

## DaimlerChrysler Ruling Lends Certainty To Jurisdiction Feuds

By Erin Coe

*Law360, San Diego (January 14, 2014, 10:10 PM ET)* -- The U.S. Supreme Court's Tuesday holding that DaimlerChrysler Corp. couldn't be targeted in California over an Argentine subsidiary's alleged union-busting activities and human rights violations imposes a stricter general jurisdiction test that should give companies greater certainty over the forums where they can expect to be sued, lawyers say.

DaimlerChrysler was sued by 22 Argentines in California federal court in 2004, who claimed its Argentine subsidiary collaborated with that country's government during its union-breaking "Dirty War" from 1976 to 1983. Although the district court dismissed the case for lack of personal jurisdiction in 2007, the Ninth Circuit ruled in 2011 that DaimlerChrysler could be sued in federal court because its control of wholly owned subsidiary Mercedes-Benz USA LLC established personal general jurisdiction for California federal courts.

On Tuesday, the high court overturned that decision, determining DaimlerChrysler could not be sued in California for injuries allegedly caused by the conduct of an Argentine firm that took place entirely outside the U.S.

"The case shows that U.S. courts are not the happy hunting ground for cases being brought against foreign companies where the underlying facts of the case have nothing to do with the U.S.," Timothy Nelson, a partner at Skadden Arps Slate Meagher & Flom LLP, said. "It's a very important ruling that will have across-the-board implications for American litigants and foreign and domestic corporations."

The court significantly limited general jurisdiction, the legal standard that allows suits against a company on any claim, no matter where the plaintiffs live or the injury occurred or the relevant events took place. The ruling made general jurisdiction available only in the company's place of incorporation or its principal place of business in most cases, according to Mayer Brown LLP partner Andrew Pincus.

Although the court left open the possibility that general jurisdiction could be available somewhere else, it noted that the plaintiffs would need to prove that a company's operations are so substantial and of such a nature as to render the corporation "at home" in that state and that the operations are much more significant than its operations in other states or countries.

"Once a plaintiff gets beyond the company's place of incorporation or the principal place of business, it's going to be extremely difficult to subject the company to general jurisdiction in other places," he said. "This ruling will apply to any case where jurisdiction rests on a general jurisdiction theory."

In order to establish jurisdiction when a plaintiff targets a defendant in a forum outside its principal place of business or incorporation, the plaintiff is going to have to show some connection between the forum and the underlying claim, according to Pincus.

Meanwhile, the decision sheds more light on where corporations could expect to be sued and should help companies better manage their liability risks, according to Morrison & Foerster LLP partner Grant Esposito.

“Under general jurisdiction, a company can be sued for anything, and that concept has led to a lot of uncertainty about where it could be sued and how expensive that could become,” he said. “The Supreme Court now has limited general jurisdiction to a jurisdiction companies can expect — essentially where they are ‘at home.’”

The DaimlerChrysler case should also limit discovery in fights over general jurisdiction, and therefore reduce companies’ litigation expenses, according to Esposito. The Supreme Court held that the relevant inquiry for the plaintiffs is where the company’s home is, rather than the quantity of contacts the defendant had with the forum.

In its ruling, the Ninth Circuit relied on the so-called agency test, which requires a subsidiary to be engaged in activities that the parent company would have to undertake if the subsidiary didn’t exist and requires the parent to have actual control over the subsidiary’s day-to-day operations. Applying the test, the Ninth Circuit found that DaimlerChrysler could be sued in California because Mercedes-Benz USA acted as an agent for the parent company and did a significant amount of business in the state.

But the Supreme Court took a dim view of the Ninth Circuit’s application of the agency test, according to Esposito.

“The Supreme Court said that plaintiffs need to focus on whether the defendant is at home in the jurisdiction and can’t make an end-run around that by claiming the domestic affiliate is the foreign company’s agent and has lots of contacts there,” he said.

If the Supreme Court had upheld the Ninth Circuit ruling, it would have transformed U.S. courts to global courts, according to Pincus.

“The Ninth Circuit would have allowed big companies that do business everywhere to be sued anywhere [in the U.S.] on everything,” he said. “But the Supreme Court found that wasn’t appropriate based on due process and international comity.”

In light of the ruling, companies should review written contracts with subsidiaries and affiliates to clarify on what grounds, if any, the local affiliate acts as an agent, and continue to observe standard formalities of corporate separateness to avoid litigation outside their home jurisdiction, according to Esposito.

DaimlerChrysler Corp. is represented by Theodore Olson of Gibson Dunn & Crutcher LLP.

The plaintiffs are represented by Terrence Collingsworth of Conrad & Scherer LLP and Ian Ceresney of Herzfeld & Ruben PC.

The case is Daimler AG v. Barbara Bauman et al., case number 11-965, in the U.S. Supreme Court.

--Additional reporting by Abigail Rubenstein. Editing by Elizabeth Bowen and Chris Yates.

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