

CORPORATION

U.S. Supreme Court Sharply Limits General Jurisdiction Over Corporate Defendants © ¶5.1

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On January 14, the U.S. Supreme Court issued *Daimler AG v. Bauman*, further clarifying—and significantly narrowing—the constitutional limitations on a court’s assertion of *general* jurisdiction over a corporate defendant. *Bauman* carries significant implications for how corporate defendants should evaluate their amenability to the general jurisdiction of U.S. courts.

Where a court possesses “general” or all-purpose jurisdiction over a defendant, it has personal jurisdiction in any lawsuit against that defendant, regardless of

whether the suit arises out of the defendant’s contacts with the forum. If no general jurisdiction exists, a court still may exercise “specific” jurisdiction over a corporate defendant where the underlying cause of action arises out of the defendant’s activity or conduct in or directed at the state.

Bauman continues the Court’s recent trend of cabining general jurisdiction. In the Court’s 2011 decision in the *Goodyear* case, it held that the Due Process Clause permits a court to assert general jurisdiction over a corporation *only* if that corporation is “at home” within the forum state. *Bauman* goes further and explicitly discards more expansive theories of general jurisdiction premised on the imputation of a subsidiary’s forum contacts to its corporate parent or on the mere existence of “continuous and systematic” contacts with the forum state. Further, *Bauman* suggests that, absent exceptional circumstances, there is general jurisdiction only where the defendant corporation is incorporated or has its principal place of business.

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Accordingly, *Bauman* augurs the prospect of a substantially simplified and narrowed general jurisdictional analysis, focused on the singular question of whether a defendant corporation is “at home” in the forum state, which often will default to whether the corporation is incorporated, or has its principal place of business, in that state. If the corporation is not “at home” in that state, there is no personal jurisdiction over it unless its in-state conduct gives rise to the cause of action.

Background

The pertinent jurisdictional facts of the *Bauman* case are fairly simple. In 2004, twenty-two residents of Argentina brought suit against DaimlerChrysler AG (“DaimlerChrysler”) and its subsidiary Mercedes-Benz USA (“MBUSA”) in the Northern District of California, asserting claims under the Alien Tort Statute (“ATS”), the Torture Victim Protection Act (“TVPA”), and the laws of California and Argentina. In brief, the plaintiffs alleged that Mercedes-Benz Argentina (“MBA”), a subsidiary of DaimlerChrysler not named in the complaint, had collaborated with Argentine state security forces to kidnap, detain, torture, and kill plaintiffs’ relatives in Argentina during the period from 1975–1977.

According to the complaint, although DaimlerChrysler, a German corporation, does not directly manufacture, distribute, or sell its vehicles in the United States, its wholly-owned subsidiary, defendant MBUSA, is a Delaware corporation headquartered in New Jersey that sells, markets, and distributes DaimlerChrysler’s automobiles throughout the United States, including in California. MBA is also a wholly-owned subsidiary of DaimlerChrysler that manufactures and sells DaimlerChrysler cars, but it apparently does no business in the United States.

The plaintiffs asserted that the Northern District of California had general jurisdiction over DaimlerChrysler on the basis that it had general jurisdiction over MBUSA, and MBUSA’s contacts with California were attributable to its parent DaimlerChrysler. The District Court rejected that theory.

Ninth Circuit Decision

On appeal, a Ninth Circuit panel initially affirmed. Nearly a year later, however, the panel reversed course and held that MBUSA’s contacts with California could be imputed to DaimlerChrysler and, thus, DaimlerChrysler was subject to the District Court’s general jurisdiction. Over the dissent of eight judges, the Ninth Circuit denied DaimlerChrysler’s petition for rehearing en banc.

The Circuit identified two possible bases for imputing the jurisdictional contacts of a subsidiary to its parent: (1) the alter ego test (which it rejected on the merits because DaimlerChrysler did not abuse the corporate form), and (2) the agency test.

On re-argument, the Circuit held that the plaintiffs had sufficiently pleaded the two elements necessary to show that MBUSA was DaimlerChrysler’s jurisdictional agent, i.e., (1) that MBUSA performed sufficiently “important” services for DaimlerChrysler, and (2) that DaimlerChrysler had the right to exercise control over MBUSA’s performance of those services. The Court found the “importance” prong was satisfied because DaimlerChrysler would continue to market, sell, and distribute its vehicles in the United States, whether on its own or through another entity, if MBUSA ceased performing that role. Additionally, the Court found the “control” element was satisfied because the distribution agreement between DaimlerChrysler and MBUSA gave DaimlerChrysler the right to exercise

substantial control over MBUSA's activities, even if DaimlerChrysler did not necessarily exercise that control.

Having found that MBUSA was DaimlerChrysler's agent for jurisdictional purposes, the Circuit held that DaimlerChrysler was subject to general jurisdiction in California (and therefore the federal courts sitting in California) and that the exercise of that jurisdiction in the particular circumstances would not be unreasonable, largely because DaimlerChrysler (a large multinational corporation) had failed to make a compelling showing of burden.

