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SCOTUS Limits the Exercise of General Personal Jurisdiction Over Multi-National Parent Corporations: *Daimler AG v. Bauman*

On Tuesday, Jan. 14, 2014, the Supreme Court of the United States stemmed the expansion of personal jurisdiction with its decision in *Daimler AG v. Bauman*, 571 U.S. --- (2014), available at http://www.supremecourt.gov/opinions/13pdf/11-965_1qm2.pdf. In *Daimler*, the Court was asked to decide whether a foreign corporation may be subject to general personal jurisdiction based solely on the in-state contacts of its U.S. subsidiary. In a 9-0 decision, with Justice Sotomayor concurring only in the judgment, the Justices held that the answer is no.

I. Background

In 2004, twenty-two Argentinian residents filed suit in the U.S. District Court for the Northern District of California against DaimlerChrysler Aktiengellschaft (Daimler), a German public stock company. The complaint alleged that Daimler's Argentinian subsidiary, Mercedes-Benz Argentina (MB Argentina), had collaborated with state security forces to torture and kill MB Argentina employees during the "Dirty War" some twenty years earlier. Jurisdiction was premised on the California contacts of Daimler's indirect subsidiary Mercedes-Benz USA, LLC (MBUSA), a Delaware corporation headquartered in New Jersey. MBUSA had several facilities in California and derived substantial profits from the California market for luxury vehicles.

Daimler moved to dismiss the case for lack of personal jurisdiction, and the District Court granted Daimler's motion. The Ninth Circuit affirmed, holding that the plaintiffs had failed to show an agency relationship sufficient to impute MBUSA's contacts to Daimler. Judge Reinhardt dissented, arguing that there was sufficient evidence of an agency relationship. The plaintiffs moved for rehearing, and upon rehearing the panel withdrew its initial opinion and adopted Justice Reinhardt's approach. In reaching its final decision, the Ninth Circuit applied an expansive theory of agency under which a subsidiary's acts may be imputed to the parent corporation if they are "important" enough that the corporations' own officials would hypothetically perform the acts if the subsidiary failed to do so.

The Supreme Court granted certiorari to decide "whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler is amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad."

II. Opinion of the Court

The Supreme Court reversed the Ninth Circuit, stating three bases for its holding. First, the Court held that even if general personal jurisdiction may be established via agency, the test employed by the Ninth Circuit "stacks the deck" in favor of jurisdiction. Under the "hypothetical readiness to perform" test, corporations would essentially be subject to general personal jurisdiction whenever they have in-state subsidiaries because a parent corporation presumably stands ready to perform any act a subsidiary performs on its behalf.

Second, even assuming that MBUSA was at home in California and its contacts were imputable to Daimler, that alone would not be sufficient to render Daimler at home in California because Daimler's contacts must be viewed in the context of its "nationwide and worldwide" operations. MBUSA's California operations accounted for only 2.4% of Daimler's overall sales. While specific jurisdiction may arguably have been appropriate on that basis, the Supreme Court balked at the idea of permitting general jurisdiction under such circumstances. To do so would potentially render multi-national corporations subject to suit in U.S. Courts for causes of action arising anywhere in the world so long as they had U.S. subsidiaries. The Court warned that "[s]uch exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."

Third, the expansive theory of personal jurisdiction embraced by the Ninth Circuit raised concerns regarding international comity. Other nations define jurisdiction more narrowly than the U.S., and "[c]onsiderations of international rapport" weighed against expanding jurisdiction as far as the Ninth Circuit would have seen it reach.

III. Justice Sotomayor's Concurrence

In her concurrence, Justice Sotomayor criticized the scope of the majority opinion. Specifically, Sotomayor took issue with the second basis for the Court's holding, i.e. that imputing MBUSA's contacts to Daimler would not be sufficient to establish general jurisdiction when weighed against Daimler's overall operations. According to Sotomayor, the Court's opinion introduced a proportionality analysis into the doctrine of general jurisdiction where it has never existed before. Under the Court's approach, the jurisdictional infirmity was "not that [Daimler's] contacts with California [we]re too few, but that its contacts with other forums [we]re too many." Instead of focusing on the "magnitude of the defendant's in-state contacts," as has been the standard, the Court based its decision on "the relative magnitude of those contacts in comparison to the defendant's contacts with other states."

IV. Implications

Daimler leaves open the question of whether a multi-national company with a U.S. subsidiary that accounts for a substantial portion of its overall business may be subject to general jurisdiction on the basis of that subsidiary's in-state contacts. *Daimler* does not foreclose the exercise of jurisdiction under such circumstances; it merely requires that courts apply a more narrow theory of agency than

the "hypothetical readiness to perform" test, and that the U.S. subsidiary account for more than small fraction of the parent corporation's overall sales. As Justice Sotomayor points out, the exercise of weighing a corporation's in-state contacts relative to its "nationwide and worldwide" operations is virgin territory in personal jurisdiction jurisprudence. The scope of such an inquiry, and the quantum of contacts needed to tip the scales in favor of general jurisdiction, remains to be determined.

For questions or further information, please contact Alec Farr (Washington, D.C., 202-508-6053); William Custer (Atlanta, 404-572-6828); James Sawtelle (Boulder, 303-417-8516); Mark Vasco (Charlotte, 704-749-8930); Steven Smith (Chicago, 312-602-5040); Christine Cesare (New York, 212-541-1228); Walter Herring (Dallas, 214-721-8042); Randy Miller (Denver, 303-866-0572); Stuart Price (Irvine, 949-223-7208); Robert Hoffman (Kansas City, 816-374-3229); Sean McElenney (Phoenix, 602-364-7379); Lee Marshall (San Francisco, 415-675-3444); Jennifer Jackson (Los Angeles, 310-576-2360); Christopher Schmidt (St. Louis, 314-259-2616); Tyson Johnson (Washington, D.C., 202-508-6228); or any other member of the Bryan Cave Commercial Litigation group.