

Ninth Circuit Finds Jurisdiction Over Foreign Corporation Based On Its Subsidiary's Contacts in the United States

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By [Bram Hanono](#) In the recent case of [Bauman v. DaimlerChrysler Corp.](#) (No. 07-15386 (9th Cir. May 18, 2011)), the Ninth Circuit expanded the use of "agency theory" to impose personal jurisdiction over a foreign corporation doing business in the U.S. solely through its U.S. subsidiary. The court found jurisdiction based on the subsidiary's contacts within California, even though the lawsuit was initiated by non-U.S. residents regarding acts allegedly committed in a foreign country that had nothing to do with the subsidiary's contacts.

If this decision stands, it has the potential to affect any foreign company doing business in the U.S. through subsidiaries, even if those subsidiaries have nothing to do with the company's alleged actions giving rise to the lawsuit.

In the decision, the Ninth Circuit held that personal jurisdiction existed over DaimlerChrysler AG (DCAG), a German company, based in part on its right to maintain control over Mercedes-Benz USA LLC (MBUSA), its wholly owned U.S. subsidiary. The court held that DCAG could be haled into court in California due to MBUSA's contacts within California.

Background

The plaintiffs in *Bauman* are 22 Argentine nationals who allege that DCAG's Argentine subsidiary, Mercedes-Benz Argentina (MBA), collaborated with the Argentine

government during its "Dirty War" in order to break up the union at an MBA plant. The plaintiffs brought suit under the Alien Tort Statute and the Torture Victims Prosecution Act of 1991.

Suit was brought against DCAG in the Northern District of California. Like many global companies doing business in the U.S., DCAG owns an American holding company, DaimlerChrysler North America Holding Corp., which in turn owns MBUSA. MBUSA is a Delaware company with its principal place of business in New Jersey, but it has a regional office in California, as well as other centers of operation located in California.

The relationship between DCAG and MBUSA is governed by a General Distributor Agreement which establishes requirements for MBUSA as the general distributor of Mercedes-Benz cars in the U.S. MBUSA is the single largest supplier of luxury vehicles to the California market, and MBUSA's sales in California alone account for 2.4 percent of DCAG's total world wide sales. DCAG did not dispute that MBUSA was subject to general personal jurisdiction in California.

However, DCAG did dispute that it was subject to personal jurisdiction in California. At the district court level, DCAG's motion to dismiss for lack of jurisdiction was granted. Plaintiffs appealed to the Ninth Circuit, which reversed the district court's holding.

Ninth Circuit's Decision

The question before the Ninth Circuit was whether the district court has general personal jurisdiction (*i.e.* jurisdiction over any claims against DCAG, regardless where they arise) over DCAG through the contacts of MBUSA. The court recognized that the district court did not have specific personal jurisdiction over DCAG, since the plaintiffs' claims did not arise from DCAG's contacts with California. Instead, the court determined whether general jurisdiction was appropriate over DCAG.

First, the court considered whether DCAG had "the requisite contacts with the forum state to render it subject to the forum's jurisdiction" by considering either "substantial" or "continuous and systematic" contact with the forum state. The real question was whether the court could impute MBUSA's contacts in California to DCAG. To decide this, the Ninth Circuit said that courts can use the "alter ego" test or the "agency"

test. Recognizing that the alter ego test was not met in this case, the court turned to the agency test.

The agency test is predicated upon showing the "*special importance* of the services performed by the subsidiary." Specifically, the agency test is satisfied by a showing that the subsidiary functions as the parent corporation's representative in that it performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.

Further, the parent company must also exert, *or have the right to exert*, sufficient control over the subsidiary, though "not as much control as is required to meet the 'alter ego' test."

The court held that MBUSA's services were sufficiently important to justify personal jurisdiction over DCAG via the agency test. The court explained that "DCAG simply could not afford to be without a U.S. distribution system," given the amount of cars sold in the U.S. and in California. Moreover, DCAG had the right to control MBUSA's activities under the distributor agreement.

Second, the court analyzed whether the assertion of jurisdiction would be fair and reasonable under the circumstances of this case. Looking at several factors, the court concluded that it was reasonable to assert jurisdiction over DCAG.

Of importance, the court focused on DCAG's purposeful interjection into the California market. The court looked at the importance of the California market to DCAG's car sales and the fact that DCAG had initiated lawsuits in California to challenge clean air laws and to protect its patents. The court also found that DCAG was a large sophisticated company, therefore the burden to litigate the dispute in California was not enough to preclude jurisdiction.

The court also found Germany's sovereignty concerns trumped by California's interest in adjudicating important questions of human rights. Finally, the court expressed doubts that Argentina was an adequate alternative forum to address allegations involving the "Dirty War."

Conclusion

The importance of *Bauman* is that the Ninth Circuit's use of the "agency" test makes it easier for foreign corporations to be sued in the U.S. based on the unrelated activities of an American subsidiary. Foreign corporations exercising control, or which have clauses in distribution or other agreements with their U.S. subsidiaries which allow them to control their subsidiary's activities, should pay close attention to the court's analysis in *Bauman*.

However, *Bauman's* importance may be limited depending on the Supreme Court's approaching decision in *Goodyear Dunlop Tires, S.A. v. Brown* (No. 10-76), which raises similar issues regarding personal jurisdiction over a foreign company when the lawsuit does not arise from events in the U.S. It is possible that the Ninth Circuit views their "agency theory" as a way around any Supreme Court decision, but until *Goodyear* is decided, *Bauman's* reach remains uncertain.

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