bauman* wherein Argentinian residents filed suit against Daimler in California alleging that Mercedes-Benz Argentina, a Daimler subsidiary, collaborated with state security forces to kidnap, detain, torture, and kill some Mercedes-Benz Argentina workers between 1976 and 1983. Personal jurisdiction over Daimler was based on another subsidiary’s (Mercedes-Benz USA, LLC; “MBUSA”) contacts within the State of California. Clearly, the events giving rise to the lawsuit took place outside the forum state of California, and the Court noted that neither Daimler nor MBUSA was incorporated in California nor maintained its principal place of business there, but that MBUSA did maintain several California-based facilities.

The Court also found that an agreement between Daimler and MBUSA established MBUSA as an independent contractor and did not make MBUSA a general or special agent, partner, joint venture, or employee of Daimler. As a result, the Court declined to impute MBUSA’s California contacts (which it assumed for purposes of the case qualified MBUSA as at home in California) on to Daimler under an agency theory of liability. Instead, it found that if “Daimler’s California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA’s sales are sizeable. Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants ‘to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.’” (*Bauman*, at 761-62 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1982))). The Court held that personal jurisdiction over Daimler under general jurisdiction was improper and that “subjecting Daimler to the general jurisdiction of courts in California would not accord with the ‘fair play and substantial justice’ due process demands.” *Id.* at 763 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Importantly, the *Bauman* Court recognized that the two “paradigm” bases for asserting general or “all-purpose” jurisdiction over a defendant are the defendant’s principle place of business or its place of incorporation. *Id.* at 760. Otherwise, general jurisdiction would only be proper in an exceptional circumstance.

The importance of *Bauman* is not that the Supreme Court somehow changed the law with respect to a court’s assertion of general personal jurisdiction over a defendant. Instead, the Court significantly clarified that a company doing a lot of business with a particular state does not necessarily render the defendant “at home” in that respective state. Indeed, as the Supreme Court stated, “[P]laintiffs would have us ... approve the exercise of general jurisdiction in every State in which a corporation ‘engages in a substantial, continuous, and systematic course of business.’ That formulation we hold, is unacceptably grasping.” *Id.* at 761.

## **Jurisdictional considerations with respect to joint development scenarios**

As autonomous vehicle technology continues to develop, original equipment manufacturers and suppliers, who historically distinguished one another as wholly separate entities under traditional supply chain roles, have increasingly turned to joint development agreements (JDAs), or similar arrangements, to facilitate the development of software and hardware used in

autonomous vehicle systems. Without proper consideration given during the creation of these type agreements, a manufacturer or supplier may open themselves up to increased jurisdictional considerations in litigation. As JDAs become more and more prevalent, courts will certainly be faced with questions regarding the assertion of personal jurisdiction over defendants, and the implications in litigation may be significant.

For instance, imagine that an autonomous vehicle manufacturer is incorporated and has its principal place of business in State A. The manufacturer worked closely with a software development company in State B to develop the systems that operate the vehicle in autonomous mode. The developer is incorporated in State B and has its principal place of business there as well. A plaintiff, a resident of State C, was injured in State C while riding in an autonomous vehicle manufactured by the manufacturer and being operated by the software. For various reasons, the plaintiff wants to file suit in State A against both the manufacturer and the developer. When a court is unable to find that the software developer is “at home” in State A, absent some finding of specific jurisdiction, the plaintiff’s claims against the developer in State A will be barred for lack of personal jurisdiction, and the plaintiff will have to make a choice whether to seek relief solely from the manufacturer in State A, solely from the developer in State B, or from both in State C where the crash and injuries occurred.

JDAs, like any contract, are critically important for defining the roles and responsibilities of the two or more parties in the development of the product, and include provisions such as what or who each party will contribute, how ownership in the endeavor is divided, and what representations and warranties are being made by each party. Additionally, JDAs should include an indemnification provision, also known as a hold harmless clause, which provides that when the indemnifying party has generated a claim for which the indemnified party is found liable, the indemnifying party will relieve the other of any obligation owed to a third-party. In this manner, foundational contract law principles are applicable, and the parties are free to contract between themselves as they best see fit. While parties are generally free to alter contractual rights and responsibilities between themselves, however, they may not contract to exempt themselves altogether from the reach of a court that has proper jurisdiction. Indeed, particularly where agreements are poorly defined, opposing parties may argue that an out-of-state defendant who participated in the co-development of a product has impliedly consented to a *de facto* partnership or joint venture, of sorts, distinct from its status as a separate entity, and that the out-of-state defendant is therefore subject to the assertion of personal jurisdiction by the court. Consequently, the language of these JDAs should be exacting to define, assign, or limit the rights, responsibilities, and obligations of the contracting parties when liability arises from the cooperative development, and should include, to the fullest extent possible, express terms related to when parties will and will not indemnify one another.

## **Conclusion**

On its face, the principle of personal jurisdiction seems clear cut, and *Bauman, supra*, reinforces that the proper inquiry for asserting general jurisdiction is whether the defendant’s interactions with a state are continuous and systematic such that the defendant can be considered at-home in that forum. Likewise, *Bauman* clarified that a subsidiary’s actions, absent something more,

should not be imputed to a parent when asserting personal jurisdiction. However, as companies collaborate more closely with each other to spur the development of autonomous technologies, inevitably the lines between entities will blur, and contractual arrangements between parties may be determinative of the extent of resulting liability. Meanwhile, the parties should be cognizant of the fact that lawsuits against the companies pursuing autonomous technologies will undoubtedly face legal challenges – including challenges to personal jurisdiction – and the availability of forums in which to seek relief may be so limited.