

Client Alert

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The Supreme Court Curtails General Personal Jurisdiction Over Foreign Parent Corporations: *Daimler AG v. Bauman*

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On January 14, 2014, the Supreme Court decided *Daimler AG v. Bauman*, No. 11-965—a closely watched personal jurisdiction case. In an opinion authored by Justice Ginsburg for eight Justices, the Court reversed the Ninth Circuit's holding that a German company was subject to general personal jurisdiction in California, based on the California contacts of the company's Delaware subsidiary. Justice Sotomayor concurred in the judgment.

Until recently, the Supreme Court has infrequently engaged with issues of personal jurisdiction. Prior to the October 2010 Term, the Supreme Court had not significantly addressed personal jurisdiction since 1987, when the Court issued a splintered decision in *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102 (1987). During the 2010 Term, the Supreme Court decided two cases that effectively limited the ability of state courts to assert personal jurisdiction over foreign defendants: *Goodyear Dunlop Tires Operations v. Brown* and *J. McIntyre Machinery v. Nicastro*. In *Goodyear*, the Supreme Court explained there is general jurisdiction when a business is "at home" in the forum State. 131 S. Ct. 2846, 2887 (2011). *Bauman* further closes the door on efforts to extend personal jurisdiction against foreign corporations.

Bauman addresses a question left unresolved by *Goodyear*: whether the in-state contacts of a corporate subsidiary can be imputed to a foreign parent corporation for purposes of exercising general jurisdiction over the parent, even though the parent does not itself conduct any business in the forum State. The Supreme Court held that the subsidiary's in-state contacts could not support general jurisdiction over the parent corporation. And the Court reiterated that personal jurisdiction is generally limited to where a foreign corporation's affiliations with the forum State are so extensive as to render it essentially at home in the forum State.

BACKGROUND

The question presented in *Bauman* was "whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect corporate subsidiary performs services on behalf of the defendant in the forum State."

The plaintiffs are residents of Argentina who allege human rights violations against them and their relatives at the hands of Argentina's military dictatorship during the 1970s and early 1980s. Plaintiffs and their relatives were employed by Daimler's subsidiary in Argentina. Daimler is a German company that manufactures Mercedes-Benz automobiles in Germany. It does not manufacture, market or sell any products in the United States.

The plaintiffs filed suit in California, maintaining that Daimler was subject to general personal jurisdiction in California based on an agency theory. The plaintiffs argued that Daimler was subject to general jurisdiction in California based on the contacts that Daimler's wholly owned subsidiary, which is incorporated in Delaware, has in California. Based on the subsidiary's contacts, plaintiffs argued that the German parent could be forced to defend itself in California against the human rights violations allegedly committed by its Argentine subsidiary in Argentina. The district court dismissed the case for lack of jurisdiction.

Client Alert

The Ninth Circuit reversed, holding that Daimler was subject to general jurisdiction. The Ninth Circuit considered two separate tests for determining whether a subsidiary's in-state contacts can be imputed to a parent corporation for purposes of general jurisdiction. Although other Circuits have applied similar tests, neither test has ever been endorsed by the Supreme Court. The first test, the alter ego test, did not apply because the plaintiffs acknowledged that the subsidiary was not an alter ego of the parent corporation. The other test—the agency test—requires two showings: (1) the subsidiary was established for, or is engaged in, activities of sufficient importance that the parent would have to undertake similar activities itself, but for the existence of the subsidiary; and (2) the parent has actual control over, or “the right to control”, the subsidiary's internal affairs or day-to-day operations. The Ninth Circuit concluded that the agency test was satisfied.

