Lect 16

**General PJ–**

General PJ over Corps under Int’l Shoe

* Substantial continuous contacts with forum state:
* While it has been held in cases on which appellant relies that **continuous activity** of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, there have been instances in which the 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**.

Goodyear Dunlap Tires (decided in June 2011) – Ginsburg

* Notice that it is an unusual and problematic case for general PJ
  + Goodyear Turkey had no employees, offices, property in forum state
* Ps argued PJ on basis of products making it in through stream of commerce into forum state
* Makes sense that there would be no general PJ on the basis of that
  + That would mean Ps could sue about Turkish labor dispute in NC
* But real question is category jurisd.
  + suit about tire accident in France in a state where the D ships (through intermediaries) tens of thousands of *tires*
    - problem is not *same* tires
    - would it have mattered if they were?

Goodyear also important for new test for general PJ

“For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.”

A few other issues in Goodyear: consider convenience/reasonableness

* hardship of Ps to go to Turkey or France
* Much easier for Goodyear Turkey to go to NC
* Also inefficient to refuse PJ over Goodyear Turkey, because the suit against Goodyear US in NC is continuing
* These considerations are irrelevant to the SCt in determining whether there is power

**Daimler**

**Ginsburg’s opinion**

before ND Cal.

Ps – 22 Argentinians

* D Daimler – German corp. with PPB in Germany

Causes of action concern atrocities during dirty war in Argentina

* Suit holds Daimler vicariously liable for actions of subsidiary/agent: Mercedes Benz Arg.

Our question is PJ over the defendant in CA

* We are concerned with contacts with CA and 14th Amendment because
* FRCP 4(k)(1)(A)
* PJ is about power of forum state over D due to fact that D reached out to forum state
* But couldn’t we say that the *unreasonableness* of PJ can itself become so great that it violates due process for a court to take jurisd over a D
* Example – A German has a German tagged in New York while changing planes at JFK, the suit in NY state court is about a brawl the two got into in Germany
  + There is power, at least under the Pennoyer theory
  + But might argue unreasonable top assert PJ given lack of forum state connections - inconvenient
    - Courts can dismiss for such reasons on forum non conveniens grounds
  + But maybe they must on due process grounds?
  + We will return to this in Asahi
  + This is Sotomayor’s point
  + “The Court can and should decide this case on the far simpler ground that, no matter how extensive Daimler’s contacts with California, that State’s exercise of jurisdiction would be unreasonable given that the case involves foreign plaintiffs suing a foreign defendant based on foreign conduct, and given that a more appropriate forum is available.”
  + SCt has never said whether unreasonableness could be a reason to disallow PJ in a general PJ case – this would have been a good opportunity
* Set it aside reasonablenss – what about power?
* What are Daimler’s connections with CA – very little
* But what about using MBUSA’s – the subsidiary’s – connections w/ CA

Is there general PJ over MBUSA in CA?

* what are MBUSA’s contacts with CA?
* multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine. According to the record developed below, MBUSA is the largest supplier of luxury vehicles to the California market. In particular, over 10% of all sales of new vehicles in the United States take place in California, and MBUSA’s California sales account for 2.4% of Daimler’s worldwide sales.
* The SCt assumed there was general PJ over MBUSA (although that is probably not in fact true, given what it then says about general PJ and the at home test)

But can you use MBUSA’s contacts to get general PJ over Daimler?

* + One theory of getting general PJ over a partent due to a sub’s contects (or over a sub due to a parent’s) is alter ego theory
    - Look to overlap management/board of directors between the parent and sub
    - Level of ownership of sub by parent
    - Similar to inquiry in determining whether to pierce corporate veil (that is, get at assets of the shareholder)

But alter ego theory wouldn’t work here

Ninth Cir. relied on a broader theory - agency test

* + The Ninth Circuit’s agency finding rested primarily on its observation that MBUSA’s services were “important” to Daimler, as gauged by Daimler’s hypothetical readiness to perform those services itself if MBUSA did not exist.
* Does the court answer whether the agency theory works?
  + NO (though doesn’t look like they think it does)
    - Notice that the skepticism is about the agency theory to get *general* PJ over the parent, due to general PJ over the sub
    - Agency clearly can create *specific* PJ, as when you sue the principal for torts committed by the agent in the forum
  + SCt assumes the agency theory does work for the purpose of argument, and says still no general PJ over Daimler
  + “Even if we were to assume that MBUSA is at home in California, and further to assume MBUSA’s contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler’s slim contacts with the State hardly render it at home there.”

