

U.S. Supreme Court To Review Exercise Of Jurisdiction Over A Multinational That Distributes Products In The United States Through A Subsidiary

The U.S. Supreme Court has agreed to review a ruling from the U.S. Court of Appeals for the Ninth Circuit that expands the jurisdiction of U.S. courts over foreign corporations. *DaimlerChrysler AG v. Bauman*, No. 11-965, ___, 2013 WL 1704716 (U.S. Apr. 22, 2013). In this case, the Ninth Circuit allowed Argentine plaintiffs to assert jurisdiction in federal court in California over a German parent company, DaimlerChrysler Aktiengesellschaft ("Daimler") for acts allegedly committed in Argentina by Daimler's Argentine subsidiary, Mercedes-Benz Argentina ("MBA"), on the basis that Daimler distributes products in California through a separate subsidiary, Mercedes-Benz USA ("MBUSA"). The Ninth Circuit held that the activities of the U.S. affiliate made it an "agent" of Daimler that created "general personal jurisdiction" over Daimler, which means that plaintiffs can sue the parent company in California for any and all claims, regardless of where the claims arose.

The Supreme Court's review is important for multinational corporations, as the Ninth Circuit's approach would allow a U.S. court to hear a dispute involving a multinational, regardless of where in the world the claim arose, on the basis that a legally separate corporate subsidiary conducts business in the United States. The case is a continuation of a trend in which the Supreme Court is scrutinizing broad theories of federal authority, particularly theories that extend internationally. Oral argument will take place in the October 2013 Term.

Personal Jurisdiction: An Overview

U.S. courts may hear a suit against a defendant only if they have personal jurisdiction over that defendant. The personal jurisdiction requirement arises from notions of fundamental fairness and due process, and protects potential defendants from being forced to defend lawsuits in unforeseeable and unfamiliar jurisdictions with no ties to the dispute. This rationale applies with particular force to foreign defendants, and the Supreme Court has warned lower courts to exhibit "great care and reserve" in determining whether they may exercise jurisdiction over a defendant that is not physically present in the United States. *Asahi Metal Indus. Co., Ltd. v. Superior Ct.*, 480 U.S. 102, 115 (1987).

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To determine whether it is fair to subject a defendant to suit in a particular jurisdiction, courts analyze the quality and quantity of a defendant's contacts with the forum state, as well as the nexus between those contacts and the lawsuit. A court may exercise "specific jurisdiction" over a defendant in cases that relate to the defendant's contacts with the forum state (for example, a lawsuit over an automobile accident that occurs when the defendant is driving in the state). A court may assert "general jurisdiction" over a defendant for any and all claims—even those not related to the defendant's contacts with the forum—if the defendant has continuous, substantial, and systematic contacts with the jurisdiction (such as maintaining an office in the state). The Supreme Court recently reaffirmed that general jurisdiction over a foreign corporation must arise from contacts "so continuous and systematic as to render [the corporation] essentially at home in the forum state." *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. ___, 131 S. Ct. 2846, 2851 (2011). If the defendant lacks "minimum contacts" with the state, the court cannot exercise jurisdiction at all. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

Each state has established the jurisdiction of its courts through so-called "long-arm" statutes, which identify the circumstances in which the state's courts can assert personal jurisdiction. Although the states are free to require a more significant nexus between litigation and the defendant's contacts with the state, most states' long-arm statutes simply provide that courts may assert personal jurisdiction to the full extent allowed under the Due Process Clause of the U.S. Constitution.

The District Court Dismisses the Case for Lack of Jurisdiction

The plaintiffs in *DaimlerChrysler* alleged that MBA violated U.S. federal, California, and Argentine law by punishing workers that it viewed as union agitators, and collaborating with Argentinean military forces during the period known as Argentina's "dirty war," and that Daimler was liable as the parent of MBA. The U.S. District Court for the Northern District of California dismissed for lack of personal jurisdiction, reasoning that there was no relationship between the dispute and California (so there was no specific jurisdiction) and that the mere presence of a subsidiary in a state does not provide general jurisdiction over the parent. The court rejected the application of the so-called "agency" test for jurisdictional purposes, which imputes the contacts of a subsidiary to a parent where "the subsidiary represents the parent corporation by performing services sufficiently important to the parent corporation that if it did not have a representative to perform them, the parent corporation would undertake to perform substantially similar services." *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2007 WL 486389, at *2 (N.D. Cal. Feb. 12, 2007) (internal quotations omitted). Noting that Daimler had previously used other companies to distribute its vehicles in California, the court concluded that "distribution is not a task that but for the existence of the subsidiary, [Daimler] would have to undertake itself." *Id.*

