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Daimler AG v. Bauman: The US Supreme Court Significantly Limits Where Companies May Be Sued for Claims Unrelated to Their Activities in a State

Dwight Healy
Partner, New York
+ 1 212 819 8408
dhealy@whitecase.com

Owen C. Pell
Partner, New York
+ 1 212 819 8891
opell@whitecase.com

The US Supreme Court last week issued a major ruling that will significantly limit where corporations may be sued for claims that do not relate to business they may do in a particular place. In *Daimler A.G. v. Bauman*, the Court ruled unanimously that DaimlerChrysler AG ("Daimler") in Germany could not be sued in California federal court based on the continuous and substantial business activities of its US subsidiary Mercedes-Benz USA, LLC ("MBUSA") where the claims at issue were for human rights violations allegedly committed by Daimler's Argentine subsidiary ("MB-Argentina") in Argentina decades ago.[1] Eight of the nine Justices held that under the Due Process Clause of the Fourteenth Amendment to the US Constitution there was no personal jurisdiction over Daimler based on its relationship with MBUSA or MBUSA's California connections.

The decision in *Daimler* will have a broad ripple effect on US litigation because personal jurisdiction is an essential element of every lawsuit. For example, this decision will affect where mass tort and products liability claims may be asserted, when US courts should order discovery of information from a foreign party or non-parties located outside the United States, or when US courts may attempt to enforce injunctions and judgments beyond the United States against foreign parties or non-parties. At its most basic, *Daimler* suggests that simply because a company is licensed to do business or operates a branch in a state no longer means that the company may be sued in that state on claims that have nothing to do with the company's actual activities in that state. *Daimler* also is likely to focus attention on how personal jurisdiction is pled and how difficult courts will make it for plaintiffs to try to plead around corporate separateness to establish personal jurisdiction over non-resident companies with affiliated companies in a forum.

Specific vs. General Personal Jurisdiction

The jurisdictional issue in *Daimler* turned on the two bases under which US courts exercise personal jurisdiction (i.e., the competence to adjudicate matters as to a specific defendant). So-called "specific jurisdiction" exists when the claims asserted relate to a defendant's activities in or directed toward the forum state—even if the defendant has no physical presence in the state. So-called "all-purpose" or "general jurisdiction," on the other hand, is much broader and allows a defendant to be sued in a state for any claim—even claims that have nothing to do with a defendant's connections with or activities in that state. As enunciated in the landmark decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), specific jurisdiction could be based on a defendant's "minimum

1 Daimler, Slip op. at 1-3, available at http://www2.bloomberglaw.com/public/desktop/document/Daimler_AG_v_Bauman_No_11965_2014_BL_9151_US_Jan_14_2014_Court_Op.

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
United States
+ 1 212 819 8200

contacts" with a state, for example a company soliciting sales in a state, so long as the claim asserted relates to those activities and even though the defendant lacked a physical presence in the state. By contrast, general jurisdiction was not based on minimum contacts, and as to companies only existed when a foreign company's "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities."[2]

In the decades since *International Shoe*, US courts came to treat the idea of "continuous," "systematic" and "substantial" corporate operations as a qualitative variation on the contacts required for specific jurisdiction. That is, enough ongoing sales activity *or* some corporate presence that would allow ongoing business to be done in a state could justify general jurisdiction. Thus, prior to *Daimler*, most companies accepted the idea that being licensed to do business in a state or maintaining a branch or agency in a state likely created general jurisdiction, as did substantial ongoing business (such as the ongoing and substantial sale of consumer products through distributors in a state), meaning that a company could be sued in a state even where the claim bore *no relation* to anything the company actually did (or sold) in that state. It was the meaning of "continuous," "systematic" and "substantial" activities that was at issue in *Daimler*—and it was the Court's clarification of how those terms should be understood in understanding the constitutional limits of general jurisdiction that make *Daimler* so important.

Background Facts

In *Daimler*, non-US plaintiffs sued Daimler in California federal court seeking damages for human rights violations under two federal laws, as well as California and Argentine law. The complaint alleged that MB-Argentina had cooperated with Argentina's state security forces in harming plaintiffs or their family members during the period 1976–1983, known as Argentina's "Dirty War." Neither MB-Argentina nor the Argentine authorities were alleged to have done anything in California or the United States, nor did plaintiffs allege that Daimler or MBUSA had done anything here that related to their claims. Rather, plaintiffs sought to hold Daimler in Germany liable for MB-Argentina's alleged bad acts in Argentina. Daimler is a German company, headquartered in Germany.[3] Daimler had only sporadic contacts with California, none of which related to the claims.[4] Accordingly, plaintiffs premised personal jurisdiction on the California contacts of MBUSA, a Daimler subsidiary incorporated in Delaware with its principal place of business in New Jersey. MBUSA distributes Daimler-manufactured vehicles to independent US dealerships, including in California.[5]

