U.S. Supreme Court Narrows General Jurisdiction Standard

Access to U.S. courts for claims against foreign corporations continues to be restricted

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On January 14, the United States Supreme Court directly addressed the exercise of general personal jurisdiction over corporations for only the fourth time in its history. It has, of course, long been the law that a corporation's contacts with the forum state must be "continuous and systematic" to justify the exercise of general jurisdiction, *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984), and for years courts have interpreted this to mean that if a corporation did enough business in a state, it eventually would be subject to general jurisdiction there.

In *Daimler v. Bauman*, 134 S. Ct. 746 (2014), the court acknowledged the old rule of *Helicopteros*, but then significantly limited that rule by instructing that, for general jurisdiction to be asserted, constitutional due process requires that corporations' contacts must be "so continuous and systematic as to render them essentially at home in the forum state"—a standard typically met only in a corporation's state of incorporation or principal place of business. *Bauman* thus represents a major departure from the "doing business" general jurisdiction standard that has been applied by lower courts for decades, and sharply limits where corporations may be sued for claims unrelated to their activities in a state.

Bauman is also significant for a different and perhaps equally important reason. Over the course of the last 10 years, the Supreme Court has issued a series of decisions that have effectively restricted access to United States courts for claims against foreign corporate defendants, particularly with respect to claims based upon conduct that took place outside of the United States. *Bauman* continues this trend.

In *Bauman*, 22 Argentine residents sued Daimler, a German company, in the United States District Court for the Northern District of California. The plaintiffs claimed that Daimler's Argentinean subsidiary had collaborated with state security forces to kidnap,

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torture, and kill its workers, including the plaintiffs and their relatives, during Argentina's 1976-1983 "Dirty War." The plaintiffs claimed that this conduct violated two federal statutes, the Alien Tort Statute (ATS) and the Torture Victim Protection Act. The plaintiffs predicated personal jurisdiction on the California contacts of Mercedes-Benz USA (MBUSA), a Daimler subsidiary that distributes Daimler cars in California, arguing that MBUSA operated as Daimler's "agent" enabling Daimler to conduct continuous and systematic business in California.

After allowing jurisdictional discovery regarding the relationship between MBUSA and Daimler, the district court dismissed the case for lack of personal jurisdiction. On appeal, the Ninth Circuit reversed, imputing to Daimler all of MBUSA's California contacts under an agency theory, and holding that Daimler was subject to general jurisdiction in California based upon MBUSA's continuous and systematic business conduct there. The United States Supreme Court granted certiorari to determine "whether a foreign corporation may be subjected to a court's general jurisdiction based on the contacts of its in-state subsidiary."

The Supreme Court began its analysis by recounting its personal jurisdiction jurisprudence and highlighting the difference between specific jurisdiction, which exists when the claims asserted relate to the defendant's contacts with the forum state, and general jurisdiction, which permits the exercise of jurisdiction over the defendant with respect to any and all claims—including those that are unrelated to the defendants' contacts with the forum state. According to the Court, in the decades following its landmark decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), "general and specific jurisdiction have followed markedly different trajectories." Whereas the specific jurisdiction analysis no longer adheres to the "rigidly territorial focus" espoused in *Pennoyer v. Neff*, 95 U.S. 714 (1878), the Supreme Court said that it has "declined to stretch general jurisdiction beyond limits traditionally recognized." *Bauman*, 134 S. Ct. at 757-58.

In keeping with that narrow approach, the court in *Bauman* first criticized the "agency theory" of general jurisdiction followed by the Ninth Circuit as likely to "always yield a

pro-jurisdiction answer," an outcome the court characterized as supporting an improper "sprawling view of general jurisdiction." The court likewise rejected as "unacceptably grasping" the test for general jurisdiction advocated by the plaintiffs (and largely followed by many lower courts for decades) that general jurisdiction may be exercised in all states in which a corporation "engages in a substantial, continuous, and systematic course of business." Constitutional due process requires something more.

The Supreme Court instead held that the general jurisdiction inquiry must focus on the singular question of whether a foreign corporation's affiliations with the forum state are "so continuous and systematic as to render them essentially *at home*." (Emphasis added.) And in all but the most exceptional cases, the court explained, a corporation will be "at home" only in its state of incorporation or principal of business. Even if all of MBUSA's California contacts could properly be attributed to Daimler—an assumption the court was willing to make despite its misgivings about the Ninth Circuit's "agency" analysis—Daimler itself was neither incorporated in California nor had its principal place of business there, and thus the Ninth Circuit erred in finding that Daimler could be subject to suit in California "on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California."

By turning away from decades of lower court decisions holding that corporations could be subject to general jurisdiction in any state in which they conduct "continuous and systematic" business operations, the court's decision in *Bauman* sharply limits the jurisdictions in which nonresident corporations will be subject to suit, in effect narrowing the exercise of general jurisdiction to the states where the defendant corporation is incorporated and has its principal place of business. Although this restrictive standard for general jurisdiction is the same whether a defendant corporation is domestic or foreign, in practice the standard is unlikely to ever be met in claims against foreign corporations, as it will be a rare case in which a foreign corporation has its principal place of business in the United States. Indeed, it appears that the court in *Bauman* was particularly focused upon restricting suits against foreign corporate defendants in United States courts where the underlying conduct took place abroad.

In this regard, *Bauman* can be understood as part of a decade-long series of Supreme Court decisions that have the effect of greatly limiting access to United States courts for claims against foreign defendants based upon conduct outside of the United States. Specifically, in recent years the court has: limited the ability of foreign plaintiffs to bring antitrust claims in United States courts for wholly foreign injuries, *F. Hoffmann-La Roche Ltd. v. Empagran*, 542 U.S. 155 (2004); restricted the permissible scope of claims under the ATS to those resting on a norm of internationally accepted character capable of definition with clear specificity, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004); reinvigorated the presumption against the extraterritorial application of United States law, *Morrison v. National Australia Bank*, 561 U.S. 247 (2010); and held that the presumption against the extraterritorial application of United States law applies to the ATS, *Kiobel v. Royal Dutch Petro. Co.*, 133 S. Ct. 1659 (2013).

The court's opinion in *Bauman* itself evidences this trend, as the court emphasized "the risks to international comity" posed by the Ninth Circuit's expansive view of general jurisdiction. The court also noted that other nations, including those in the European Union, adhere to much narrower jurisdictional approaches, and that the Solicitor General advised that foreign governments' objections to some United States courts' expansive views of general jurisdiction "have in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments."

Going forward, *Bauman* will present a significant challenge to plaintiffs seeking to sue foreign corporations in United States courts for claims unrelated to their activities in the forum state. Indeed, because under *Bauman* a corporation is generally "at home" only in its state of incorporation or principal place of business, *Bauman* largely forecloses attempts at establishing general jurisdiction over corporations domiciled outside of the United States. Moreover, *Bauman* continues the Supreme Court's recent trend of restricting access to United States courts for claims against foreign defendants based upon conduct that took place outside of the United States, and is yet another indication that the days in which foreign plaintiffs could reasonably view United States courts as a

viable forum for disputes regarding human rights abuses, securities fraud, or other allegedly tortious conduct that took place abroad, are coming to an end.

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