The Backstory on the Second Circuit Dismissal of *Sokolow v. The PLO* for Lack of Personal Jurisdiction and the Plan to "Economically Destroy" the PA

By Louis G. Adolfsen

Sokolow v. The PLO is a lawsuit brought by many families against the Palestinian Liberation Organization and the Palestinian Authority to recover for the shootings and bombings that killed or injured members of their family. The PLO was founded in 1964 and is well-known because of its former leader, Yasser Arafat. The PLO is registered with the United States Government as a foreign agent and has two diplomatic offices in the United States, a mission to the U.S. in Washington and a mission to the U.N. in New York. The PA, headquartered in Ramallah in the West Bank, was established under the Oslo Accords as the interim, non-sovereign government of portions of the West Bank and the Gaza Strip, and essentially runs the government and conducts Palestinian foreign affairs.

The PLO and PA vigorously asserted that they did not direct or assist the individuals who committed these crimes. Despite the PA/PLO denial of liability for these civil tort claims, like governmental entities all across the United States, take New York City for one, they were found liable by a New York jury. On August 31, 2016, the United States Court of Appeals, ruling on an issue the PLO and PA had been making since *Sokolow* was commenced in 2004, dismissed the case for lack of personal jurisdiction.

But there is more to the Sokolow case than what can be found in the Second Circuit opinion. First, there is nothing extraordinary about the dismissal for personal jurisdiction. There was always a compelling argument that the PLO and PA were not subject to jurisdiction. Knowing this, the PA and PLO have argued that there was no jurisdiction over them for more than 12 years. Their original attorney, Ramsey Clarke, a former Attorney General of the United States and the son of Supreme Court Justice Tom Clarke, felt so strongly about the issue that he

refused to file an answer to the complaint based on his principled view that the PLO and PA were not subject to personal jurisdiction in the United States.

Ramsey's principled position almost got the PLO and PA in deep trouble in Sokolow when the plaintiff's moved to enter a default judgment against them. Indeed, because of this advice the PLO and PA defaulted in other cases and it took large sums of money, money they could ill afford, to pay because of the defaults. However strong felt the views of attorneys representing the PLO and PA, the cases where they defaulted had to be settled rather than risk an affirmance on appeal. Settling defaults was good advice considering the inability to obtain appellate review.

In 2007, following a change in attorneys, the PLO and PA made its first motion to dismiss for lack of personal jurisdiction. That firm, Miller Chevalier, continued to make the argument through the years, most recently when they petitioned for mandamus following the District Court's denial of yet another motion to dismiss. That petition, like all the other applications to dismiss for lack of personal jurisdiction, was dismissed by the Second Circuit on January 6, 2015.

After yet another denial of the PLO/PA effort to have the case dismissed for lack of personal jurisdiction, Sokolow went to trial. After a seven week trial, the PA and the PLO were found civilly liable for injuries to various U.S. citizens in Israel who were killed in numerous incidents, including a PA police officer opening fire on a pedestrian while in Jerusalem, a PA intelligence informant detonating a suicide bomb on the Jaffa Road in Jerusalem and various other suicide bombings in other parts of Israel and Jerusalem. The Second Circuit, after having previously dismissed a mandamus petition on the same jurisdictional grounds less than 2 years ago, dismissed the case on a direct appeal from a $655 million judgment for lack of personal

jurisdiction. There was nothing all that surprising about the dismissal on these grounds. Three decisions of the United States District Court for the District of Columbia based on fairly recent but well established precedent of the Supreme Court of the United States found there was no personal jurisdiction over the PLO and the PA. Based on the law, the Court found that there was no general personal jurisdictional over the PA and the PLO because they are not "at home" in the United States. They also found there was no specific personal jurisdiction because, even though they were found liable for the various bombings on the grounds that their employees are people who they provided material support to committed terrorist acts. As the Second Circuit explained, none of the random attacks in Jerusalem and other parts of Israel were in any way related to the PLO running the missions in New York and Washinton, DC, and generally promoting the interests of the PA and the PLO in the United States.

What you may not know is that the *Sokolow* lawsuit was not simply intended to provide a recovery for the individuals killed or injured in the shootings and bombings. It was also a lawsuit brought by an Israeli lawyer and an Israeli organization, with the support of the State of Israel, with the express intention of attempting to destroy the PA and the PLO financially.