Daimler moved to dismiss for want of personal jurisdiction. In opposing, plaintiffs asserted that general jurisdiction over Daimler could be based on MBUSA's California contacts because MBUSA was Daimler's implied agent for jurisdictional purposes. The district court allowed jurisdictional discovery, which showed that: (i) MBUSA serves as Daimler's exclusive US importer and distributor; (ii) MBUSA has multiple California-based facilities; (iii) MBUSA is the largest supplier of luxury vehicles in California (and over 10 percent of all new US vehicle sales occur in California); and (iv) MBUSA's California sales comprise 2.4 percent of Daimler's worldwide sales (which, in 2004, were US$4.6 billion). The district court dismissed the case, finding that Daimler's contacts with California could not support general personal jurisdiction and that MBUSA's California contacts could not be attributed to Daimler because plaintiffs had not shown that MBUSA acted as Daimler's agent. The Ninth Circuit Court of Appeals initially affirmed the dismissal, but on rehearing, changed its decision to reinstate the action. Although not ignoring the separate corporate status of Daimler and MBUSA, the court held that Daimler had substantial control over MBUSA and that MBUSA was very important to Daimler's US sales given the money Daimler made from the California market.[6]

The *Daimler* Decision: When Is a Corporation "At Home" in a Jurisdiction?

The Supreme Court unanimously reversed, with all but one Justice joining in Justice Ginsburg's opinion. As an initial matter, Justice Ginsburg went back to first principles, noting repeatedly that *International Shoe* made clear that general jurisdiction is the exception, not the norm.[7] *International Shoe* was a specific jurisdiction case, and the Court in that case broke with the territorial component of personal jurisdiction *only* as to specific jurisdiction.[8] In other words, *International Shoe* did not make territorial locus irrelevant to jurisdictional analysis. Rather, it made

2 *International Shoe*, 326 U.S. at 318.

3 *Daimler*, Slip op. at 3.

4 *Id.* at 15.

5 *Id.* at 2.

6 *Id.* at 3-4.

7 *Id.* at 9, 18.

8 *Id.* at 6-9, 13-14 & n.10.

territorial locus unnecessary in establishing minimum contacts for specific jurisdiction—a "momentous departure" from the prior "rigidly territorial focus" that hinged jurisdiction on a defendant's actual physical presence in the forum. This holding as to specific jurisdiction "unleashed a rapid expansion of [US] tribunals' ability to hear claims against out-of-state defendants when the episode-in-suit occurred in the forum or the defendant purposefully availed itself of the forum."[9]

In distinguishing general jurisdiction, the Court noted that simply placing goods in the stream of commerce had never been enough to support general jurisdiction, citing a recent case in which the Court refused to allow three non-US subsidiaries of a US tire company to be sued here simply because some of the foreign tires made it into the parent company's stream of sales into the US state where an auto accident occurred.[10] General jurisdiction was rejected there because "[a]lthough the placement of a product into the stream of commerce 'may bolster an affiliation germane to specific jurisdiction,'...such contacts 'do not warrant a determination that, based on those ties, the forum has general jurisdiction over a defendant.'"[11] Indeed, the Court noted that *International Shoe* said that a company's "continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity."[12] Thus, the Court concluded, "general and specific jurisdiction have followed markedly different trajectories post-*International Shoe*." While specific jurisdiction had been "cut loose" from the requirements of actual territorial presence, the Supreme Court had "declined to stretch general jurisdiction beyond limits traditionally recognized."[13]

Turning to general jurisdiction—where the claim will not relate to the defendant's actions or activities in a forum—the Court held that "only a limited set of affiliations with a forum will render a defendant amenable" to general jurisdiction. The Court then placed stress on the idea of "affiliations" as opposed to just the volume of commercial contacts: "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home"—the place of incorporation and principal place of business.[14] This focus on definite territorial affiliations was seen as having the advantage of being unique and easily ascertainable. It also obviates the need for jurisdictional discovery to determine the location of a company's "home" because place of incorporation and principal place of business are normally well-established facts.[15] Thus, discovery such as that done in *Daimler* would not be needed. Significantly, the Court then expressly noted that a "substantial, continuous and systematic course of business" *cannot* by itself support general jurisdiction absent real territorial "affiliations."[16]

By focusing on these two territorial components of a company's "home" the Court appeared to highlight the importance of basic corporate activity and planning. For example, place of incorporation and principal place of business often will determine what laws govern the corporation's duties to shareholders, what tax regimes apply to it, where the true center of corporate decision making lies and what law will govern shareholder rights in the event of merger or liquidation. Driving home the point that the search for a true territorial locus of corporate activity is central to the general jurisdiction analysis, the Court noted that the inquiry here "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them."[17] Thus, it did not matter whether MBUSA is at home in California or whether MBUSA's contacts with California were imputable to Daimler, "there would still be no basis to subject Daimler to general jurisdiction in California."[18]

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9 *Id.* at 9.

10 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. ___, Slip op. at 10 (2011).

11 *Daimler*, Slip op. at 13, citing *Goodyear*, Slip op. at 10-11 (emphasis in original).

12 *Daimler*, Slip op. at 13.

13 *Id.* at 13-14.

