

# Insight: Litigation

January 2014

## US Supreme Court Significantly Limits Where Foreign Companies May Be Sued in US Courts For Claims Unrelated To Their Activities In A State

The United States Supreme Court earlier this month 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 the U.S. In *Daimler A.G. v. Bauman*, the Court ruled unanimously that DaimlerChrysler AG (“Daimler”) in Germany could not be sued in the California federal court based on the continuous and substantial business activities of its U.S. 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.<sup>1</sup>

The decision in *Daimler* will have a broad ripple-effect on U.S. litigation because personal jurisdiction is an essential element of every lawsuit. For example, this decision will affect where mass tort and product liability claims may be asserted, when U.S. courts should order discovery of information from a foreign party or non-parties located outside the United States, or when U.S. 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 the mere fact that a company is licensed to do business or operates a branch in the U.S. will no longer provide a basis for it to be sued there on claims that have nothing to do with the company’s actual activities in that State.

### Specific vs. General Personal Jurisdiction

The jurisdictional issue in *Daimler* turned on the two bases under which U.S. courts exercise jurisdiction against a specific defendant (referred to as “personal jurisdiction”):

- Specific jurisdiction, which exists when the claims asserted relate to a defendant’s activities in or directed toward a U.S. state – even if the defendant has no physical presence in the state; and
- All-purpose or general jurisdiction, which is much broader and allows a defendant to be sued in a U.S. state for any claim – even claims that have nothing to do with a defendant’s connections with or activities in that state.

Following the landmark decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), specific jurisdiction could be based on a defendant’s “minimum contacts” with a state, for example a company soliciting sales in a state, so long as the claim asserted related to those activities and even though the defendant lacked a physical presence in the state.

<sup>1</sup> *Daimler*, Slip op. at 1-3, available at [http://www.supremecourt.gov/opinions/13pdf/11-965\\_1qm2.pdf](http://www.supremecourt.gov/opinions/13pdf/11-965_1qm2.pdf)



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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."

In the decades since *International Shoe*, U.S. 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-U.S. plaintiffs sued Daimler in the 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 the 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 the plaintiffs allege that Daimler or MBUSA had done anything there that related to their claims. Rather, the 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. Daimler had only sporadic contacts with California, none of which related to the claims. Accordingly, the 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 U.S. dealerships, including in California.

Daimler applied to dismiss the claim for want of personal jurisdiction. In opposing, the 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 U.S. importer and distributor; (ii) MBUSA has multiple California-based facilities; (iii) MBUSA is the largest supplier of luxury vehicles in California (and over 10% of all new U.S. vehicle sales occur in California); and (iv) MBUSA's California sales comprise 2.4% of Daimler's worldwide sales (which, in 2004, were \$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 the 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 U.S. sales given the money Daimler made from the California market.

## The Daimler Decision: When Is A Corporation "At Home" In A Jurisdiction?

The Supreme Court unanimously reversed the decision, going back to first principles and noting repeatedly that *International Shoe* made clear that general jurisdiction is the exception, not the norm. *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. But, *International Shoe* only made 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 [U.S.] 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."

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-U.S. subsidiaries of a U.S. tire company to be sued in the U.S. simply because some of the foreign tires made it into the parent company's stream of sales into the U.S. state where an auto accident occurred.<sup>2</sup> 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."

Turning to general jurisdiction – significantly, the Court in *Daimler* expressly noted that a "substantial, continuous and systematic course of business" *cannot* by itself support general jurisdiction absent real

<sup>2</sup> *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. \_\_\_, Slip op. at 10 (2011).

territorial “affiliations.” It held that “only a limited set of affiliations with a forum will render a defendant amenable” to general jurisdiction. The Court found that, for a corporation, the paradigm forum for the exercise of general jurisdiction is the place in which the corporation is fairly regarded as “at home” – the place of incorporation and principal place of business. This focus on definite territorial affiliations was seen as having the advantage of being unique and easily ascertainable.

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.” 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.”

The Court’s decision also makes clear that 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. 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.”

### Daimler’s Broad Implications

*Daimler* will have far-reaching implications beyond defendants in U.S. lawsuits.

First, *Daimler* is likely to make it much harder to pursue judgment enforcement actions and third-party U.S. discovery against non-U.S. defendants who do business in the United States, but whose U.S. activities do not relate to the judgment being enforced or the discovery sought. In particular, U.S. branches of non-U.S. banks now will have strong arguments that their presence in the United States does not open the rest of the institution worldwide to U.S. 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 U.S. presence, if the U.S. operations are not implicated in the underlying investigation. Moreover, to the extent that *Daimler* may make it more likely that plaintiffs seeking U.S. jurisdiction will attempt to pierce the corporate veil, *Daimler* highlights the value to corporations of maintaining corporate formalities and documenting adherence to corporate structure. *Daimler* will reward corporate separation with limits on the reach of U.S. personal jurisdiction.

Second, by framing the decision in the context of a need to be more careful about broad assertions of U.S. jurisdiction, the Court has provided companies with a new

and strong response to U.S. discovery and enforcement decisions in the event that they fail to give sufficient weight to the interests of non-U.S. legal systems, especially where the proceedings do not relate to a company’s U.S. operations. 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 U.S. 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 U.S. law. 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.”

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.