

# Cornell International Law Journal Online

## The *Daimler* Decision and Personal Jurisdiction

by Connor O'Shea\*

### I. INTRODUCTION

In the Supreme Court's decision in *Daimler AG v. Bauman*, handed down in January, the Court tackled the thorny issue of personal jurisdiction.<sup>1</sup> The case, which involved a suit by foreign plaintiffs under the Alien Tort Statute and the Torture Victim Protection Act, concerned what is known as general or all-purpose jurisdiction. Arising from a lawsuit filed in the Northern District of California, the case featured arguments by the plaintiffs that sought to test and redefine the boundaries of federal court jurisdiction.<sup>2</sup> While these arguments proved convincing to the Ninth Circuit, they were ultimately rejected by the Supreme Court.

In the wake of *Daimler*, most analysis has focused on what the case has changed.<sup>3</sup> Another and perhaps more interesting question is why this case made it to the Supreme Court in the first place. After the Ninth Circuit's decision granting jurisdiction, there was near consensus that the Supreme Court would reverse.<sup>4</sup> Indeed, it was characterized as an easy decision.<sup>5</sup> Such conclusions stemmed from the fact that, for all of the confusion that exists regarding specific jurisdiction, there is great consistency in cases involving general jurisdiction.<sup>6</sup> This begs the question: How did the Ninth Circuit get this "easy" question wrong? In order to shed some light on the issue, this article looks at some of the

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<sup>1</sup> *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014).

<sup>2</sup> *Id.* at 751.

<sup>3</sup> See U.S. Supreme Court Severely Circumscribes "Presence" as Basis for Personal Jurisdiction of Foreign Corporations, 265 *Siegel's Prac. Rev.* 1 (2014).

<sup>4</sup> See Todd W. Noelle, *At Home in the Outer Limits: Daimlerchrysler v. Bauman and the Bounds of General Personal Jurisdiction*, 9 *Duke J. Const. L. & Pub. Pol'y Sidebar* 17 (2013); see also Howard M. Erichson, *Why the Supreme Court Should Give the Easy Answer to an Easy Question: A Response to Professor Childress, Neuborne, Sherry and Silberman*, 66 *Vand. L. Rev. En Banc* 179 (2013).

<sup>5</sup> See Noelle, *supra* note 4, at 40.

<sup>6</sup> *Id.* at 17.

main tenets of personal jurisdiction, examining the arguments presented to the Ninth Circuit and the rationale of the Ninth Circuit's decision. This article concludes by rejecting the agency theory of jurisdiction applied by the Ninth Circuit and arguing that the Supreme Court's approach leads to better results because it promotes greater uniformity and predictability in jurisdictional analysis.

## II. PERSONAL JURISDICTION

Writing for the majority in *Daimler*, Justice Ginsburg reviewed a series of cases familiar to any student of United States civil procedure.<sup>7</sup> From *Pennoyer v. Neff* to *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Court tracked the evolution of personal jurisdiction from its humble, limited origins to the refinement of the doctrine into the two strands known as specific and general jurisdiction.

A synopsis of the Court's own recitation is helpful for understanding the issues presented in *Daimler*. Although *Pennoyer* is no longer good law,<sup>8</sup> its general proposition still pervades personal jurisdiction analysis: the authority of any court is "necessarily restricted by the territorial limit of the State in which it is established."<sup>9</sup> To this end, specific and general jurisdiction define the two ways in which a court can exercise adjudicative authority over an individual or corporation. Specific jurisdiction follows where a suit "aris[es] out of or relate[s] to the defendant's contacts with the forum."<sup>10</sup> General jurisdiction, on the other hand, occurs where "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against [the corporation] on causes of action arising from dealings entirely distinct from those activities."<sup>11</sup> Further, where a suit involves a foreign corporation, courts look to see that the corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the foreign state."<sup>12</sup> Only then will a court find that general jurisdiction exists over the corporation such that that court can adjudicate "any and all claims against them."<sup>13</sup> This general, all-purpose jurisdiction is what the *Daimler* decision concerned itself with.

