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Daimler AG v. Bauman: Court Again Rejects a "Sprawling View of General Jurisdiction"

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On January 14, 2014, the U.S. Supreme Court in Daimler AG v. Bauman *held that Argentinian plaintiffs could not sue a German car manufacturer in California for human rights violations allegedly committed in Argentina. The Court explained that United States courts may only exercise general jurisdiction over foreign corporations when the corporation's contacts with the state in which the suit is brought are so extensive that the corporation is "essentially at home" in the state.*

Overview of Personal Jurisdiction

Before diving into *Daimler AG v. Bauman*, a brief overview of personal jurisdiction may help. Personal jurisdiction refers to a court's authority to make binding decisions concerning each party in a lawsuit. This authority is derived from the parties' contacts with the state in which the suit is brought – the forum state.

For a case to proceed, the court must have at least one of two types of personal jurisdiction over the defendant.[1] The first is "general" jurisdiction, which permits a court to hear any claim against a defendant with extensive contacts with the forum state, regardless of the subject matter of the lawsuit. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Supreme Court explained that these contacts must be "so 'continuous and systematic' as to render [the defendant] essentially at home in the forum state."

The second type of jurisdiction – "specific" jurisdiction – permits a court to render binding decisions over a defendant if, but only if, the suit in question arises out of or relates to a particular activity of the defendant in the forum state.

[1] A plaintiff consents to a court's jurisdiction by filing a lawsuit.

Conflicting Approaches to General Jurisdiction

Daimler AG v. Bauman addresses the scope of general jurisdiction over foreign defendants. Prior to this decision, lower courts developed conflicting tests to determine whether they could exercise general jurisdiction over an out-of-state defendant based on the in-state contacts of its subsidiary.

Some courts applied the "alter ego test." Under this test, a court only extended jurisdiction over a parent corporation based on the contacts of its subsidiary, if the subsidiary was *so* controlled by the parent corporation that the two were essentially acting as a single entity, or as alter egos of each other.

Other courts applied the "agency test," which asked whether a subsidiary's activities were so important that the parent corporation would perform those activities in the subsidiary's absence. This test also considered, to a lesser degree, whether the parent corporation had the right to control the day to day affairs of its subsidiary. (Note: The alter ego test required a finding of greater control by a parent corporation over its subsidiary.) If the subsidiary was deemed an "agent" of the parent corporation, the court could consider the subsidiary's forum contacts when evaluating personal jurisdiction over the parent corporation.

Daimler AG v. Bauman – the Facts and the Decision

In 2005, plaintiffs sued German car manufacturer DaimlerChrysler AG (Daimler AG's predecessor; together "Daimler") for human rights violations allegedly committed against them (or their deceased family members) in Argentina by Daimler's subsidiary, Mercedes Benz Argentina. Instead of bringing an action in Argentina, however, the plaintiffs filed suit in federal district court in California under the Alien Tort Claims Act[2] and the Torture Victims Protection Act. Moreover, plaintiffs did not sue Mercedes Benz Argentina; instead, they sued only Daimler.

Daimler moved to dismiss plaintiffs' lawsuit for lack of personal jurisdiction, asserting that Daimler had insufficient contacts with California because it did not sell products, own property, or employ workers in the United States. In response, plaintiffs argued that Daimler was subject to general jurisdiction in California through the extensive contacts of its wholly owned United States subsidiary, Mercedes Benz USA LLC (MBUSA). MBUSA is a Delaware corporation, with its principal place of business in New Jersey, which sells Daimler vehicles in the United States and maintains offices in California. Ultimately, the district court granted Daimler's motion to dismiss after applying the agency test, concluding that MBUSA's contacts could not be imputed to Daimler for the purpose of establishing general jurisdiction.

Plaintiffs appealed the district court's ruling to the Court of Appeals for the Ninth Circuit. In 2011, the Ninth Circuit reversed. Although it applied the agency test used by the district court, the Ninth Circuit reached the opposite conclusion: It held that Daimler was subject to general jurisdiction in California based on MBUSA's contacts, because: (i) MBUSA had extensive forum contacts (*e.g.*, MBUSA maintained offices in California and its sales in California accounted for 2.4% of Daimler's worldwide sales); (ii) MBUSA's distribution services were sufficiently important to Daimler (*i.e.*, its parent corporation); and (iii) even though Daimler did not exert actual control over MBUSA, it had the *right* to exert such control.

In 2012, Daimler petitioned the Supreme Court to review and reverse the Ninth Circuit's decision. The Supreme Court granted review in April 2013 and held oral argument in October 2013. The question before the Court was whether it violated due process for a court to exercise general jurisdiction over an out-of-

[2] The Act provides United States district courts with original jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

state defendant based solely on the fact that its subsidiary performed services on behalf of the defendant in the forum state. At oral argument, Daimler urged the Court to reject the agency test and hold that jurisdictional contacts may only be imputed to a parent corporation under the more rigorous alter ego test.