14 *Id.* at 18-19, citing *Goodyear*, Slip op. at 7 (other citations omitted).

15 *Daimler*, Slip op. at 21 n.20. Thus, the Court disagreed with Justice Sotomayor's concurrence which raised a concern that the *Daimler* holding would lead to expanded jurisdictional discovery.

16 *Daimler*, Slip op. at 19-20. Interestingly, the Court left open the possibility that in "an exceptional case" a corporation's operations in a forum other than its place of incorporation or principal place of business where it was at home may be so extensive as to render the company "at home" in that forum. However, the case cited for that proposition was a case involving a company which had been displaced from its principal place of business by the Japanese invasion of the Philippines during World War II. Where the company had been at home. *Id.* at 20 n.19, citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447-48 (1952).

17 *Daimler*, Slip op. at 21 n.20.

18 *Id.* at 18. The Court stressed that it was assuming that MBUSA was at home in California only for purposes of this opinion, *Id.* at 15, and, indeed, it appears clear from the Court's analysis that MBUSA was not subject to general jurisdiction in California.

Finally, in rejecting the agency theory used by the Ninth Circuit, the Court again distinguished between corporate presence and an "affiliation" that may render a company "at home" in a state. In language that will be extremely important to corporations with agencies or distribution branches in a state, *or* companies whose presence is limited to being registered to do business in a state, the Court stressed that agencies "come in many sizes and shapes," and while an agency relationship may sometimes be relevant to specific jurisdiction, "it does not inevitably follow, however, that similar reasoning applies to *general* jurisdiction."[19] Thus, mere presence—whether by branch, agency or license to do business, without more, should not render a company subject to general personal jurisdiction in a state.

Daimler's Broad Implications

Based on its clarity and that eight of nine Justices joined in the opinion, *Daimler* may be the most important ruling on personal jurisdiction since *International Shoe*. The decision will have far-reaching implications beyond defendants in US lawsuits.

First, *Daimler* is likely to make it much harder to pursue judgment enforcement actions and third-party US discovery against non-US defendants who do business in the United States, but whose US activities do not relate to the judgment being enforced or the discovery sought. In particular, US branches of non-US banks now will have strong arguments that their presence in the United States does *not* open the rest of the institution worldwide to US discovery or judgment enforcement remedies. Similarly, *Daimler* could, under certain circumstances, make it harder for federal and state regulators to seek civil discovery abroad based on a company's US presence, if the US operations are not implicated in the underlying investigation.

Second, the *Daimler* Court went out of its way to place the decision in the broader context of recent Supreme Court decisions narrowing the extraterritorial reach of US law. The Court added a section at the end of its opinion noting its recent decision in *Kiobel*, which limits the extraterritorial reach of substantive US law.[20] The Court then stressed that in positing a broad theory of general jurisdiction the Ninth Circuit here had "paid little heed to the risks to international comity its expansive view of general jurisdiction posed."[21] Again, by placing the *Daimler* decision in the context of a need to be more careful about broad assertions of US jurisdiction, the Court has provided companies with a new and strong response to US discovery and enforcement decisions that failed to give great weight to the interests of non-US legal systems even in proceedings that did not relate to a company's US operations.

Third, to the extent that *Daimler* will make it more likely that plaintiffs will attempt to plead piercing of the corporate veil in an effort to plead general jurisdiction against non-US parent companies, this is likely to focus state and federal courts on the standards that should apply to this pleading. In particular, federal courts may apply the more rigorous fact pleading and plausibility standards recently applied to the pleading of claims in federal actions to the pleading of jurisdiction. In addition, *Daimler* highlights the value to corporations of maintaining corporate formalities and documenting adherence to corporate structure, as *Daimler* will reward corporate separation with limits on the reach of US personal jurisdiction.

Finally, *Daimler* is likely to create opportunities for companies to manage certain litigation risks by considering where to house those risks in the corporate structure. Thus, because plaintiffs will not be able to assert general jurisdiction every place a company may be licensed to do business or have substantial sales and distribution, companies may be better able to manage where certain types of claims are adjudicated and thereby better manage those risks. What also is apparent from this and other implications of *Daimler* is that the full ramifications of the decision may not be known for many years.

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19 *Id.* at 16 & n.13 (emphasis in original).

20 *Daimler*, Slip op. at 22, citing *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. ___ (2013), Slip op. available at http://www2.bloomberglaw.com/public/desktop/document/Kiobel_v_Royal_Dutch_Petroleum_Co_No_101491_2013_BL_102043_US_Apr/1, where the Court held that the Alien Tort Statute, 28 U.S.C. § 1350, could not reach the claims of foreign defendants for human rights violations occurring outside the United States (as were alleged in *Daimler*) against a foreign defendant. *Kiobel*, and now *Daimler,* built on the decision in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), where the Court held that securities fraud claims under Section 10(b) of the Securities Exchange Act of 1934 could not reach the claims of foreign plaintiffs who purchased shares of a foreign company on a foreign stock exchange.

21 *Daimler*, Slip op. at 23.

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