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<sup>7</sup> *Daimler AG v. Bauman*, 134 S.Ct. 746, 753-54 (2014).

<sup>8</sup> *Shaffer v. Heitner*, 433 U.S. 186, 227 (1977).

<sup>9</sup> *Id.* at 197; *see also Pennoyer v. Neff*, 95 U.S. 714 (1877).

<sup>10</sup> *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984).

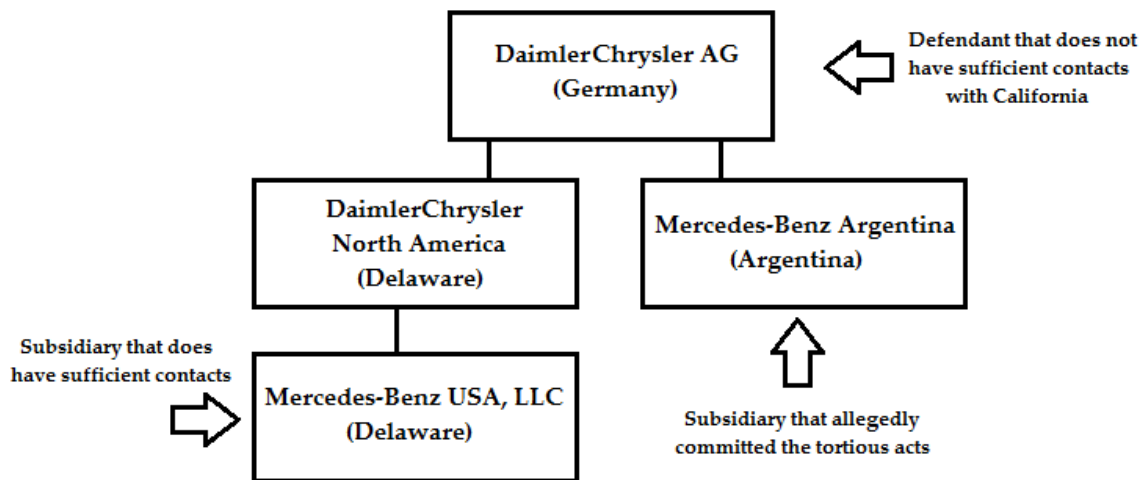
<sup>11</sup> *International Shoe Co. v. State of Washington*, 326 U.S. 310, 318 (1945).

<sup>12</sup> *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011).

<sup>13</sup> *Id.*

### III. PLAINTIFF'S ARGUMENTS AND THE NINTH CIRCUIT'S DECISION

The twenty-two plaintiffs in *Daimler* were all residents of Argentina who were either employees of Mercedes-Benz Argentina (MBA) or close relatives thereof.<sup>14</sup> The complaint filed in the Northern District of California alleged that MBA, a wholly owned subsidiary of DaimlerChrysler AG's (Daimler) predecessor in interest, collaborated with the Argentinian military to perpetuate various atrocities against MBA workers during Argentina's "Dirty War."<sup>15</sup> The plaintiffs asserted their claims against Daimler under the Alien Tort Statute and the Torture Victims Protection Act of 1991.<sup>16</sup> In response, Daimler challenged whether the California District Court had personal jurisdiction to hear the case.



The general jurisdiction analysis requires an assessment of the contacts each defendant has with the forum. Here, the named defendant Daimler was the one-hundred-percent owner of MBA.<sup>17</sup> Daimler was incorporated and had its principal place of business in Germany.<sup>18</sup> Mercedes-Benz USA, LLC (MBUSA) was a limited liability company formed under Delaware law with its principal place of business in New Jersey. MBUSA was a wholly owned subsidiary of DaimlerChrysler North America, which was a wholly owned subsidiary of Daimler.<sup>19</sup> In assessing MBUSA's contacts with California, the Ninth Circuit concluded—and the parties did not contest—that “MBUSA has the requisite

<sup>14</sup> Bauman v. DaimlerChrysler Corp., 644 F.3d 909, 911 (9th Cir. 2011).

<sup>15</sup> *Id.* at 911-12.