Supreme Court's Decision

In a unanimous decision authored by Justice Ginsburg (with a concurrence by Justice Sotomayor that disagreed with much of the majority's analysis), the Supreme Court reversed. Justice Ginsburg's opinion begins by recounting the evolution of the Court's jurisdictional jurisprudence, starting with *Pennoyer v. Neff*, 95 U.S. 714 (1878). According to the Court, the historical survey revealed that "general and specific jurisdiction have followed markedly different trajectories post-*International Shoe* [issued in 1945]. Specific jurisdiction has been cut loose from *Pennoyer*'s sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized." Therefore, the Court reiterated the test for general jurisdiction announced in the *Goodyear* decision, i.e., "a court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State."

The Supreme Court gave short shrift to the jurisdictional reasoning of the Ninth Circuit, which, as discussed, relied on an

agency theory of general jurisdiction. In particular, the Court found that the Ninth Circuit's agency theory, with its focus on the "importance" of the subsidiary's activities to the corporate parent, "stacks the deck, for it will always yield a pro-jurisdiction answer." The Court further held that the "control element" of the Ninth Circuit's test "hardly curtail[ed] the overbreadth of the Ninth Circuit's agency holding."

The Court likewise rejected the test for general jurisdiction proffered by the plaintiffs, under which general jurisdiction might be predicated upon a finding that the corporate defendant engages in a "substantial, continuous, and systematic course of business" in the forum state. According to the Court, the "continuous-and-systematic" formulation is not the test for general jurisdiction; rather, *International Shoe* used the words "continuous and systematic" in its consideration of specific jurisdiction—i.e., jurisdiction where the in-state conduct is the basis for the claim.

Having rejected the Ninth Circuit's agency theory of jurisdiction and the plaintiffs' "continuous-and-systematic" formulation, the Court reiterated that the general jurisdictional inquiry turns on whether the corporate defendant is "at home" in the forum state. Further, the Court indicated that the focus of this jurisdictional inquiry must be on whether the defendant corporation—not its parents, subsidiaries, or affiliates—is "at home" in the forum state. Thus, according to the Court, even if MBUSA is "at home" within California and even if MBUSA's contacts are imputable to DaimlerChrysler, the Due Process Clause did not permit the exercise of general jurisdiction over DaimlerChrysler because "Daimler[Chrysler]'s slim contacts with the State hardly render it at home there."

The Court elaborated that a corporation generally is “at home,” within the intent of the Due Process Clause, where it has its principal place of business or is incorporated. Although the Court did not entirely foreclose the possibility that a corporation might also be “at home” elsewhere, the Court suggested that such a finding could only be proper “in an exceptional case,” leaving for another day consideration of the circumstances (if any) that could support that finding. In this respect, the only possible “exceptional case” alluded to in the Court’s opinion concerns the facts of *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), where the Court held that the Ohio courts could exercise general jurisdiction over a company incorporated under the laws of the Philippines because that company’s “principal, if temporary, place of business” was Ohio during the Japanese occupation of the Philippines. The example chosen by the Court powerfully underscores how rarely the Court expects there to be exceptions to the general jurisdiction test it announced.

Finally, the Court highlighted that the Ninth Circuit’s decision failed to afford appropriate deference to considerations of comity. In particular, the Court explained that foreign governments’ objections to some domestic courts’ expansive jurisdictional interpretations had in the past impeded international negotiations, a consideration that the Ninth Circuit had not properly accounted for.¹

Implications of the Decision

Bauman is significant, both because of the standard for general jurisdiction that it announces and because of the standards it rejects.

Now, the test for general jurisdiction is whether the corporate defendant can be deemed to be “at home” in the forum state and, more significantly, a corporation

generally will be “at home” only where it has its principal place of business and where it is incorporated. Accordingly, a corporation will not likely be subject to personal jurisdiction outside of its state of incorporation and headquarters unless its conduct in that foreign state gave rise to the claim.

Bauman also conclusively rejects the expansive “agency theory” of jurisdiction adopted by the Ninth Circuit. This theory, as the Court noted, threatened to permit general jurisdiction over a corporate parent in any jurisdiction where its subsidiaries had operations, as such operations presumably would be “important” to the parent corporation under the Ninth Circuit’s gloss on the agency theory. *Bauman*’s rejection of the plaintiffs’ “continuous-and-systematic-contacts” test for general jurisdiction also provides doctrinal clarity, making plain that such continuous and systematic contacts alone can only support specific jurisdiction.

Finally, because *Bauman*’s holding is based upon the Due Process Clause, any contrary state law, such as New York’s “doing business” jurisdictional statute (CPLR 301), is unconstitutional to the extent it would justify conferring personal jurisdiction where, as interpreted by *Bauman*, the Due Process Clause would not permit it.

1. Justice Sotomayor authored a separate opinion concurring in the judgment. Although Justice Sotomayor agreed that the case should be dismissed for lack of personal jurisdiction, she would have grounded that ruling in the “unreasonableness” of asserting jurisdiction where none of the parties or facts had a sufficient nexus to California, and she sharply criticized the approach taken by the majority. In Justice Sotomayor’s view, the Court’s emphasis on the “home” of the corporate defendant departed from the Court’s precedent, which focused on the “systematic” contacts between the defendant and the jurisdiction.