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Give Me Your Tired, Your Poor, Your Huddled Masses … But Not Your Plaintiffs: Supreme Court Decision Limits General Personal Jurisdiction Over Foreign Defendants

By Barry S. Alexander and Peter Colonna-Romano

It is no secret that U.S. courts are among the most favorable to plaintiffs, especially with regard to damages awards. For this reason, there has been a growing trend of foreign plaintiffs bringing lawsuits in the U.S. even where neither the plaintiff(s) nor the incident causing injury has any real connection to the U.S. This is especially true in the field of aviation, where more and more frequently foreign air disasters are resulting in U.S. litigation despite the lack of any apparent connection to the U.S.

The doctrine of *forum non conveniens* (FNC), through which U.S. courts dismiss actions on the basis of inconvenience where there is a more convenient forum elsewhere, has proven effective in shifting many of these cases to a proper, foreign jurisdiction. In some cases, and especially some jurisdictions (e.g., Cook County, Illinois), however, FNC motions have met with little success. Those of us involved with these cases are fully familiar with the importance of these decisions, as the result of an FNC motion can change the value of a single plaintiff's claim by hundreds of thousands, if not millions, of dollars.

Thus, the U.S. Supreme Court's reversal of a troubling decision from the Ninth Circuit, in which the Circuit Court found that there was personal jurisdiction over a foreign defendant for claims arising out of a foreign incident, is a positive development for multinational corporations. In an opinion issued on January 14, 2014, the Supreme Court in *Daimler AG v. Bauman*[1] found that a California federal district court lacked personal jurisdiction over the foreign defendant for claims (1) brought by foreign plaintiffs and (2) arising from the alleged acts entirely outside of the U.S. of the defendant's foreign subsidiary: "Exercises of personal jurisdiction so exorbitant, we hold, are barred by due process constraints on the assertion of adjudicatory authority."

There are two types of personal jurisdiction: specific jurisdiction and general jurisdiction. Specific jurisdiction recognizes that even a single act or occurrence in the forum may be enough to subject a corporation to jurisdiction. General jurisdiction, on the other hand, provides a basis for jurisdiction over a corporation for all suits, regardless of their connection to the forum, where "a foreign corporation's 'continuous corporate operations with a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.'" The Court's opinion in *Daimler* places a limit on the reach of general jurisdiction.

In *Daimler*, 22 Argentine residents commenced litigation against DaimlerChrysler Aktiengesellschaft, a German company (Daimler). The claims related to human rights violations allegedly committed by Daimler's Argentine-subsidiary Mercedes-Benz Argentina (MB Argentina) during Argentina's "Dirty War" (a campaign waged from

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1. *Daimler AG v. Bauman*, 571 U.S. _____ (2014) (slip op).

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1976 to 1983 by Argentina's military dictatorship against suspected left-wing political opponents in which thousands of people were killed). No part of MB Argentina's conduct took place in California or anywhere else in the U.S., and MB Argentina was not named as a defendant. Instead, the plaintiffs sought to hold Daimler vicariously liable for its subsidiary's conduct.

The plaintiffs argued that the court had personal jurisdiction over Daimler based on the "California contacts" of Mercedes Benz USA (MBUSA), an indirect subsidiary of Daimler that acts as Daimler's exclusive importer and distributor of automobiles in the U.S. MBUSA has multiple facilities in California and is the largest supplier of luxury automobiles in California. MBUSA's California sales totaled $4.6 billion in 2004, a substantial amount of money by almost any standard, but just 2.4 percent of Daimler's worldwide sales that year.

The district court dismissed the lawsuit for lack of personal jurisdiction but the Ninth Circuit, which initially affirmed the district court's ruling, reversed after rehearing on the grounds that there was an agency relationship between Daimler and MBUSA sufficient to attribute MBUSA's California contacts to Daimler, and "considerations of 'reasonableness' did not bar the exercise of jurisdiction."

On appeal, the Supreme Court, finding that Daimler was not subject to general jurisdiction in California, that is, its "affiliations with the State [were not] so continuous and systemic as to render it essentially at home in the forum State," reversed. The Court reasoned that, if Daimler's California activities were sufficient to allow the district court to hear this "Argentina-rooted case in California," Daimler would be subject to suit in any state where MBUSA had sizable sales. The Court found such an outcome impermissible under the Due Process Clause of the Fourteenth Amendment and, accordingly, held that it was error to subject Daimler to suit in California "on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California."

Perhaps the most interesting (and from the perspective of a foreign corporation, exciting) aspect of the Court's decision is its imposition of what Justice Sotomayor in her concurring opinion deemed a "proportionality test," whereby the Court chose to look at Daimler's U.S. contacts in the context of Daimler's entire operations, as opposed to simply evaluating those U.S. contacts on their own merit. In other words, where the analysis seemingly used to focus only on a defendant's U.S. contacts, with the assumption being that general jurisdiction was proper where the contacts were substantial and continuous, the analysis applied by the Court in *Daimler* appears to require that a defendant's U.S. contacts be viewed in context of its global operations to see if the U.S. operations are sufficient to support a finding that the foreign company was "at home" in the U.S. This is important because it appears to protect foreign companies from personal jurisdiction in the U.S. even where they have substantial contacts with the U.S. (e.g., a foreign airline that operates flights to/from the U.S. and has offices in the U.S.) where the U.S. operations do not constitute a sufficient percentage of the company's entire operations. Of course, it is not at this time clear exactly what percentage would be deemed sufficient.

In reaching its decision, the Supreme Court was mindful of the many business and political implications of affirming the far-reaching general jurisdiction proposed by the Ninth Circuit. It noted that, without limits on the exercise of jurisdiction by U.S. courts, foreign companies would be unable to structure their conduct in a manner to allow them to know where they will or will not be amenable to suit. The Court also noted that its limitation on personal jurisdiction was more in line with the jurisdictional limitations adhered to in, for example, the European Union, and that a broader application of personal jurisdiction could discourage foreign investment in the U.S.

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The practical impact of this ruling is that it will be more difficult for plaintiffs to maintain suit in the U.S. against foreign multinational corporations for conduct that occurs outside and is unrelated to the U.S. At a minimum, the decision provides foreign aviation defendants with another arrow in their quiver of defenses to litigation in the U.S. arising out of foreign incidents involving foreign plaintiffs. The greater hope, however, is that it will provide a powerful supplement to the doctrine of *forum non conveniens*, thwarting efforts by courts such as those in Cook County to retain jurisdiction over cases, especially those arising out of air disasters, with no connection to the U.S. In any event, the Court's decision provides a reason for us to smile, at least temporarily. ◆

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