

ALERT

Supreme Court's Recent *Daimler AG v. Bauman* Decision Could Have Important Effects on Personal Jurisdiction in Suits Against Multistate Corporations

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In *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the Supreme Court of the United States recently held that a corporation is subject to general personal jurisdiction only where it is "at home." While its potential impact is uncertain, the 9-0 decision (with Justice Sotomayor concurring in the judgment) could have important effects on suits against multistate corporations. In broad terms, most corporations now will be subject to suit only in states where they are incorporated, where they have their headquarters, or where their actions gave rise to a particular claim. Plaintiffs will find it more difficult to bring a large number of corporate defendants into a single action based on regular contacts, or even satellite offices, not related to the particular claims.

The Supreme Court's Analysis

Daimler addresses the scope of personal jurisdiction, and specifically, the relationship between general personal jurisdiction and specific personal jurisdiction. General jurisdiction has traditionally allowed a multistate corporation to be sued on any claim in a forum where the corporation's affiliations with the forum are "continuous and systematic," even if the claim does not arise from those contacts. Specific jurisdiction, on the other hand, allows a multistate corporation to be sued in any state where even "minimal contacts" give rise to the claim, such as where a corporation is sued in Florida for personal injuries caused there by the intentional sale of defective products into the state.

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Daimler continues the Court's trend of favoring specific personal jurisdiction to the exclusion of traditional notions of general personal jurisdiction. At the same time, *Daimler* indicates that the Court will reject efforts to abandon general personal jurisdiction.

The *Daimler* plaintiffs brought suit against Daimler under the Alien Tort Statute, accusing Mercedes-Benz Argentina (MB Argentina), a subsidiary of Daimler, of collaborating with security forces to commit human rights abuses, including torture and kidnapping, during Argentina's "Dirty War." No part of MB Argentina's alleged collaboration with Argentinian authorities took place in California or anywhere else in the United States. But the Ninth Circuit held that Daimler could be sued in California under an agency theory based on the "continuous and systematic" presence there of another Daimler subsidiary, Mercedes-Benz USA, LLC (MBUSA).

The Supreme Court assumed, for purposes of its decision, that the subsidiary had substantial and continuous contacts with California and that those contacts could be attributed to the parent corporation. Nevertheless, the Court unanimously reversed the Ninth Circuit, holding that "continuous and systematic" forum contacts—even when substantial—are in themselves insufficient to establish general personal jurisdiction over a corporation.

To truly be at home in a state, the Court determined, a corporation's contacts with that state must be substantial both in an absolute sense and in the context of the defendant's general activities. This is contrary to many lower court decisions that had treated any significant ongoing activities in a state—such as maintaining a branch facility or office—as enough to render a corporation generally at home there.

Daimler's Impact Uncertain

Although some speculated that the Court might use *Daimler* to do away with general jurisdiction altogether, the Court endorsed the notion that there should be some place where a corporation can be sued on any claim against it. Nevertheless, the ruling affirms that it will be more difficult for plaintiffs to rely on general jurisdiction when suing a corporation. That is, the ruling suggests that a corporation will be subject to general jurisdiction only where it is incorporated and where it has its principal place of business.

Insofar as the Court in *Daimler* further curtailed general personal jurisdiction, it creates additional hurdles for plaintiffs to bring large, multistate lawsuits, simply because it will be more difficult to hail all of the defendants into a single jurisdiction, especially if federal courts apply the new pleading standards to require plaintiffs to allege facts that plausibly establish jurisdiction. This is particularly true where potential plaintiffs' claims may have arisen in multiple states, making specific personal jurisdiction unsuitable.

Moreover, *Daimler* may limit forum shopping against corporate defendants. For example, the case may undermine cases finding general personal jurisdiction in any forum based on an interactive website. Also, it may limit patent infringement suits in favorable patent fora based on defendants' non-infringing contacts. And the ability of plaintiffs' counsel in multi-plaintiff actions to destroy diversity by adding multiple defendants, including one defendant incorporated in a single plaintiff's home state, may be restricted.

Still, pre-*Daimler* attitudes and courts' practical reluctance to abstain from exercising jurisdiction could limit the effects of *Daimler*. For example, the Southern District of Florida found general jurisdiction in Florida over an Anguillian corporation with its principal place of business in Anguilla, where the corporation maintained a sales office in Florida, had a Florida-based agent manage its assets, and where the parent company controlling the corporation did not object to personal jurisdiction in and had extensive business ties to Florida. *Barriere v. Juluca*, No. 12-23510-CIV, 2014 WL 652831 at *7-9 (S.D. Fla. Feb. 19, 2014). However, the Court's closing comment—that otherwise a foreign corporation could operate freely in the United States while escaping suit for resulting injury to Americans suffered abroad—suggests that a specific jurisdiction analysis would have been more appropriate.

Notwithstanding the possibility that courts may try to limit *Daimler*, corporate defendants should consider whether to raise a personal jurisdiction defense in inconvenient fora where they are neither incorporated nor have their principal place of business, and where the events giving rise to the lawsuit arguably occurred elsewhere. Some corporate defendants may wish to reconsider remaining incorporated in states such as Delaware where many other corporations also are incorporated, subjecting them all to suit on any claim there.