

**January 14, 2014**

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***Daimler AG v. Bauman: US Supreme Court Rejects Broad 'Agency Theory' of General Jurisdiction***

Today, the Supreme Court of the United States held in *Daimler AG v. Bauman et al.*, that due process prevents a court from applying an "agency" theory to exercise general personal jurisdiction over a foreign corporation based solely on unrelated contacts of its domestic, wholly-owned subsidiary, if the subsidiary is not otherwise an alter ego of the parent corporation. Justice Ginsburg delivered the opinion of the Court, in which Chief Justice Roberts and Justices Scalia, Kennedy, Thomas, Breyer, Alito and Kagan joined. Justice Sotomayor wrote a concurring opinion. The Court's ruling reversed a 2011 decision of Judge Stephen Reinhardt of the United States Court of Appeals for the Ninth Circuit.

The Court held that the Ninth Circuit's two-part "agency" test did not satisfy the requirements of due process. Under the Ninth Circuit test, a court could exercise general personal jurisdiction over a foreign parent corporation for activities that occurred entirely outside of the U.S. if (1) it would perform the tasks of the subsidiary if the subsidiary did not exist and (2) it had the "right to control" the subsidiary. Applying this test, the Ninth Circuit had held that the foreign parent (the corporate predecessor to Daimler AG) would perform all the tasks of its domestic subsidiary, Mercedes Benz USA, i.e., selling cars in the American market, if the subsidiary did not exist, and that the parent had the right to control virtually every function of the domestic subsidiary. Thus, the Ninth Circuit held that it could exercise general personal jurisdiction over the foreign parent based on the activities of its subsidiary in California.

The Supreme Court rejected the Ninth's Circuit's "agency" test for general personal jurisdiction. The Court found that the "Ninth Circuit's agency theory ... appears to subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the 'sprawling view of general jurisdiction'" that the Court previously rejected in its decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. \_\_ (2011). The Court noted that "[i]f Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA's sales are sizable. Such 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.'" The Court concluded that "[i]t was therefore error for the Ninth Circuit to conclude that Daimler, even with MBUSA's contacts attributed to it, was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California."

The Court also emphasized the transnational context of the dispute in reaching its holding, and found that the Ninth's Circuit's decision "paid little heed to the risks to international comity its expansive view of general jurisdiction posed.... Considerations of international rapport thus reinforce our determination that subjecting Daimler to the general jurisdiction of courts in California would not accord with the 'fair play and substantial justice' due process demands."