

U.S. Supreme Court Limits U.S. Courts' Jurisdictional Reach Over Foreign Corporations with U.S. Subsidiaries

On January 14, 2014, the U.S. Supreme Court (“Supreme Court” or “Court”) held that the Due Process Clause of the U.S. Constitution bars a U.S. court from exercising personal jurisdiction over a foreign corporation for the actions of a foreign subsidiary that took place outside the United States, even where that corporation also has a U.S. subsidiary. In *Daimler AG v. Bauman*, workers at a plant operated by Mercedes-Benz Argentina, a subsidiary of Daimler AG (“Daimler”), sued Daimler in a federal district court in California for Mercedes-Benz Argentina’s alleged role in publicizing its employees union status thus making them targets of the Argentine military and police forces. The Supreme Court rejected the lower appellate court’s decision that the California district court had personal jurisdiction over Daimler because a U.S.-based subsidiary of Daimler provided “important” services to Daimler in California. The Court’s decision makes clear that mere corporate presence in a state by means of a corporate affiliate cannot support jurisdiction over multinational corporations for claims involving a separate foreign affiliate.

Personal Jurisdiction: An Overview

To exercise authority over a defendant, U.S. federal and state courts must have personal jurisdiction over that defendant. Personal jurisdiction over an out-of-state defendant must satisfy the minimum constitutional requirement that the defendant has “certain minimum contacts with [the forum state] such that the maintenance of the suit

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does not offend traditional notions of fair play and substantial justice.”¹ This requirement protects potential defendants from being forced to defend lawsuits in unforeseeable and unfamiliar jurisdictions.² The Supreme Court has specifically 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.³

The Supreme Court has distinguished between two types of personal jurisdiction: general and specific. General jurisdiction exists for “any and all claims” against a defendant that has continuous, substantial, and systematic contacts with the jurisdiction so “as to render [it] essentially at home in the forum State,” such as incorporating its business or having its principal place of business within the state.⁴ Specific jurisdiction exists in cases that arise out of a defendant’s specific contacts with the forum state—for example, a lawsuit over an automobile accident that occurs when the defendant is driving in the state.⁵ If the defendant lacks “minimum contacts” with the state, the court cannot exercise jurisdiction over the defendant at all.⁶

Each state has identified the specific circumstances in which the state’s courts can assert personal jurisdiction through so-called “long-arm” statutes. Although some states require a more significant nexus between an out-of-state defendant’s contacts with the state and the disputed conduct, most states’ long-arm statutes simply provide that courts may assert personal jurisdiction to the full extent allowable under the Due Process Clause of the U.S. Constitution—meaning the standards articulated by the Supreme Court.

The U.S. Supreme Court Limits General Jurisdiction in *Daimler*

In *Daimler*, twenty-two residents of Argentina brought a lawsuit in a California federal district court against DaimlerChrysler Aktiengesellschaft, a German public stock company headquartered in Germany and predecessor to Daimler AG, alleging that Mercedes-Benz Argentina, a subsidiary of Daimler, collaborated with Argentine state security forces to kidnap, detain, torture, and kill workers at a plant run by Mercedes-Benz Argentina during Argentina’s “Dirty War.” The plaintiffs invoked California’s general jurisdiction based on the contacts of another Daimler AG subsidiary—Mercedes-Benz USA, LLC—with California. Mercedes-Benz USA is incorporated in Delaware with its principal place of business in New Jersey. Mercedes-Benz USA distributes Daimler AG’s vehicles to independent dealerships throughout the United States and is the largest supplier of luxury vehicles in California.

Daimler moved to dismiss the case for lack of personal jurisdiction. Opposing the motion, the plaintiffs argued in part that the district court’s exercise of personal jurisdiction over Daimler was appropriate because Mercedes-Benz USA was Daimler’s agent and had sufficient contacts with California. The district court granted Daimler’s motion to dismiss, finding that Daimler’s contacts with California were insufficient and that the plaintiffs had failed to demonstrate that Mercedes-Benz USA acted as Daimler’s agent.⁷ On appeal, the U.S. Court of Appeals for the Ninth Circuit initially agreed, but following a petition for rehearing, the Ninth Circuit withdrew its initial opinion and replaced it with an opinion finding that Mercedes-Benz USA acted as Daimler’s agent based “upon a showing of the *special importance* of the services performed by [Mercedes-Benz USA]” for Daimler and that if Daimler did not have a representative to perform those services, Daimler’s own officials would have performed them.⁸ The Ninth

¹ *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation mark omitted).

