

Recent Supreme Court Decision Limits the General Jurisdiction of U.S. Courts over Foreign and Out-Of-State Corporations

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Extending its 2011 decision narrowing the application of general jurisdiction over foreign corporations, the Supreme Court significantly limited the forums in which a foreign (or out-of-state) corporation may be sued for foreign conduct. In *Daimler AG v. Bauman*, No. 11-965 (January 14, 2014), the Supreme Court held that “all-purpose” or “general” personal jurisdiction — the ability to hear claims unrelated to the forum state — is only proper where the corporation is “at home.”

The Court explained that a corporation is not “at home” everywhere it does substantial business, effectively abrogating many state statutes that authorize exercise of personal jurisdiction against any out-of-state company found to be “doing business” in the state. Instead, the Court has now largely constrained the exercise of *general* personal jurisdiction over a corporation to forums in the state where it is incorporated or has its principal place of business.¹ In addition, the Court severely curtailed plaintiffs’ ability to use a subsidiary’s presence in the forum state to claim jurisdiction over a foreign or out-of-state parent corporation. Because *Daimler* strengthens the ability of foreign and out-of-state corporations to avoid court proceedings in inhospitable forums, it has substantial strategic implications for defendants and plaintiffs alike.

Background

Daimler AG is a German company that manufactures Mercedes Benz vehicles in Germany and markets them worldwide through subsidiaries. In 2004, twenty-two Argentinian plaintiffs brought suit against Daimler in the Northern District of California. Asserting violations of the Alien Tort Statute and the Torture Victim Protection Act, as well as claims for wrongful death and intentional infliction of emotional distress, the plaintiffs alleged that, between 1976 and 1983, Daimler’s subsidiary, Mercedes-Benz Argentina, collaborated with Argentinian forces to harm plaintiffs and their relatives.

The plaintiffs asserted that, although they were foreigners and the events at issue all occurred outside California, the California district court nonetheless had jurisdiction over Daimler based on Daimler’s own limited presence in California and on the presence of Daimler’s indirect subsidiary, Mercedes-Benz USA (MBUSA) — Daimler’s exclusive importer and distributor in the United States. With respect to Daimler, the plaintiffs alleged that the company was listed on the Pacific Stock Exchange in California and engaged in litigation and other activities in California. With respect to MBUSA, the plaintiffs

argued that it should be treated as Daimler's agent for jurisdictional purposes. MBUSA is a Delaware corporation with its principal place of business in New Jersey, but it has multiple facilities in California and is the largest supplier of luxury vehicles to the California market.

The district court granted Daimler's motion to dismiss, concluding that Daimler's own contacts with California were insufficient to support general jurisdiction and that MBUSA's presence in California was irrelevant because it was not Daimler's agent. After initially affirming the district court, the Ninth Circuit then granted rehearing and reversed. The court of appeals concluded that MBUSA acted as Daimler's agent, and therefore MBUSA's contacts with California could be imputed to Daimler. In reaching this conclusion, the Ninth Circuit considered whether the subsidiary "performs services that are sufficiently important to the foreign corporation" so that, in the subsidiary's absence, "the corporation's own officials would undertake to perform substantially similar services."²

The Supreme Court's Decision

The Supreme Court reversed, in an opinion authored by Justice Ginsburg and joined by seven other justices, holding that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there."³ Drawing heavily upon her 2011 opinion in *Goodyear Dunlop Tires Operations*,⁴ Justice Ginsburg observed that general jurisdiction over a corporation is limited to those places where the corporation could be considered "at home." The paradigm locations for general jurisdiction over a corporation, the Court said, are the state of incorporation and the principal place of business.⁵

While leaving open the possibility of "an exceptional case" where another court may exercise general jurisdiction based on the corporation's operations in that forum, the Court rejected the argument that general jurisdiction is proper "in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'"⁶ As the majority opinion explained, "[a] corporation that operates in many places can scarcely be deemed at home in all of them."⁷

Because Daimler was not incorporated in California and did not have its principal place of business there, the Court concluded that it could not be said to be "at home" in California. Thus, the Court explained, even assuming that MBUSA was "at home" in California and that MBUSA's contacts with California could be imputed to Daimler, jurisdiction over the parent German company was improper.⁸

