“Minimum Contacts” Inquiry Cannot Be Minimal: U.S. Supreme Court Rejects Broad Reading of the Effects Test for Personal Jurisdiction

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The Supreme Court continues to curtail plaintiffs’ freedom to select the forum of litigation. On the heels of its decision last month in *Daimler AG v. Bauman* restricting general personal jurisdiction,¹ the Court’s decision last week in *Walden v. Fiore*, No. 12-574, clarifies the constitutional limits of specific jurisdiction.² In both contexts, the Court confirmed that even in our increasingly mobile world, plaintiffs cannot presume that the court they choose will have jurisdiction over the defendant. In *Walden*, the Court held that specific jurisdiction turns on the defendant’s contacts with the forum, not the defendant’s relationship with forum residents. *Walden* makes clear there is no presumption of jurisdiction where a defendant¹ knows that a plaintiff lives in a particular state. In addition, *Walden* rejects the theory previously embraced by some courts that specific jurisdiction is proper in intentional tort cases wherever a plaintiff suffers any form of foreseeable harm.

Although the Court’s opinion focused on an individual, not a corporation, and the Court pointedly declined to consider the impact of a defendant’s virtual “presence” within the state by e-commerce, *Walden* has important favorable implications for online and out-of-state businesses alike. By further narrowing the bases for personal jurisdiction, *Walden* encourages courts to err on the side of dismissal when faced with a defendant’s inadvertent or tenuous connection to the forum state.

**Background**

*Walden* arises out of the intersection between gambling and travel. Professional gamblers Gina Fiore and Keith Gipson were flying from Puerto Rico to Nevada when they were stopped by Drug Enforcement Agency (DEA) agents in San Juan. Fiore and Gipson’s carry-on bags contained almost $97,000 in cash. Fiore and Gipson insisted that the cash was their gambling winnings, and that they were returning to Nevada because they had residences there and in California. DEA agents permitted Fiore and Gipson to board their flight, but notified a DEA taskforce in Atlanta, where the couple had a connecting flight to Las Vegas.⁴

When Fiore and Gipson arrived in Atlanta, two DEA agents (including Anthony Walden) approached them at their departure gate. Fiore and Gipson repeated their explanation that they were professional gamblers, and that the cash was their gambling winnings and “bank.” After using a drug-sniffing dog, Walden seized the cash. Walden told Fiore and Gipson the cash would be returned once they verified
its source, at which point Fiore and Gipson boarded their flight to Las Vegas. The next day, their attorney contacted Walden to arrange for the cash’s return, and soon after provided Walden with documentation showing the legitimacy of the funds. Nonetheless, the cash remained in federal custody.5

Later, Walden drafted an affidavit outlining probable cause for forfeiture of the cash, and forwarded the affidavit to a United States Attorney’s Office in Georgia. Although a forfeiture complaint was never filed, the government did not return the money until about seven months later.6

Fiore and Gipson brought an action against Walden in the United States District Court for the District of Nevada, alleging violations of their Fourth Amendment rights. Among other things, plaintiffs alleged that Walden’s affidavit was false and misleading because it misrepresented the encounter at the airport and omitted exculpatory information. The district court dismissed the case for lack of personal jurisdiction, applying the Calder v. Jones "effects test," which authorizes jurisdiction where a defendant commits an intentional act expressly aimed at the forum state, causing harm the defendant knows is likely to be suffered in the forum.7 The district court reasoned that, even assuming Walden knew plaintiffs were Nevada residents when he seized their funds, his conduct surrounding the seizure was "expressly aimed" at Georgia, not Nevada.8

In a divided opinion, the Ninth Circuit reversed. The court of appeals majority held that Walden’s affidavit was "expressly aimed" at Nevada because he knew at the time that plaintiffs lived there.9 Moreover, the Ninth Circuit opined that Walden should have foreseen that the plaintiffs might suffer the negative effects of his conduct (the deprivation of funds) in their home state.10

The Supreme Court’s Decision

In a unanimous decision authored by Justice Thomas, the Supreme Court reversed, holding that "the proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant’s conduct connects him to the forum in a meaningful way."11 The Court relied on its precedent emphasizing the defendant’s connection to the forum, not the plaintiff’s, when considering whether specific jurisdiction may be asserted. Reiterating that "the defendant’s suit-related conduct must create a substantial connection with the forum State," the Court explained that the defendant’s relationship with the state must arise from the defendant’s contacts with the forum, not with persons who reside there.12 Because plaintiffs brought claims for intentional torts, the Court also discussed the Calder effects test, explaining that effects jurisdiction under that test does not depart from a focus on the defendant’s conduct, and that the Court’s normative specific jurisdiction law “appl[ies] when intentional torts are involved.”13

Applying these principles, the Court observed that none of Walden’s conduct occurred in Nevada. He approached, questioned, and searched plaintiffs in Georgia, drafted the affidavit in Georgia, and forwarded the affidavit to federal prosecutors in that state. Although plaintiffs alleged that Walden seized the funds or drafted the affidavit knowing that plaintiffs were Nevada residents, the Court held such knowledge, standing alone, was insufficient to establish that Walden’s conduct targeted Nevada.14

The Court then analyzed the harmful effects the plaintiffs allegedly suffered in Nevada— their continued lack of access to the seized cash—and held that those effects did not provide a sufficient basis for jurisdiction. Plaintiffs lacked access to their cash in Nevada as a result of their decision to be in that state, not as a result of Walden’s conduct. Had plaintiffs traveled to another state, the Court
explained, they would have experienced the same lack of access. As a result, the Court held Walden’s connections to Nevada were insufficient to authorize personal jurisdiction.

