

LEGAL MEMORANDUM

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Closing the Door to Foreign Lawsuits: *Daimler AG v. Bauman* Paul J. Larkin, Jr.

Abstract

The Supreme Court's January 14, 2014, unanimous decision in Daimler AG v. Bauman effectively forecloses plaintiffs from suing nondomestic corporations for wrongs that they allegedly committed beyond U.S. shores that did not adversely affect the plaintiff in this nation. By resting its decision on the Due Process Clause of the Fourteenth Amendment, the Court has also severely limited the ability of the states and the federal government to volunteer our courts to serve as the "World Court for Litigation."

Midway through its October 2013 term, on January 14, 2014, the Supreme Court of the United States decided a case that will make its way into every civil procedure casebook, *Daimler AG v. Bauman*.¹ The plaintiffs, residents and citizens of Argentina and Chile without any connection to the United States, initiated a federal court lawsuit in California against Daimler AG, a German company,² seeking relief for the allegedly tortious activities of Mercedes-Benz Argentina, a subsidiary corporation of Daimler AG. The plaintiffs alleged that the subsidiary had collaborated with Argentine security forces during that country's 1976–1983 "Dirty War" to detain, kidnap, torture, and kill Argentine nationals employed by or related to employees of Mercedes-Benz Argentina—injuries that occurred entirely within Argentina. Writing for eight members of the Court,³ Justice Ruth Bader Ginsberg concluded that the plaintiffs' lawsuit could not go forward because the trial court could not exercise personal jurisdiction over the defendant Daimler AG.⁴

KEY POINTS

- Personal jurisdiction comes in two varieties. Specific jurisdiction describes the case where a party seeks to obtain judicial relief for a specific act or series of acts that the defendant is alleged to have taken in a particular state. General jurisdiction describes the scenario in which a corporation can be sued for any harm it may have caused anywhere in the world.
- General jurisdiction generally is limited to the states in which a person or corporation resides, which, in the case of a corporation, is where it is incorporated or headquartered.
- The Supreme Court's decision in *Daimler AG v. Bauman* effectively forecloses a plaintiff from suing nondomestic corporations for wrongs that they allegedly committed beyond U.S. shores that did not adversely affect the plaintiff in this nation.
- Because the Supreme Court relied on the Due Process Clause, Congress cannot "remedy" any error that it might perceive in the Court's decision through new legislation.

This paper, in its entirety, can be found at <http://report.heritage.org/lm126>

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The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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The Background to *Daimler*

The term “jurisdiction” generally has two meanings. *Subject-matter jurisdiction* refers to a tribunal’s authority to resolve a dispute.⁵ That was not at issue in the *Daimler* case. *Personal jurisdiction*, the authority of a court to enter judgment against a specific individual or entity, was at issue.⁶

Personal jurisdiction comes in two varieties. *Specific jurisdiction* encompasses the circumstances in which a party seeks to obtain judicial relief for a specific act or series of acts that the defendant is alleged to have taken in a particular state.⁷ *General jurisdiction* describes the scenario in which a corporation can be sued for any harm it may have caused anywhere in the world. General jurisdiction generally is limited to states in which a person or corporation resides, which, in the case of a corporation, is where it is incorporated or headquartered.⁸ At issue in the *Daimler* case was the breadth of the general jurisdiction doctrine.

The Supreme Court’s Decision in *Daimler*

As Justice Ginsberg explained, the Due Process Clause of the Fourteenth Amendment limits a court’s ability to exercise personal jurisdiction over the parties to a civil lawsuit. That is, the clause limits a plaintiff’s ability to demand that a particular party defend himself, herself, or itself in a specific federal or state court against the claim that the defendant has violated some private or public right enjoyed by the plaintiff.⁹

Originally, the principal restriction was geographical because it rested on the notion that the trial court needed to be able to exercise “physical power” over a defendant.¹⁰ In 1878, in *Pennoy v. Neff*,¹¹ the Court ruled that a court may exercise jurisdiction over a defendant only within the boundaries of the state in which the court found itself.¹² Put another way, a court may not exercise jurisdiction extraterritorially—that is, over anyone in a different state—because doing so would interfere with the coequal sovereignty of another state.