The Court also severely constrained — to the point of rendering inoperative — the "agency theory" used by the Ninth Circuit to find general jurisdiction over a parent company based on its subsidiary's contacts with the forum state. Though the Court declined to foreclose entirely the possibility of a foreign corporation becoming subject to general jurisdiction based on the contacts of a subsidiary, the Court concluded that the Ninth Circuit's agency test, which "appears to subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate," was unacceptably broad.⁹ In rejecting the Ninth Circuit's test as too sweeping, the Court contrasted it with the approach adopted by other courts of appeals, which have held that a subsidiary's jurisdictional contacts can be imputed to the parent only when the subsidiary can be considered the parent company's alter ego.¹⁰

Justice Sotomayor concurred in the result, but disagreed with the majority's analysis, accusing the Court of fashioning a novel rule of constitutional law.¹¹ Justice Sotomayor would have rejected jurisdiction as unreasonable "in light of the unique circumstances of this case," without deciding whether Daimler's contacts with California were sufficient to support general jurisdiction.¹²

Potential Ramifications and Recommendations

Daimler curtails drastically courts' ability to assert general jurisdiction over out-of state corporations. The Court rejected as "unacceptably grasping" the concept of finding general jurisdiction where an out-of-state corporation engages in such continuous and systematic activity within a state that it can be said to be "doing business" there.¹³ In doing so, the Court effectively invalidated the approach followed by many states and lower courts.¹⁴ Now, in order for a corporation to be subject to general jurisdiction, it must be "at home" in a state — a test that, the Court emphasized, is not synonymous with "doing business."¹⁵ As a result, *Daimler* limited the forums that have general jurisdiction over a corporation to essentially two locations: the state of incorporation and the principal place of business.¹⁶

Although the Court left open the possibility of another forum having general jurisdiction over a corporation in "an exceptional case," the plaintiff would still have to show that the corporation is so connected to the forum state as to be "at home" there.¹⁷ This requirement would be very hard to meet, especially given the Court's instruction that general jurisdiction requires "an appraisal of a corporation's activities in their entirety, nationwide and worldwide," and that the existence of some in-state contacts should not give a state authority over a corporation's conduct that is unconnected to such in-state activity.¹⁸ Nevertheless, at least with respect to already-pending cases, companies should consider the reach of *Daimler* and, specifically, determine whether to raise an argument that the "doing business" contacts are insufficient to demonstrate that a corporation is "at home" in that state.

Daimler significantly limits the ability of plaintiffs to shop for favorable forums. *Daimler* effectively immunizes foreign corporations — those that are incorporated outside of the United States and have their principal place of business abroad — from suit in the United States based on general jurisdiction (though they would remain subject to specific jurisdiction related to events occurring in or affecting a state). In fact, the Court's decision stems, in part, from its continuing hostility towards efforts to make U.S. courts into judicial forums for claims arising out of foreign events.¹⁹ And *Daimler* enables U.S.-based corporations to defeat assertion of general jurisdiction in states other than their state of incorporation or principal place of business.

We emphasize, as did the Court, that *Daimler* does not change the Court's approach to specific jurisdiction — a separate category of jurisdiction.²⁰ Where a plaintiff meets certain established requirements and shows that it would be reasonable, specific jurisdiction permits a forum to assert jurisdiction over a foreign defendant based on that defendant's forum-related activity if that activity also gave rise to the plaintiff's claim. While allowing greater balancing than in the general jurisdiction analysis, due process also constrains a court's exercise of specific jurisdiction, and — as we have written previously — the Supreme Court's recent discussion of specific jurisdiction recognizes those limitations are to be carefully scrutinized and meaningfully applied where a forum tries to extend the reach of its authority over a foreign defendant.²¹

States and municipalities may attempt to legislate around *Daimler* by requiring any corporation that wishes to do business in the state or with the municipality to agree to subject itself to general jurisdiction in that state's courts. The Supreme Court, however, has looked with disfavor upon attempts by states to extract a waiver of constitutional rights or restrictions (such as, for example, the right to remove a case to federal court) as a condition of doing business in the state.²² The same rationale may protect corporations from being forced to waive the constitutional due process right not

to be sued in a forum that lacks general jurisdiction over them, although the contours of this case-law are unclear.

The Court's opinion in *Daimler* also essentially eliminates the agency theory of personal general jurisdiction, except in circumstances where the corporate subsidiary is so closely related to the parent company so as to be considered its alter ego. Although the Court declined to address definitely the agency theory's viability, it found no general jurisdiction over Daimler in California (because it was not "at home" there) despite assuming (for the purposes of the case) that Daimler's subsidiary, MBUSA, was "at home" in California and that MBUSA's contacts could be attributed to Daimler.²³ While companies may encounter continuing efforts by plaintiffs to assert the agency theory of general jurisdiction, they now have a powerful tool to defeat such efforts where corporate formalities are observed.