While the Court’s decision does not cast any real doubt on the well-established principle that a court has jurisdiction to redress actual injuries occurring in the forum in intentional tort cases, it does clarify the principle’s limits. Where the injury occurs outside the forum (here, Georgia), but the plaintiff suffers consequential harms in his forum of residency (Nevada), those harms do not suffice to connect the defendant’s conduct to the forum. In the end, Walden holds “it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State.”

### Potential Ramifications and Recommendations

Walden continues the Supreme Court’s steady march toward a more conservative approach to personal jurisdiction, giving the Due Process Clause renewed force. When faced with a motion to dismiss for lack of personal jurisdiction, Walden, Daimler, and their recent brethren, J. McIntyre Machinery, Ltd. v. Nicastro, 131 S. Ct. 2780, 2792 (2011), and Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), impel lower courts to err on the side of dismissal, something the courts might otherwise be reluctant to do. The proliferation of the internet, global commerce, and class action practice have all increased a company’s exposure to litigation in distant forums, while enhancing a defendant’s ability to press a defense remotely. The Supreme Court’s recent jurisprudence strikes the balance in favor of limiting jurisdiction to forums with tangible connections to the defendant—such as their “home” forum or forums where the defendants’ alleged wrongful activity occurred.

The main question left open in Walden may be the most intriguing one. Walden’s discussion of World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), suggests the Court’s ongoing skepticism of “stream of commerce”-based theories where someone other than the defendant caused the defendant’s product to enter the forum. The Court, however, expressly left open the question of “e-commerce” and virtual presence for another day, but not without sending a signal as to its possible approach. By reiterating that personal jurisdiction protects “the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties,” the Court intimates a willingness to discount “virtual” contacts in a forum that are solely plaintiff initiated.

Walden’s input, likewise, may not be limited to cases based on intentional torts, stream of commerce theories, or e-commerce. For related reasons, Walden may influence class action practice. Plaintiffs’ counsel may no longer assume personal jurisdiction will be found anywhere putative class members are harmed, in the absence of evidence that the defendant’s unlawful activities occurred within the state. This factor may limit the ability of the plaintiff’s bar to litigate in forums they believe to be more favorable.

In conclusion, in one respect Walden confirmed what we already knew—personal jurisdiction is not a given, and defendants cannot be haled into court on the basis of a plaintiff’s connection to the forum alone. But in another respect, the decision erased broad tests of specific jurisdiction that the Ninth Circuit and other courts had adopted. Under Walden, the fact that a plaintiff suffered foreseeable negative effects in the forum is not enough to authorize effects jurisdiction where the location of the harm is not tied to the defendant’s conduct. Walden is yet another example of the Court’s careful attention to the limits of personal jurisdiction. As we have written elsewhere, over the past few years the Court has rejected a broad reading of commerce-based jurisdiction, general jurisdiction, and now,
injury-based jurisdiction. The message from the Court is clear: personal jurisdiction focuses on the defendant.

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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2. See Walden, No. 12–574, 2014 WL 700098 (Feb. 25, 2014). As the Court explained, "'[s]pecific' or 'case-linked' jurisdiction depends on an affiliation[n] between the forum and the underlying controversy (i.e., an activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation). This is in contrast to ‘general’ or ‘all purpose’ jurisdiction, which permits a court to assert jurisdiction over a defendant based on a forum connection unrelated to the underlying suit (e.g., domicile).” Id. at *4 n.6 (selected internal quotation marks and citations omitted) (alterations in original).


5. Id.

6. Id. At *3.

7. Fiore v. Walden, No. 2:07-cv-01674, Docket No. 23, p. 5-6 (D. Nev. Oct. 17, 2008) (“The effects test ‘requires that the defendant allegedly have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.’”) (citing Dole Food Co., Inc. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002)); see also Calder v. Jones, 465 U.S. 783 (1984).


10. The Ninth Circuit denied rehearing en banc, over the dissent of eight judges. Id. at 562 (O’Scannlain, J., dissenting from denial of rehearing en banc); id. at 568 (McKeown, J., dissenting from denial of rehearing en banc).


12. Id. at *4.

13. Id. at *6.
14 Id. at *7.
15 Id.
16 Id. at *8.
17 See Kuko v. Super. Ct. (Horn), 436 U.S. 84, 96 (1978) (the effects test is “intended to reach wrongful activity outside of the State causing injury within the State or commercial activity affecting state residents”) (citing Restatement (Second) of Conflicts of Laws § 37 cmt. a at 157 (1971)).
18 Walden, 2014 WL 700098, at *6 (discussing Calder and noting that “defendants wrote an article for publication in California” and “the ‘effects’ caused by the defendant’s article—i.e., injury to the plaintiff’s reputation in the estimation of the California public—connected the defendants’ conduct to California, not just to plaintiffs who lived there”).
19 Id. at *8.
20 See supra nn.1 & 2.
21 Walden, 2014 WL 700098, at *7 n.9.
22 Id. at *4.
23 See supra nn.1 & 2.