The organization, Shurat HaDin, and the lawyer, Nitsana Darshan-Leitner, describe themselves in this way:

"Shurat HaDin is at the forefront of fighting terrorism and safeguarding Jewish rights worldwide. We are dedicated to the protection of the State of Israel. From defending against lawfare suits fighting academic and economic boycotts and challenging those who seek to delegitimize the Jewish State, Shurat HaDin is utilizing court systems around the world to go on the legal offensive against Israel's enemies.

Based in Tel Aviv, and directed by Attorney Nitsana Darshan-Leitner, Shurat HaDin works with Western intelligence agencies, law enforcement branches and a network of volunteer lawyers across the globe to file legal actions on behalf of world Jewry."

http://israellawcenter.org/about/#OBJECTIVES

Shurat HaDin and Nitsana, as she is known, describe their overall plan as "Bankrupting Terrorism," describing their plan as follows:

Beginning in the 1990s, Western countries, especially the United States, passed laws making it possible for victims of terror to sue the regimes that sponsor terror, banks that transfer funds to terror groups, front organizations that pretend to serve charitable causes, and even the terrorists themselves. For the first time, terror victims and their families have a chance to fight back through the court system.

One of the major goals of Shurat HaDin-Israel Law Center is to economically destroy Middle Eastern hate groups by specializing in tracking the assets and bank accounts of the terror groups, legally obstructing and restraining their funds. Shurat HaDin-Israel Law Center is recognized by banks, legal organizations and outlaw regimes around the world as the leading authority and resource on stopping the movement of global terror financing.

Shurat HaDin-Israel Law Center's staff works together with western intelligence agencies and volunteer lawyers around the world to file legal actions on behalf of victims of terror, representing hundreds of victims in cases against Hamas, Islamic Jihad, Hezbullah, the **Palestinian Authority**, Iran, Syria, North Korea, and numerous financial institutions such as UBS AG, the Lebanese-Canadian Bank, American Express Bank, and the Bank of China.(emphasis added).

http://israellawcenter.org/war-zones/bankrupting-terrorism/

This description of objectives shows that Nistsana and the Shurat HaDin consider the PA to be no different than Islamic Jihad, Hezbullah, and brought the *Sokolow* case, and other cases like it, to bankrupt the PA. In other words, they want to destroy the legitimate government of the Palestinian people. The PA, as the Second Circuit acknowledged:

"…funds conventional government services, including developing an infant structure; public safety in the judicial system; healthcare; public schools and education: foreign affairs: economic development initiatives in agriculture, energy, public works, and public housing; the payment of more than 155,000 government employee salaries and related pension funds; transportation; and, communication and information technology services."

Sokolow v PLO, slip opinion, a page 9.

Thus, in attempting to bankrupt the PA, Nitsana and the Shurat HaDin wanted to prevent the PA from providing such essential services as healthcare, education, and salaries. As a result of the Second Circuit dismissal, they failed.

The issue in the Second Circuit was the two parts of the Due Process test, under the Fifth and Fourteenth Amendments of the US Constitution, for personal as jurisdiction. Based on well established case law, in *Sokolow v The PLO*, the Second Circuit reasoned: "The District Court could not constitutionally exercise either general or specific personal jurisdiction over the defendants in this case." Slip Opinion, at page 60. The decision is fully consistent with developments, including other cases where terrorism was alleged.

Anyone who went to law school in the past 60 or 70 years knows *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945). In *Int'l Shoe Co.,* Chief Justice Stone framed the issue in this way:

> Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of court was prerequisite to its rendition of a judgment personally binding him. Pennoyer v. Neff, 95 U.S. 714, 733, 24 L.Ed. 565. But now that the capias ad respondendum has given way to personal service of summons or other form of notice, 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**.' Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278, 132 A.L.R. 1357. (emphasis added).

To understand why the Second Circuit ruled as it did, we need to examine the facts in two cases, one involving specific personal jurisdiction and the other general personal jurisdiction.

First, as to specific jurisdiction, in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 2851, 180 L. Ed. 2d 796 (U.S. 2011), the Court explained:

> Specific jurisdiction, … depends on an "affiliatio[n] between the forum and the underlying controversy," principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation. von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L.Rev. 1121, 1136 (1966) (hereinafter von Mehren & Trautman); see Brilmayer et al., A General Look at General Jurisdiction, 66 Texas L.Rev. 721, 782 (1988) (hereinafter Brilmayer). In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of "issues deriving from, or connected with, the very controversy that establishes jurisdiction." von Mehren & Trautman 1136.45. Because the episode-in-suit, the bus accident, occurred in France, and the tire alleged to have caused the

accident was manufactured and sold abroad, North Carolina courts lacked specific jurisdiction to adjudicate the controversy.

