

## CLIENT ALERT

### **In *Daimler AG v. Bauman*, U.S. Supreme Court Makes It More Difficult To Assert General Personal Jurisdiction Over Foreign Parent Corporations**

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A January 14, 2014 Supreme Court decision will almost certainly make it more difficult for foreign parent corporations to be sued in U.S. jurisdictions. The Supreme Court ruled in *Daimler AG v. Bauman*, No. 11-965, that the forum state contacts of a corporate subsidiary cannot be imputed to a foreign parent corporation for purposes of exercising general (or "all-purpose") personal jurisdiction over the parent.

In an eight-justice majority opinion written by Justice Ginsburg, the Supreme Court reversed the Ninth Circuit's decision holding that a German company was subject to general jurisdiction in California due to its U.S. subsidiary's extensive contacts with the state. Justice Sotomayor concurred in the result, but heavily criticized the majority's reasoning.

*Bauman* answers in the negative a question that the Supreme Court did not address in 2011 in *Goodyear Dunlop Tires Operations v. Brown*: whether a foreign parent company can be tagged with the forum state contacts of a subsidiary for purposes of general jurisdiction. In *Goodyear*, the Court declined to exercise general jurisdiction over a foreign subsidiary of a U.S. parent company, because the foreign subsidiary lacked continuous and systematic contacts with the forum state such that it would have been rendered "essentially at home in the forum State." 131 S. Ct. 2846, 2887 (2011). The *Bauman* decision also continues the Court's recent interest in personal jurisdiction after more than two decades of inaction.

#### **Background**

The litigation was initiated in 2004 when 22 Argentine residents sued DaimlerChrysler AG (Daimler), a German company that manufactures Mercedes-Benz vehicles in Germany, in the Northern District of California. Plaintiffs, former employees or relatives of former employees of Mercedes-Benz in Argentina, alleged that the company had collaborated with the Argentinian government to commit human rights violations during that country's Dirty War in the 1970s and 1980s. Plaintiffs asserted jurisdiction based on the California contacts of Mercedes-Benz USA, LLC (MBUSA), a subsidiary of Daimler that distributes Daimler-manufactured vehicles throughout the U.S. and had facilities in California.

The district court dismissed the case for lack of personal jurisdiction, finding that plaintiffs had failed to demonstrate that MBUSA acted as Daimler's agent. The Ninth Circuit, sitting *en banc*, reversed, finding that MBUSA's contacts with California could be imputed to Daimler. In subjecting Daimler to general jurisdiction, the Ninth Circuit held that its "agency test" for general jurisdiction had been met because: (1) MBUSA had engaged in activities of such importance that Daimler would have had to undertake them in the absence of its subsidiary; and (2) Daimler had "the right to control" MBUSA's daily affairs.

## Key Points of the Opinion

The Supreme Court reversed the Ninth Circuit and held that California did not have general jurisdiction over Daimler. Among the key points in Justice Ginsburg's majority opinion:

- The Supreme Court rejected the Ninth Circuit's "agency test" as too broad a standard for whether a court has general jurisdiction over a foreign parent company whose domestic subsidiary is "at home" in the forum state. The Court found that such a test "stacks the deck" in favor of jurisdiction because "[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. at 17.
- The Supreme Court found that MBUSA's California contacts were insufficient to create general jurisdiction. In so ruling, the Court reaffirmed its holding in *Goodyear* that a foreign company may be amenable to general jurisdiction only if its contacts are "so 'continuous and systematic' as to render [it] essentially **at home in the forum State**." The Court emphasized that "continuous and systematic" contacts alone are insufficient, and expressed concern that if a foreign parent company was subject to general jurisdiction everywhere its subsidiaries did business, it would be unable to structure itself so as to exercise control over where it might be sued. Slip Op. at 20-21.
- The Supreme Court gave great weight to the Solicitor General's argument that the Ninth Circuit's expansive view of general jurisdiction could impede negotiations with foreign governments about the reciprocal recognition and enforcement of judgments, and recognized that disrupting international comity "would not accord with the 'fair play and substantial justice' due process demands." Slip Op. at 23.

Justice Sotomayor authored a concurring opinion in which she agreed that Daimler should not be subject to general jurisdiction, but only because it would be "unreasonable" in this instance due to plaintiffs' failure to show that "it would be more convenient to litigate in California than in Germany." Slip Op. at 4 (Sotomayor, J., concurring).

Justice Sotomayor then sharply criticized the majority for, among other things, ignoring MBUSA's California contacts and focusing its analysis instead on how substantial its California contacts were compared to its presence in other states. Slip Op. at 8. Justice Sotomayor expressed concern that this aspect of the Court's holding could unwittingly expand the scope of jurisdictional discovery to include a company's contacts in every forum in which it does business.

## What Does This Decision Mean for Foreign Corporations?

The Supreme Court's opinion in *Bauman* has far-ranging implications for foreign corporations that do business—or have subsidiaries that do business—in the United States:

- The decision unmistakably makes it more challenging to sue a foreign corporation in a jurisdiction where specific jurisdiction does not exist. After *Bauman* and *Goodyear*, general jurisdiction now requires not only that a foreign company's forum state contacts be "continuous and systematic," but also that the company must be "essentially at home" in the jurisdiction. Lower courts will be called upon to further interpret what it means to be "essentially at home."

- Although *Bauman* did not expressly hold that an alleged agent's contacts could never be imputed to a parent corporation, the practical effect of the decision is to weaken that argument. The focus of the general jurisdiction analysis is on the defendant's contacts with the forum state, not the alleged agent's contacts.
- *Bauman* left undisturbed the long-standing precedent holding that a parent corporation can be subject to general jurisdiction based on the forum contacts of its subsidiary if the subsidiary is found to be its "alter ego." Corporations should therefore continue to observe all corporate formalities in order to reduce the chances of being haled into a foreign court for the alleged acts of its subsidiaries.

Crowell & Moring will continue to track developments in this area and advise companies on jurisdictional issues and liability risks in the U.S.

For a summary of the October 15, 2013 Supreme Court oral argument in *Bauman*, please click [here](#). To access the *Bauman* opinion, please click [here](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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