THE SUPREME COURT'S DECISION

The Supreme Court reversed the Ninth Circuit. The Supreme Court rejected the Ninth Circuit's invocation of the agency test for general jurisdiction. The Court explained that it had “not yet addressed whether a foreign corporation may be subjected to a court's general jurisdiction based on the contacts of its in-state subsidiary.” Slip op. 16. While the Court did not forever foreclose use of the agency test to impute a subsidiary's in-State contacts to a foreign parent, it made clear the Ninth Circuit's analysis could not be sustained. The Ninth Circuit had relied on the fact that the subsidiary's “services were ‘important’ to Daimler, as gauged by Daimler's hypothetical readiness to perform those services itself if [the subsidiary] did not exist.” Slip op. 17. The Court held that “importance” cannot be the test, as “[a]nything a corporation does through an independent contractor, subsidiary, or distributor is presumably something that the corporation would do by other means if the independent contractor, subsidiary, or distributor did not exist.” Slip op. 17 (quoting 676 F.3d 774, 777 (9th Cir. 2011) (O'Scanlainn, J., dissenting from denial of rehearing en banc)). Such a result “would sweep beyond even the ‘sprawling view of general jurisdiction’ we rejected in *Goodyear*.” Slip op. 17.

The Supreme Court also reiterated that even if the subsidiary's contacts could be imputed to Daimler, “there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with the State hardly render it at home there.” Slip op. 18. The Court stressed that for a corporation, “the place of incorporation and principal place of business are paradigm bases for general jurisdiction.” Slip op. 19 (internal quotations and alterations omitted). And the Court rejected plaintiffs' argument that general jurisdiction exists whenever “a corporation engages in a substantial, continuous, and systematic course of business” as “unacceptably grasping.” Slip op. 19. The Court explained that “continuous and systematic” is the standard for *specific* jurisdiction, not general jurisdiction. For general jurisdiction to exist, the foreign corporation's in-state affiliations must “render it essentially at home in the forum State.” Slip op. 20. Finally, the Court concluded that concerns about predictability and international comity supported its determination that foreign corporations are not subject to general jurisdiction in all States where their subsidiaries have sizeable sales.

Justice Sotomayor concurred. She agreed that there was no jurisdiction over the parent company, but, in her view, the majority placed too much weight on the size and extent of Daimler's worldwide contacts. Justice Sotomayor would instead have focused the general jurisdiction test “solely on the magnitude of the defendant's in-state contacts, not the relative magnitude of those contacts in comparison to the defendant's contacts with other States.” Slip op. 8 (Sotomayor, J., concurring).

IMPLICATIONS

Bauman further closes the door on recent lower court efforts to expand general personal jurisdiction. Had the Supreme Court approved the Ninth Circuit's permissive approach to personal jurisdiction, it could have significantly expanded the scope of corporate and shareholder liability. Instead, the Supreme Court reaffirmed the more restrictive test articulated

Client Alert

in *Goodyear*: foreign corporations are not subject to general personal jurisdiction in a state unless they are “essentially at home” in that state.

Bauman further clarified that where the alter ego test is not satisfied, a corporate subsidiary’s sizeable sales in the forum State or the importance of its services to its parent are not sufficient to support general jurisdiction over a foreign parent corporation. This holding will make it more difficult to subject non-state defendants, including foreign corporations, to general personal jurisdiction.

Moreover, although *Bauman* did not expressly hold that the in-state contacts of an alleged agent could never supply general jurisdiction, the Court signaled an end to that argument by placing the focus squarely on the defendant’s—rather than the agent’s—activities in the forum. Thus, even if the agency test survives, the circumstances in which it might confer general jurisdiction appear extremely limited. Nonetheless, companies should review written agreements with subsidiaries and affiliates to clarify on what grounds, if any, an in-state affiliate might be considered an agent, and continue to observe standard formalities of corporate separateness to avoid litigation expense outside their home jurisdiction.

Bauman is the first of two personal jurisdiction opinions expected from the Supreme Court this Term. On November 4, 2013, the Supreme Court heard argument in *Walden v. Fiore*, No. 12-574, which addressed what it means for a defendant to “expressly aim” its conduct at a forum State, such that the forum State has specific personal jurisdiction over the defendant. In *Walden*, the Ninth Circuit held that there was personal jurisdiction over a non-resident DEA agent who lacked contacts with the forum State, because the DEA agent committed an intentional act—the filing of an allegedly false probable cause affidavit—expressly aimed at the forum State where plaintiffs resided.

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