<sup>16</sup> *Id.* at 912.

<sup>17</sup> *Id.* at 913.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 914.

contacts” to be amenable to suit in California.<sup>20</sup> So the question before the Supreme Court was whether the California contacts of MBUSA could be imputed to Daimler, a separate corporate entity and indirect owner.<sup>21</sup> Applying an agency test, the Ninth Circuit answered this question in the affirmative, considering the level of control between the parent and subsidiary and the importance of the subsidiary to the parent.<sup>22</sup> On review, the Supreme Court rejected this agency theory, concluding that such a test would lead to a “sprawling view of general jurisdiction” that was flatly rejected by prior precedent.<sup>23</sup>

#### IV. WHAT DOES THIS ALL MEAN

Perhaps the easiest answer as to why the Ninth Circuit got this question wrong is that, since *International Shoe*, the Court has had few opportunities to address general jurisdiction, and thus the record on the issue is substantially less developed as compared to specific jurisdiction. While the agency theory applied by the Ninth Circuit was a minority rule, it is not inconsistent with prior precedent on general jurisdiction and indeed the Supreme Court did not reject all applications of an agency theory in *Daimler*.<sup>24</sup> What the Ninth Circuit did do that made this an “easy” case was extend the agency concept to its logical limit.

The *Daimler* plaintiffs sought to impute the contacts of a subsidiary to another subsidiary via a shared parent corporation. The Ninth Circuit granted jurisdiction on this argument based on a liberal application of agency principles. By the Ninth Circuit’s definition, an agency relationship would exist whenever an entity performed a function that was “important” to another entity.<sup>25</sup> Importance is further defined as the latter entity’s willingness to perform a task if the former entity did not exist to do it for them.<sup>26</sup> The Supreme Court noted that such logic would mean that anything a corporation does through a subsidiary, independent contractor, or distributor amongst other things, could subject the corporation to general jurisdiction.<sup>27</sup> This virulent conception of agency would, as the Supreme Court noted, create a “sprawling view of general jurisdiction.”<sup>28</sup> Moreover, such an interpretation of general jurisdiction would blur the line between general and specific jurisdiction.

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<sup>20</sup> *Id.* at 920.

<sup>21</sup> *Daimler AG v. Bauman*, 134 S.Ct. 746, 752 (2014).

<sup>22</sup> *Bauman*, 644 F.3d at 914.

<sup>23</sup> *Daimler AG*, 134 S.Ct. at 760.

<sup>24</sup> *Id.* at 759 ; *see also* Noelle, *supra* note 4, at 29.

<sup>25</sup> *Daimler AG*, 134 S.Ct. at 759.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 760 (internal quotations omitted).

Indeed, the Supreme Court's holding in *Daimler* primarily rests on maintaining the distinction between specific and general jurisdiction first established in *International Shoe*.<sup>29</sup> The agency theory the Supreme Court left intact, the alter ego theory, maintains a much more reasonable limitation on general jurisdiction than the one utilized by the Ninth Circuit. The alter ego theory limits general jurisdiction to where a subsidiary "is so dominated by the latter as to be its alter ego."<sup>30</sup> Quite simply, the alter ego theory allows jurisdiction where the parent and subsidiary are indistinguishable. Upholding this theory of agency while rejecting the one applied by the Ninth Circuit makes sense in the context of general jurisdiction because it limits the places where a corporation will be subject to general jurisdiction. General jurisdiction was meant to have limited applicability.<sup>31</sup> Furthermore, there was meant to be a sense of simplicity in applying jurisdictional rules to promote predictability.<sup>32</sup> The limitation the Supreme Court has enforced in *Daimler* enhances these aims by maintaining a simple bright-line rule between specific and general jurisdiction that will promote greater uniformity and predictability in jurisdictional analysis.

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<sup>29</sup> *Id.* at 761.

<sup>30</sup> *Id.* at 759.

<sup>31</sup> *Id.* at, 760 ("These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.").

<sup>32</sup> *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) ("Simple jurisdictional rules . . . promote greater predictability.").