Why? “at home” test – even if sub is at home in the forum state and all the contacts of the sub in the forum state are attributed to parent, it does not mean that the parent is at home in the forum state

* So what must that mean?
  + What the corporate D has *elsewhere* is important
  + In the end it is possible that there are only two states where there is general PJ - the state of incorporation and the state where the corp has its principal place of business
  + Though Ginsburg does say: “We do not foreclose the possibility that in an exceptional case, see, e.g., Perkins, described supra, at 10–12, and n. 8, 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.”
* problems with this approach
  + Sotomayor
    - Now more discovery to determine PJ – must look to D’s contacts elsewhere
    - Unfair to individuals
      * They can be tagged anywhere they happen to be and ct can get general PJ over them
        + But corp doesn’t have to worry – general PJ only in state of incorp and PPB
  + Green: Daimler decision does not make sense given Intl Shoe theory
    - * Idea of general PJ under Int’l Shoe is that D gets so much from the forum state that D has a duty to respond in its courts concerning any cause of action
        + Does not matter how much D gets from *other* states
      * This is also a restriction of general PJ over corps from what existed under Pennoyer regime – Why does Scalia sign on?

Also – if usually general PJ over a corp only in principal place of business and state of incorp, what does “principal place of business” mean?

* Probably not Hertz – nerve center test – that was for citizenship for diversity
* Notice that Daimler was not a possibility for category jurisd
  + Nothing analogous to the Argentine torture occurred in CA

But assume a good case for category jur.

- The D Corp. (incorporated in France with its PPB in France) put in new floors in all of its 1000 hotels  
- P (NY), while staying at D Corp. hotel in France, slipped and fell.  
- P sues the D Corp. in federal court in NY.  
- The D Corp. has 10 hotels in NY  
- There is already litigation in NY concerning the floors of the NY hotels

* + PJ in NY not possible under Daimler

Now specific jurisdiction

McGee v. Int’l Life Ins. Co.  
(US 1957)

McGee sues Int’l Life in Texas state ct

To enforce a judgment of a Ca state ct

D collaterally attacks the judgment - invalid because no PJ

- D wins in trial ct and in appellate courts in Tex – SCt grants cert and reverses

What was cause of action for 1st j in Ca state ct?

* breach of contract – D didn’t pay under insurance contract for death of her son (because the company said he committed suicide)

D’s response to Ca suit

* defaulted
  + was this a wise move?
  + What disadvantages resulted from defaulting?
    - Bound if they lose their collateral attack on PJ
    - Cannot challenge on the merits
    - What must their reasoning have been?
    - Would have lost (before Ca court) on PJ
      * Ca court would be ruling on its own power
    - Felt they had a better chance on the PJ issue before a Tex ct
      * Which would be ruling on the Ca ct’s power

1) What were the Texas D’s contacts with CA?

- Texas Ins co reinsured the life of a Calif. resident

- certificate of insurance mailed to Cal. insured

- insured sent payments to Tex

- D had no office or salesmen in Cal

- D had no other insureds in Cal

2) How could PJ be allowed on basis of so few acts?

* sufficiently related
* contract sent to CA was very thing being sued about

3) Remember Int’l shoe theory of implied consent to PJ by getting protections of state

- does this fit in theory?

Turning to this case we think it apparent that the Due Process Clause did not preclude the California court from entering a judgment binding on respondent. It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State. The contract was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died.

The premiums and insured’s residence are not something *the D* did.

Consider:

- D (a TX corp.) enters into an insurance contract with P (a TX domiciliary) in TX.   
- After paying some premiums, P moves to CA and continues paying the premiums from there.  
- PJ over D in CA for breach of the contract?

- here the insured mail the premiums from California and the insured was a resident of California when he died, but it appears we have no act by the defendant reaching out to California

*Could you fit this into the Int’l Shoe theory by saying that the D chose to maintain a relation with a Cal dom*iciliary? This idea was explored...

It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold it legally accountable. When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum - thus in effect making the company judgment proof. Often the crucial witnesses - as here on the company's defense of suicide - will be found in the insured's locality. Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing which amounts to a denial of due process.

* These don’t concern actions of D
* new considerations – these are the McGee factors (reasonableness)
  + state interests
  + balance of burdens
  + location of witnesses

we will discuss the role of the McGee factors later