Finally, the *Daimler* decision could have important implications for judgment enforcement proceedings. For example, turnover proceedings, where a court orders a defendant-judgment debtor (or a third party) to turn over to the plaintiff-judgment creditor the debtor's property that may otherwise be difficult to reach, are often predicated on the court's general jurisdiction over the debtor or third party. Following *Daimler*, a corporate defendant in turnover proceedings may be able to argue that the only courts that have jurisdiction to order turnover of property are courts in the state where the corporation is "at home." This could be a powerful defense for corporations facing proceedings in states whose turnover laws authorize a court to order delivery of the judgment debtor's out-of-state property.²⁴

While the Supreme Court's majority opinion sought to depict the *Daimler* decision as merely a re-affirmation of the long-held jurisdictional principles, it could have a potentially transformative effect. Foreign corporations and corporations with nationwide activity should evaluate the decision closely and consider the ways in which *Daimler* strengthens their ability to resist attempts to subject them to judicial proceedings in inhospitable forums or to expose them to liability based on the conduct of their subsidiary entities. Plaintiffs will become more likely to rely on specific jurisdiction in shopping for favorable forums, but the prevailing rule is that specific jurisdiction must be established for each claim.²⁵ While some plaintiffs may test the limits of the *Daimler* bright-line test for general jurisdiction, the battleground will increasingly shift to questions of whether each of the plaintiffs' claims can satisfy the requisites of specific jurisdiction.

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- ¹ As explained below, the Court's opinion leaves *specific* personal jurisdiction intact under the analysis of *International Shoe v. Washington*, 326 U.S. 310 (1945), and its progeny.
- ² *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 920 (9th Cir. 2011), *rev'd*, *Daimler AG v. Bauman*, 571 U.S. ___, No. 11-965, 2014 WL 113486 (Jan. 14, 2014).
- ³ *Daimler*, 571 U.S. ___, slip op. at 18.
- ⁴ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. ___, 131 S. Ct. 2846 (2011).
- ⁵ *Daimler*, slip op. at 18-19.
- ⁶ *Id.* at 19, 20 n.19 (citation omitted).
- ⁷ *Id.* at 21 n.20.
- ⁸ *Id.* at 20-21.
- ⁹ *Id.* at 17.
- ¹⁰ *Id.* at 16-17.
- ¹¹ *Id.* at 16-17.
- ¹² *Id.* at 16-17.
- ¹³ *Daimler*, slip op. at 19-20.
- ¹⁴ See, e.g., *Frummer v. Hilton Hotels Int'l, Inc.*, 227 N.E.2d 851, 853 (N.Y. 1967) (applying one of New York's jurisdictional statutes, N.Y. C.P.L.R. § 301).
- ¹⁵ *Daimler*, slip op. at 21 n.20.
- ¹⁶ *Id.* at 20-21.
- ¹⁷ *Id.* at 20 n.19.
- ¹⁸ *Id.* at 21 n.20; see also *id.*, slip op. at 1-2 (Sotomayor, J., concurring in the judgment).
- ¹⁹ See *Daimler*, slip op. at 22-23 (citing *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. ___, 133 S. Ct. 1659 (2013)).
- ²⁰ See *Daimler*, slip op. at 7-8 (discussing *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945)).
- ²¹ See *The U.S. Supreme Court Narrows the Jurisdictional Reach of U.S. Courts in Products-Liability Litigation*, Paul Hastings Client Alert (July 2011), <http://www.paulhastings.com/Resources/Upload/Publications/1959.pdf> (discussing *J. McIntyre Machinery, Ltd. v. Nicaastro*, 564 U.S. ___, 131 S. Ct. 2780 (2011)).
- ²² See, e.g., *Terral v. Burke Const. Co.*, 257 U.S. 529, 532 (1922); see also *Hanover Fire Ins. Co. v. Carr*, 272 U.S. 494, 517 (1926).
- ²³ *Daimler*, slip op. at 17, 20-21.
- ²⁴ See, e.g., *Koehler v. Bank of Bermuda Ltd.*, 911 N.E.2d 825, 827 (N.Y. 2009) (construing New York's turnover statute).
- ²⁵ See 5B Wright & Miller, *Federal Practice and Procedure* § 1351, at 299 n.30 ("the existence of personal jurisdiction for one claim will not provide the basis for another claim"); *Seiferth v. Helicopteros Atuneros*, 472 F.3d 266, 274-275 (5th Cir. 2006).