The Ninth Circuit Agrees, Then Reverses Itself

On appeal, the Ninth Circuit initially affirmed the district court's ruling over a dissent by Judge Reinhardt. *Bauman v. DaimlerChrysler Corp.*, 579 F.3d 1088 (9th Cir. 2009), *vacated* 603 F.3d 1141 (9th Cir. 2010). But the court then granted plaintiffs' motion for reconsideration, vacated the opinion, and reversed course, concluding that Daimler can be sued in California for any and all claims based on the contacts of MBUSA. *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 934 (9th Cir. 2011). Without hearing additional argument, the court issued a new opinion authored by Judge Reinhardt. *Id.* The court held that by distributing vehicles in California, MBUSA was acting as Daimler's agent, which is sufficient to impute MBUSA's contacts for purposes of personal jurisdiction.

The Ninth Circuit reasoned that the services "MBUSA currently performs are sufficiently important to [Daimler] that they would almost certainly be performed by other means if MBUSA did not exist." *Id.* at 922. The court also concluded based on a distribution agreement between Daimler and MBUSA that Daimler "had the right to substantially control MBUSA's activities" *Id.* at 924. The court opined that jurisdiction over Daimler would be reasonable because Daimler makes cars that meet California's air quality standards, initiated lawsuits in California, established the DaimlerChrysler Research and Technology Center in California, and retained permanent counsel in California, and because California accounts for 2.4% of Daimler's worldwide sales. *Id.* at 913-14. The court did not consider that the entities maintain separate boards of directors, separate

employees, separate officers, separate books and records, or that each corporation claims to be responsible for its own day-to-day decision-making. Concluding that MBUSA was Daimler's agent, the court held that "MBUSA's contacts with California may be imputed to [Daimler]." *Id.* at 924.

Facing a ruling that subjects multinational corporations to seemingly unbridled jurisdiction in the Ninth Circuit due to the presence of local subsidiaries, Daimler requested a rehearing *en banc*. The court denied rehearing. *Bauman v. DaimlerChrysler Corp.*, 676 F.3d 774 (9th Cir. 2011). Judge O'Scannlain dissented from the denial, stressing that asserting "personal jurisdiction over a German corporation for its Argentinean subsidiary's alleged activities in Argentina based simply on having a separate U.S.-based subsidiary, is an affront to due process," which "drastically expands the reach of personal jurisdiction beyond all constitutional bounds." *Id.* at 775 (O'Scannlain, J., dissenting). Laying the foundation for the U.S. Supreme Court to grant review, Judge O'Scannlain emphasized that the Ninth Circuit diverged from at least six other circuit courts. *Id.* Indeed, plaintiffs conceded that federal courts in Missouri would reach the opposite conclusion from the Ninth Circuit in this very case, as the Eighth Circuit "directly considered and rejected the agency test." Br. Opp'n to certiorari at 13.

Implications

The Supreme Court's decision to review *Bauman* may be a continuation of the Court's recent trend of policing expansive theories of U.S. jurisdiction and U.S. law. The week before granting certiorari, for instance, the Court rejected an effort by foreign plaintiffs to sue a multinational corporation in U.S. federal court under the Alien Tort Statute for alleged human rights violations in Nigeria, based on the presumption against extraterritorial application of U.S. federal law. *Kiobel v. Royal Dutch Petroleum Co.*, No. 10-1491, 569 U.S. ____ (U.S. Apr. 17, 2013). "[E]ven where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application. Corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices." *Id.* In 2010, the Court held that the Securities Exchange Act of 1934 did not permit foreign investors who purchased shares of a foreign company on a foreign exchange to bring securities fraud suits in U.S. court. *Morrison v. Nat'l Australian Bank Ltd.*, 561 U.S. ____, 130 S. Ct. 2869 (2010). And in *Goodyear Tire*, the Court rejected the lower court's expansive application of the "stream of commerce" theory (in which a company may be subject to jurisdiction in a state if one of its products causes injury in that state) to invoke general jurisdiction over a foreign corporation. 564 U.S. at ____, 131 S. Ct. at 2851. The Court emphasized the stream of commerce theory is relevant to specific jurisdiction, and the lower court's "analysis elided the essential difference between case-specific and all-purpose (general) jurisdiction." *Id.* at 2855.

The Supreme Court's decision to review the Ninth Circuit's ruling may provide some reason for optimism to multinationals that distribute products in the United States through U.S. affiliates.

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