On January 14, 2014, the Supreme Court overturned the Ninth Circuit's ruling and held that Daimler cannot be sued in California under the circumstances. It did not, however, specifically address whether a foreign corporation may be subjected to a court's general jurisdiction based on the contacts of its subsidiary. Instead, the Court held that even if MBUSA's contacts could be imputed to Daimler, Daimler was still not "at home" in California for purposes of general jurisdiction.

The Court explained that the paradigm examples of where a corporation is "at home" are: (i) the state in which it is incorporated and (ii) the state in which it maintains its principal place of business (*i.e.*, where it is headquartered). Because neither Daimler nor MBUSA are incorporated or headquartered in California, the Court found that Daimler's contacts with California were insufficient to render the corporation "essentially at home" in the state.

The Court did note, in a footnote, that it was not foreclosing "the possibility that in an exceptional case . . . 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." But other than discussing with approval its decision in *Perkins v. Benguet Consol. Mining Co*., the Court did little to elaborate on the circumstances that would make for such an "exceptional" case. The Court did, however, expressly reject a formulation (proposed by plaintiffs) that would permit the exercise of general jurisdiction over a corporation that "engages in a substantial, continuous, and systematic course of business." According to the Court, such a formulation was "unacceptably grasping."

While the Court did not address whether a subsidiary's contacts may be imputed to its out-of-state parent corporation, it briefly criticized the Ninth Circuit's application of the agency test. It held that it was improper for the Ninth Circuit to conclude that MBUSA was Daimler's "agent" simply because Daimler was hypothetically ready to perform MBUSA's distribution services itself if MBUSA no longer existed. The Court warned that the Ninth Circuit's reasoning would incorrectly subject foreign corporations to general jurisdiction wherever they have an in-state subsidiary or affiliate.

Finally, the Court also criticized the Ninth Circuit for "[paying] little heed" to the international implications of its decision. The Court explained that other nations take issue with the broad exercise of personal jurisdiction over foreign defendants by United States courts, and their objections have impeded international negotiations.

Justice Sotomayor wrote the only other opinion in the case. In her concurring opinion, Justice Sotomayor explained that, while she agreed with the judgment reached (reversal of the Ninth Circuit), she disagreed with the majority's analysis. She argued, among other things, that the majority should have considered the sufficiency of the "agency" test instead of elaborating upon the "essentially at home" standard. Most notably, Justice Sotomayor also pointed out a flaw in the majority's reasoning: The majority assumed for purposes of its analysis (i) that MBUSA was "at home" in California and (ii) that MBUSA's contacts could be imputed to Daimler; but the majority nevertheless held that Daimler was not "at home" in California, a conclusion that would not appear to follow from that pair of assumptions.

Implications of the Court's Decision

So what does this mean?

First, in the aftermath of *Daimler AG*, one has to wonder what is left of general jurisdiction – that is, other than being able to sue a corporation in its state of incorporation or principal place of business. The Court's refusal to elaborate on the circumstances that would make for an "exceptional" case could be read to mean the circumstances are vanishingly narrow. But *Daimler AG* clearly approved of the Court's decision in *Perkins v. Benguet Consol. Mining Co.*, a 1952 case in which the Court found general jurisdiction in Ohio over an out-of-state corporation (notwithstanding the fact that Ohio was not the corporation's state of incorporation or principal place of business). Accordingly, *Perkins* provides guidance when evaluating whether a set of circumstances would render a case "exceptional" under *Daimler AG*, and perhaps this decision has not carved away as much as it may seem. Of course, on the other hand, the decision creates a fairly clear rule for the application of general jurisdiction.

Second, and similarly, one may question what is left of the "agency" test. While the Court expressly did not overrule the agency test in the context of general jurisdiction, it may have sufficiently gutted the Ninth Circuit's formulation and application of it that courts will refuse to apply it in later cases.

Third, undeniably however, the alter ego test remains unchanged. The Court made clear the test was not before it on the appeal because plaintiffs did not assert that MBUSA was an alter ego of Daimler. Accordingly, the alter ego test may remain a viable approach to asserting general jurisdiction over a parent corporation.

Finally, given its express concern over international relations (i.e., that a finding of general jurisdiction here would expand personal jurisdiction beyond what other countries might view as appropriate) the decision in *Daimler AG* might make foreign corporations more willing to conduct business and invest in the United States. The Court's decision may actually improve United States foreign relations with countries that have criticized the reach of United States courts and, thereby, help avoid retaliatory claims of jurisdiction by foreign courts.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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