

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NANCY L. SURITA and ROJELIO	)	
SURITA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	15 C 7164
	)	
AM GENERAL LLC, et al.,	)	
	)	
Defendants.	)	

**ORDER**

For the following reasons, the Court grants Defendant Blain Supply, Inc’s (“Blain”) motion to dismiss Plaintiffs Nancy L. Surita and Rojelio Surita (the “Suritas”) First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(2) (“Rule 12(b)(2)”).

**STATEMENT**

For the purposes of the instant motion, the following well-pleaded allegations derived from the Complaint are accepted as true. The Court draws all reasonable inferences in favor of the Suritas. The Suritas are citizens and residents of the State of Minnesota.

From approximately the 1980s to 2000, the Suritas allege that Nancy L. Surita (“Mrs. Surita”) was wrongfully exposed to asbestos, an inherently dangerous toxic substance. During this time period, Mrs. Surita resided in both Illinois and Kentucky,

where she allegedly performed maintenance on her personal vehicles, including, but not limited to, removing and replacing brakes. From approximately 1990 to 1993, Mrs. Surita also served in the United States Army in Fort Campbell, Kentucky. She allegedly worked directly with and in proximity of others who used and handled asbestos-containing products and equipment, including, but not limited to, Blain's manufactured products. Mrs. Surita was allegedly exposed to and inhaled asbestos from these products, which were used in the maintenance of automobiles and military equipment. The exposures to asbestos have allegedly caused Mrs. Surita's malignant mesothelioma, a cancer caused by asbestos.

The Suritas originally filed this lawsuit in the Circuit Court of Cook County, Illinois. Blain is incorporated under the laws of the State of Wisconsin. The Suritas issued service to Blain at its current principal place of business in Wisconsin: Blain Supply Inc., 3507 E. Racine Street, #391, Janesville, WI 53547. Blain is registered to do business in Illinois and also has a registered agent in Illinois. On August 14, 2015, Defendant AM General, LLC removed this action to this Court. On September 14, 2015, the Suritas filed their First Amended Complaint (the "Complaint"). On September 22, 2015, Blain filed the instant motion to dismiss under Rule 12(b)(2).

District courts exercising diversity jurisdiction apply the personal jurisdiction rules of the state in which they are located. *Philos Technologies, Inc. v. Philos & D, Inc.*, No. 12-3446, 2015 WL 5562178, at \*6 (citing *Hyatt Int'l Corp. v. Coco*, 302 F.3d 707, 712-13 (7th Cir. 2002)). Illinois's long-arm statute provides that the Due

Process Clause of the Fourteenth Amendment sets the outer boundary of the personal jurisdiction of its courts. *See* 735 ILCS 5/2–209(c) (“A court may also exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States.”). The Due Process Clause authorizes personal jurisdiction over out-of-state defendants who have “certain minimum contacts with [the state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). A defendant's contacts with the forum state must be such that it could “reasonably anticipate being haled into court there.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)).

General jurisdiction is available when a defendant’s contacts with the forum state are “continuous and systematic,” even when a plaintiff’s claims do not arise out of those contacts. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984). “[A] court may assert jurisdiction over a foreign corporation ‘to hear any and all claims against [it]’ only when the corporation’s affiliations with the State in which suit is brought are so constant and pervasive ‘as to render [it] essentially at home in the forum State.’” *Daimler AG v. Bauman*, —U.S. —, 134 S.Ct. 746, 750 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, — U.S. —,

131 S.Ct. 2846, 2851 (2011)). The “paradigm” for the exercise of general jurisdiction is a corporation's “place of incorporation and principal place of business.” *Id.*

A court may also exercise specific personal jurisdiction over a defendant based on the defendant’s contacts with the forum state. *See Helicopteros*, 466 U.S. at 414. The Seventh Circuit has identified “three essential requirements” for specific jurisdiction: “(1) the defendant must have purposefully availed himself of the privilege of conducting business in the forum state or purposefully directed his activities at the state; (2) the alleged injury must have arisen from the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with traditional notions of fair play and substantial justice.” *Felland v. Clifton*, 682 F.3d 665, 673 (7th Cir. 2012) (internal citations omitted). The analysis is not “mechanical or quantitative.” *Int’l Shoe*, 326 U.S. at 319. The ultimate question is “whether it is fundamentally fair to require the defendant to submit to the jurisdiction of the court *with respect to this litigation.*” *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 780 (7th Cir. 2003) (emphasis in original).