² *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

³ *Asahi Metal Indus. Co., v. Superior Ct. of Cal.*, 480 U.S. 102, 115 (1987).

⁴ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011).

⁵ *Int’l Shoe Co.*, 326 U.S. at 317-18.

⁶ *Id.* at 318.

⁷ *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2005 WL 3157472 (N.D. Cal. Nov. 22, 2005).

⁸ *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 920 (2011).

Circuit further found that “the exercise of ... jurisdiction [over Daimler] is not only reasonable, but fair and just” because of its purposeful availment of the California market.⁹

The Supreme Court agreed to hear the case to consider “whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum State.”¹⁰ On January 14, 2014, the Supreme Court unanimously held that Daimler was not subject to general jurisdiction in California. Justice Ruth Bader Ginsburg, writing for eight justices, rejected the Ninth Circuit’s “special importance” test. According to the Court, the test “[would] always yield a pro-jurisdiction answer,” “subject[ing] foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate.”¹¹ The Court further rejected the plaintiffs argument that a corporation that engages in substantial, continuous, and systematic business within a state is subject to general jurisdiction in that state, holding that the proper inquiry is whether a “corporation’s affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State.”¹² Even assuming that Mercedes-Benz USA was “at home” in California and that its contacts were imputable to Daimler, the Court concluded that Daimler’s connections to California were too attenuated to consider it “at home” in the state, in part because Daimler was not incorporated and did not have its principal place of business in California—paradigmatic examples of when general jurisdiction is appropriate.

Justice Sonia Sotomayor concurred in the Court’s judgment only, stating that allowing the lawsuit to proceed would be unreasonable because the case involves foreign plaintiffs suing a foreign defendant based on foreign conduct and because a more appropriate forum was available. Justice Sotomayor objected to the majority’s decision to consider more than the question of whether Mercedes-Benz USA acted as Daimler’s agent, and criticized the majority’s ruling on general jurisdiction as “wholly foreign to our due process jurisprudence.”¹³ Justice Sotomayor articulated what she saw as a new rule on general jurisdiction: “that in order for a foreign defendant to be subject to general jurisdiction, it must not only possess continuous and systematic contacts with a forum State, but those contacts must also surpass some unspecified level when viewed in comparison to the company’s nationwide and worldwide activities.”¹⁴

Justice Sotomayor said the majority’s analysis would “produce deep injustice” in four ways: (1) by reducing a state’s ability to adjudicate disputes involving companies that do substantial business within its borders; (2) by putting smaller businesses at a disadvantage relative to national or multinational corporations; (3) by creating an incongruity between general jurisdiction as applied to an individual passing through a state compared to a corporation with a substantial presence in the state “simply because the corporation has similar contacts elsewhere”; and (4) by “shift[ing] the risk of loss from multinational corporations to the individuals harmed by their actions” because individuals harmed abroad will be unable to “seek relief in any U.S. court ... even if that company has considerable operations in numerous U.S. forums.”¹⁵

Implications

The Court’s decision in *Daimler* limits a U.S. court’s exercise of general personal jurisdiction over a corporation based solely on the presence of a subsidiary within the state and continues a general trend limiting the power of U.S. federal courts to hear cases brought by a foreign plaintiff against a foreign corporation involving conduct that took place outside of the United States. Although the Court stated that place of incorporation and principal place of business—“paradigm all-purpose forums”¹⁶—were

⁹ *Id.* at 931.

¹⁰ Petition for a Writ of Certiorari at i, *Daimler AG v. Bauman*, No. 11-965 (U.S. Feb. 6, 2012).

¹¹ No. 11-965, at 17.

¹² *Id.* at 20 (alteration and internal quotation marks omitted).

¹³ *Id.* at 1 (Sotomayor, J., concurring).

¹⁴ *Id.* at 13 (internal quotation marks omitted).

¹⁵ *Id.* at 16-19.

¹⁶ *Id.* at 19 (Ginsburg, J.).

not the only bases that could support a U.S. court's exercise of general jurisdiction, the Court relied on Daimler's lack of such a connection to California in reaching its holding. It is unclear what additional factors might establish connections that are sufficiently systematic and continuous to render a corporation "at home" in a particular state.

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