That rule was a reasonable one for a primarily agrarian economy, one in which the majority of business was conducted on a local or intrastate basis. Over time, however, the emergence of a national economy and the birth of nationwide transportation and communications capabilities meant that persons and firms could adversely affect other parties at a great distance.¹³

Recognizing that problem, beginning in 1945, the Supreme Court in *International Shoe Co. v. Washington*¹⁴ expanded the permissible personal jurisdictional bases for hauling a defendant into court. Today, a plaintiff may sue a corporation not only in its “home” state¹⁵—that is, where the business is incorporated or has its principal place of business¹⁶—but also in a state where it directly conducts business and that business gave rise to the breach of contract, tort, or public law violation at issue in the case.¹⁷

In *Daimler AG*, the Court concluded that neither basis justified the plaintiffs’ attempt to sue Daimler AG in California. The home for Daimler AG was Germany, not California, and none of the allegedly tortious acts could be attributed to Daimler AG rather than to its subsidiary. To be sure, Mercedes-Benz Argentina was the agent for Daimler AG in that nation, but that fact alone was insufficient to render Daimler AG subject to suit in California, because all of the allegedly tortious acts took place in Argentina. The California courts therefore could not exercise personal jurisdiction over Daimler AG without subjecting a company to suit in whatever forum a related corporate entity could be served with process.¹⁸ That rule, the Court concluded, would stretch the general jurisdiction doctrine too far.

The Significance of the Supreme Court’s Decision in *Daimler*

The *Daimler AG* case is both interesting and important. It is interesting because of what it signals. The ruling effectively forecloses plaintiffs from suing nondomestic corporations for wrongs that they allegedly committed beyond U.S. shores that did not adversely affect the plaintiff in this nation. Over the course of the past few years, foreign and domestic plaintiffs have sought to use the courts of the United States as an erstwhile “World Human Rights Court” in which anyone could sue anyone else for alleged human rights abuses under one or more of the federal statutes that invoke or make reference to international norms.¹⁹ The Supreme Court has been hostile to those efforts, and the *Daimler AG* decision may be the final nail in their coffin.

The *Daimler AG* case is important for two reasons. First, the Court apparently has made up its mind on this subject. The Court unanimously turned aside the plaintiffs’ claims, even though there was some slight disagreement over the rationale. Second, the Court rested its decision on the Due Process Clause. In its

other recent decisions involving foreign plaintiffs, the Court bottomed its ruling on an interpretation of the particular statute at issue. The result was to foreclose relief to a particular set of plaintiffs unless and until Congress amended the act in order to broaden its reach. But the *Daimler AG* case did not involve an issue of statutory interpretation, so Congress cannot “remedy” any error that it might perceive in the Court’s decision through new legislation.²⁰

Conclusion

Congress is no less bound than the states by constitutional restrictions on personal jurisdiction. It also is highly unlikely that Congress could resort to

the treaty process to evade due process restrictions in cases like *Daimler AG* because the Fifth Amendment limits the Senate’s Article II treaty-approval power just as much as it limits Congress’s Article I regulatory authority.²¹ The *Daimler AG* case therefore stands as a new and important limitation on the authority of the states and the federal government to volunteer our courts to serve as the “World Court for Litigation.”

—*Paul J. Larkin Jr., is Senior Legal Research Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.*

Endnotes:

1. 134 S.Ct. 746 (2014).
2. Daimler AG is the current name of the restructured company originally known as DaimlerChrysler Atkiengesellschaft. See *Daimler AG*, 134 S.Ct. at 751 n.2. Like the Supreme Court, I use the company's current name if for no other reason than that it is easier to spell.
3. Justice Sonia Sotomayor wrote a separate opinion in which she disagreed with Justice Ginsberg's general analysis of personal jurisdiction but concurred in the judgment.
4. The plaintiffs filed their lawsuit in a California federal district court, and Rule 4(a), Fed. R. Civ. P., requires a federal district court to use the "long-arm" statute of the state in which that court is located. The relevant California statute allows a state court to assume jurisdiction over a defendant unless the state or federal constitution bars that result. See Cal. Civ. P. Code § 410.10 (West 2004); *Daimler AG*, 134 S.Ct. at 753.
5. See, e.g., *Union Pacific R. Co. v. Locomotive Engineers and Trainmen Gen. Comm. of Adjustment, Central Region*, 558 U.S. 67, 81 (2009); *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006); *THE FEDERALIST* No. 81, at 447, 451 (J. Cooke ed. 1961) (Hamilton).
6. See, e.g., Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121 (1966).
7. See, e.g., *Burnham v. Superior Court*, 495 U.S. 604 (1990); *Calder v. Jones*, 465 U.S. 783 (1984); *Rush v. Savchuk*, 444 U.S. 320 (1980); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).
8. See, e.g., *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846 (2011); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952); Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610 (1988).
9. See *Baker v. Baker, Eccles & Co.*, 242 U.S. 394, 403 (1917) ("[U]ntil the adoption of the 14th Amendment (1868) this remained a question of state law; the effect of the 'due process' clause of that amendment being, as was held in the case just mentioned, to establish it as the law for all the states that a judgment rendered against a nonresident who had neither been served with process nor appeared in the suit was devoid of validity within as well as without the territory of the state whose court had rendered it, and to make the assertion of its invalidity a matter of Federal right.").
10. See *McDonald v. Mabee*, 243 U.S. 90, 91 (1917) ("The foundation of jurisdiction is physical power.") (Holmes, J.).
11. As Justice Field explained in *Pennoy v. Neff*: "[There are] two well-established principles of public law respecting the jurisdiction of an independent State over persons and property. The several States of the Union are not, it is true, in every respect independent, many of the rights and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory.... The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. 'Any exertion of authority of this sort beyond this limit,' says Story, 'is a mere nullity, and incapable of binding such persons or property in any other tribunals.'" 95 U.S. 714, 722-23 (1878) (citations omitted; original emphasis).
12. *Id.* at 720 ("The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse."); William F. Cahill, *Jurisdiction over Foreign Corporations and Individuals Who Carry on Business Within the Territory*, 30 HARV. L. REV. 676, 677 (1917) ("The sovereign has jurisdiction of the persons and property within its territory altogether irrespective of the consent of those persons, or the owners of the property. They may be rebels denying the authority of the government or even anarchists. But so long as a government is recognized to be *de jure* by other nations, their governments acknowledge its right to exercise sovereignty over all persons and things rightfully within its borders, and recognize abroad the legality of this exercise."); see also, e.g., *Baker*, 242 U.S. at 403 ("To hold one bound by the judgment who has not had such opportunity is contrary to the first principles of justice. And to assume that a party resident beyond the confines of a State is required to come within its borders and submit his personal controversy to its tribunals upon receiving notice of the suit at the place of his residence is a futile attempt to extend the authority and control of a State beyond its own territory.").
13. See, e.g., *Burnham v. Superior Court*, 495 U.S. 604, 617 (1990); A NATION TRANSFORMED BY INFORMATION: HOW INFORMATION HAS SHAPED THE NATION FROM COLONIAL TIMES TO THE PRESENT 55, 63, 82-90 (Alfred D. Chandler, Jr., & James W. Cortada eds., 2003); Paul L. Larkin, Jr., *Turning Points in Telecommunications History*, 29 JOHN MARSHALL J. OF COMPUTER & INFO. L. 513, 515-16 (2012).
14. 326 U.S. 310 (1945).
15. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846, 2851 (2011).
16. See *Daimler AG*, 134 S.Ct. at 761.

17. See *id.* at 758-63.
18. The ruling in *Daimler AG* is consistent with an early, pre-*International Shoe* Supreme Court decision uncited by the Court. See *Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189 (1915) (a state court cannot enter a judgment against a corporation that is not incorporated in that state, that does not have an agent to accept service of process in that state, and that does not do business in that state).
19. See, e.g., *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013) (Nigerian nationals residing in the United States sued Dutch, British, and Nigerian corporations under the Alien Tort Statute (ATS), 28 U.S.C. § 1350 (2006), for allegedly cooperating with the Nigerian government in violating the law of nations); *Mohamad v. Palestine Auth.*, 132 S.Ct. 1702 (2012) (lawsuit brought against the Palestine Liberation Organization under the Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (codified at note following 28 U.S.C. § 1350 (2006))); cf. *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247 (2010) (foreign investors sued an Australian bank for violations of U.S. securities laws).
20. The Court has been quite emphatic about that point too. See, e.g., *Dickerson v. United States*, 530 U.S. 428 (2000); *City of Boerne v. Flores*, 521 U.S. 507 (1997).
21. Article II, § 2, cl. 2 of the Constitution empowers the President to enter into treaties with foreign nations "provided two thirds of the Senators present concur." For a discussion of the treaty power, see Andrew Kloster, *Bond v. United States: Federalism's Limits on the Treaty Power*, THE HERITAGE FOUNDATION, LEGAL MEMO. No. 106 (Nov. 7, 2013), <http://www.heritage.org/research/reports/2013/11/bond-v-united-states-federalisms-limits-on-the-treaty-power>; Nicholas Quinn Rosenkrantz, *Executing the Treaty Power*, 118 HARV. L. REV. 1867 (2005).