In the instant motion to dismiss, Blain asserts that it “does not, and has never had, any contacts with the Suritas in Illinois.” After reviewing the Complaint, the Suritas make a blanket assertion that Blain “is a foreign corporation doing business in the State of Illinois who[] may be served at its principal place of business [Wisconsin]” to establish jurisdiction, but fail to allege any specifics as to Blain’s acts in Illinois that apparently give rise to this action. Now, in their Response, the Suritas

argue that Blain is subject to personal jurisdiction in Illinois, and consequently jurisdiction in this Court under the Illinois long-arm statute, because Blain is registered to do business and has appointed a registered agent in Illinois. However, in furtherance of their argument, the Suritas mistakenly rely on many pre-*Daimler* cases.

In 2014, the United States Supreme Court addressed a very similar jurisdictional issue in *Daimler*, holding that it was an error for the lower court to conclude that the defendant, Daimler, was “at home in California” and subject to claims by foreign plaintiffs in the forum state “having nothing to do with anything that occurred or had its principal impact in California.” *Daimler*, 134 S.Ct. at 762. The Court noted:

Here, *neither Daimler nor MBUSA is incorporated in California, nor does either entity have its principal place of business there.* 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 sizable. 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.” *Burger King Corp.*, 471 U.S. at 472 (internal quotation marks omitted). *Daimler*, 134 S. Ct. at 761-62 (emphasis added).

In the instant matter, it is clear that Blain is incorporated and maintains its principal place of business in Wisconsin, not Illinois. The Suritas’s desire for this Court to exercise “all-purpose jurisdiction” over Blain based on the presence of its registered agent in Illinois and Blain’s registration to do business in Illinois is unavailing, especially in light of *Daimler*. 134 S. Ct. at 762. Also, much of the

Suritas's supportive case law involves defendants who consented to jurisdiction under the Federal Motor Carrier Act, 49 U.S.C. § 13304(a), which explicitly contains a service of process provision with language that a corporation has consented to be sued in the forum where it designates an agent to receive service of process. *See R.R. Donnelley & Sons Co. v. Jet Messenger Servs., Inc.*, No. 03-C-7823, 2004 WL 1375402, at \*3-4 (N.D. Ill. May 25, 2004) (finding that an American trucking corporation waived objection to personal jurisdiction by designating an agent for service of process in accordance with a federal motor carrier statute). Nothing in the instant matter pertains to interstate motor carriers under the Federal Motor Carrier Act. Blain is instead subject to the Illinois Business Corporation Act of 1983, 805 ILCS 5/13.05, which does *not* contain a provision with jurisdictional consent language.<sup>1</sup> Thus, the Suritas's overreaching attempt to establish Blain's personal jurisdiction in Illinois, and subsequently this Court, fails in its entirety.

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<sup>1</sup> The Business Corporation Act of 1983 requires a foreign corporation to apply for authority to transact business in Illinois: "a foreign corporation organized for profit, before it transacts business in this State, shall procure authority so to do from the Secretary of State." 805 ILCS 5/13.05. The Act also requires that each domestic corporation and each foreign corporation having authority to transact business in Illinois shall have and continuously maintain in Illinois (a) a registered office, (b) a registered agent, and (c) the address of the initial registered office, and the name of the initial registered agent of each foreign corporation stated in its application for authority to transact business in Illinois. 805 ILCS 5/5.05. A foreign corporation having authority to transact business in Illinois may be served with process either upon the registered agent appointed by the corporation or upon the Secretary of State. 805 ILCS 5/5.25.

Blain's motion to dismiss under Rule 12(b)(2) for lack of personal jurisdiction is hereby granted.

A handwritten signature in black ink that reads "Charles P. Kocoras". The signature is written in a cursive style with a horizontal line underneath it.

Charles P. Kocoras  
United States District Judge

Date: 11/4/2015