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Supreme Court Limits Reach Of General Jurisdiction

Law360, New York (January 21, 2014, 6:55 PM ET) -- Last week's decision by the U.S. Supreme Court in Daimler AG v. Bauman clarified the law on general jurisdiction and should bring some comfort to foreign parent companies whose ownership of a subsidiary in the United States is their primary contact with the country.

In May 2011, the Ninth Circuit Court of Appeals expanded the reach of general jurisdiction over a foreign corporation by imputing the contacts of its U.S. subsidiary to justify the exercise of personal jurisdiction over the corporation in a California court. In Bauman, the Supreme Court rejected this expansion of general jurisdiction and provided much-needed certainty on the limits of the potential forums a corporation could be brought before under the principle of general jurisdiction.

In permitting the exercise of general jurisdiction over Daimler AG, a German public stock company, the Ninth Circuit relied on an agency theory to establish the necessary forum contacts for general jurisdiction. The Ninth Circuit found that Daimler AG's subsidiary, Mercedes-Benz USA LLC, had sufficient contacts within California to be subject to general jurisdiction.

Based on those contacts, the Ninth Circuit held that MBUSA was acting as the agent of Daimler AG because MBUSA "performs services that are sufficiently important to the foreign corporation." Therefore, concluding that because MBUSA was subject to general jurisdiction in California and acted as Daimler AG's agent in California, Daimler AG could not escape the general jurisdiction reach of the California court.

A hypothetical car accident discussed during oral argument highlighted the potential litigation exposure that a foreign parent company could face in the United States under the Ninth Circuit's view of general jurisdiction. First, if a California plaintiff, injured in a California accident while driving a Daimler manufactured vehicle, sued Daimler in a California court on the legal basis of a defectively designed vehicle, the California court's ability to adjudicate such a matter would be based on specific jurisdiction.

If Daimler AG had purposefully availed itself of the "benefits and protections" of California, Daimler AG should not be surprised to have to defend itself in California because the underlying facts to the litigation occurred in that forum. Alternatively, if the same car accident occurred in Poland and the injured Polish plaintiffs sued Daimler AG in a California court, the California court's basis to hear such a case would be founded on general jurisdiction.

Under the Ninth Circuit's and the plaintiffs' approach, Daimler AG could be hailed before the California court (or any court in any state) under a general jurisdiction standard if (1) Daimler AG had a subsidiary that had sufficient contacts with the forum state to invoke general jurisdiction, and (2) the subsidiary

was found to be an agent of Daimler AG.

Because the Ninth Circuit's test for agency was whether the subsidiary provided "sufficiently important" services to the foreign corporation, and it is difficult to imagine any subsidiary not providing "sufficiently important" services to its parent, Daimler AG (or any other foreign parent company) could face litigation before any U.S. court in any state for any alleged wrongdoing that occurred anywhere in the world.

Justice Ruth Bader Ginsburg delivered the Supreme Court's opinion rejecting the Ninth Circuit's expansive general jurisdiction approach. Writing for the unanimous majority (Justice Sonia Sotomayor filed a concurring opinion), she noted that the Ninth Circuit's agency theory test "will always yield a pro-jurisdiction answer."

While the court declined to provide guidance on the future use of the agency theory to invoke general jurisdiction, the court held, even assuming MBUSA was Daimler AG's agent, that the exercising of general jurisdiction over Daimler AG would be inconsistent with the court's 2011 decision in Goodyear Dunlop Tires Operations SA v. Brown.

The court highlighted the important distinction between the International Shoe test of "continuous and systematic" contacts under specific versus general jurisdiction. Under general jurisdiction and the progeny of Goodyear, the inquiry "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,'" [as used when analyzing specific jurisdiction] "it is whether that corporation's 'affiliations with the state are so 'continuous and systematic' as to render [it] essentially at home in the forum state.'"

The court made clear that because of the expansive extraterritorial reach available to plaintiffs with specific jurisdiction, the reach of general jurisdiction should not be stretched "beyond limits traditionally recognized." Under this guiding principle, the location where a defendant will be subject to general jurisdiction "ordinarily indicates only one place" that should be "easily ascertainable." While the court did not provide a bright-line rule, general jurisdiction over a corporation will typically be found only in the place of incorporation or a corporation's principal place of business.

When defendants file motions to dismiss for lack of personal jurisdiction, one of the underlying benefits is the possibility of avoiding litigation in a foreign forum without incurring the costs associated with discovery. But when these motions to dismiss are filed, most forums across the United States either permit jurisdictional discovery by right or typically grant jurisdictional discovery if requested.

While most forums are explicit that jurisdictional discovery should be limited and narrowly focused to the underlying facts needed to support personal jurisdiction, Sotomayor's concurrence raises concerns that jurisdictional discovery will instead become more expansive because of the court's holding.

Sotomayor felt that instead of focusing on a "defendant's forum-state contacts alone, courts will now have to identify the extent of a company's contacts with every other forum" to establish where a corporation should be considered "at home" for purposes of general jurisdiction.

While such a concern may be reasonable in theory, it will likely be unfounded when applying the court's opinion in practice. As the court noted, "it is hard to see why much in the way of discovery would be needed to determine where a corporation is at home."

The "at-home" inquiry should be relatively straightforward as the test "calls for an appraisal of a

corporation's activities in their entirety" and additional discovery "would [not] be needed to determine where a corporation is at home." Therefore, defendants considering future motions to dismiss that hinge on a general jurisdiction theory should take some comfort that the costs of any future jurisdictional discovery will not subsume the benefits of the motion to dismiss itself.

While the Supreme Court's recent plurality decisions concerning specific jurisdiction are not ideal for advising multinational corporations about the risks of various forums for litigation in the United States, the court's decision in Bauman provides much-needed guidance to enable effective counseling.

Now counsel can advise their domestic and international corporate clients that the reach of the U.S. courts under a general jurisdiction theory will be based where the corporation is "at home." This guidance should be tempered for clients whose primary business activities occur away from the typical "at-home" standards (either its principal place of business or place of incorporation) because the holding in Bauman left unanswered what types or amount of primary business contacts are necessary to shift an entity's "at-home" forum away from the typical standard.

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