Next, as to general personal jurisdiction, in *Daimler AG v. Bauman*, 134 S. Ct. 746, 751, 187 L. Ed. 2d 624 (2014), referring to *Goodyear,* the Court observed:

we held that 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." Id., at ——, 131 S.Ct., at 2851. (emphasis added).

It is especially noteworthy that *Int'l Shoe's* analysis of general personal jurisdiction has rarely been applied. Since *Int'l Shoe,* the decisions of the Supreme Court:

"… have elaborated primarily on circumstances that warrant the exercise of specific jurisdiction. In only two decisions postdating *International Shoe* has this Court considered whether an out-of-state corporate defendant's in-state contacts were sufficiently "continuous and systematic" to justify the exercise of general jurisdiction over claims unrelated to those contacts: *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485; and *Helicopteros,* 466 U.S. 408, 104 S.Ct. 1868…"

Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 131 S. Ct. 2846, 2849, 180 L. Ed. 2d 796 (U.S. 2011).

Applying the *Daimler* and *Goodyear* decisions to *Sokolow* shows that the PLO and PA are not subject to either general or specific personal jurisdiction in the *Sokolow* case. The PLO Missions do not subject them to general personal jurisdiction because the PLO and PA's "affiliations with[New York]… are [not] so constant and pervasive "as to render [them] essentially **at home**…" in New York. (*Daimler*) and there is no specific personal jurisdiction because there is no "affiliatio[n] between [New York where the PLO has a mission] and the underlying controversy," the bombings and shootings in Jerusalem or elsewhere in Israel (*Goodyear*).

Sokolow is not the only case where the families of victims of terror sought to recover in the United States against a U.S. entity based on foreign crimes, as the following lengthy description from Daimler shows:

> This case concerns the authority of a court in the United States to entertain a claim brought by foreign plaintiffs against a foreign defendant based on events occurring entirely outside the United States. The litigation commenced in 2004, when twenty-two Argentinian residents1 filed a complaint in the United States District Court for the Northern District of California against DaimlerChrysler Aktiengesellschaft *751 (Daimler),2 a German public stock company, headquartered in Stuttgart, that manufactures Mercedes–Benz vehicles in Germany. The complaint alleged that during Argentina's 1976–1983 "Dirty War," Daimler's Argentinian subsidiary, Mercedes–Benz Argentina (MB Argentina) collaborated with state security forces to kidnap, detain, torture, and kill certain MB Argentina workers, among them, plaintiffs or persons closely related to plaintiffs. Damages for the alleged human-rights violations were sought from Daimler under the laws of the United States, California, and Argentina. Jurisdiction over the lawsuit was predicated on the California contacts of Mercedes–Benz USA, LLC (MBUSA), a subsidiary of Daimler incorporated in Delaware with its principal place of business in New Jersey. MBUSA distributes Daimler-manufactured vehicles to independent dealerships throughout the United States, including California.The question presented is whether the Due Process Clause of the Fourteenth Amendment precludes the District Court from exercising jurisdiction over Daimler in this case, given the absence of any California connection to the atrocities, perpetrators, or victims described in the complaint. Plaintiffs invoked the court's general or all-purpose jurisdiction. California, they urge, is a place where Daimler may be sued on any and all claims against it, wherever in the world the claims may arise. For example, as plaintiffs' counsel affirmed, under the proffered jurisdictional theory, if a Daimler-manufactured vehicle overturned in Poland, injuring a Polish driver and passenger, the injured parties could maintain a design defect suit in California. See Tr. of Oral Arg. 28–29. Exercises of personal jurisdiction so exorbitant, we hold, are barred by due process constraints on the assertion of adjudicatory authority.In Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. ——, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011), we addressed the distinction between general or all-purpose jurisdiction, and specific or conduct-linked jurisdiction. As to the former, we held that 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." Id., at ——, 131 S.Ct., at 2851. Instructed by Goodyear, we conclude Daimler is not "at home" in California, and cannot be sued there for injuries plaintiffs attribute to MB Argentina's conduct in Argentina.
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> *Daimler AG v. Bauman*, 134 S. Ct. 746, 750–51, 187 L. Ed. 2d 624 (2014).

What makes *Sokolow* unusual is two factors. First, it took so long for the Courts to recognize what the PLO and PA had been arguing all along. Second, and perhaps more

unfortunate, is the fact that the lawyers who brought the lawsuit did not just want to obtain compensation for the family of the victims, they wanted “to economically destroy” the PA, a functioning government and thereby cause suffering to an entire population.

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