Washington Legal Foundation

On the Merits:

DAIMLERCHRYSLER AG,

Petitioner,

v.

BARBARA BAUMAN, et al.,

Respondents

No. 11-965

U.S. Supreme Court

Oral Argument: October 15, 2013

Question Presented: Whether it violates due process for a court to exercise general personal jurisdiction over a foreign corporation based solely on the fact that an indirect subsidiary performs services on behalf of the defendant in the forum state.

Summary of the Case: DaimlerChrysler is a German automobile manufacturer. Plaintiffs sued Daimler in federal district court in California for alleged human rights violations that occurred in Argentina by an Argentinian subsidiary of DaimlerChrysler. The plaintiffs asserted the California court enjoys general jurisdiction over Daimler based solely on Daimler's relationship with yet another indirect subsidiary of Daimler, Mercedes-Benz USA LLC, which is incorporated in Delaware and distributes Daimler vehicles to dealerships in California. Although the district court found it lacked personal jurisdiction over Daimler, the Ninth Circuit ultimately reversed on the theory that Mercedes-Benz USA was an "agent" of Daimler.

On The Merits:
Judgment for Petitioner
Donald Earl Childress III
Pepperdine University

We are here asked to decide whether it violates due process for a court to exercise general personal jurisdiction over a foreign, non-U.S. corporation for alleged torts committed by the corporation's indirect subsidiary in Argentina based solely on the fact that another of the corporation's indirect subsidiaries performs services on the corporation's behalf in the forum state.

We begin with what is beyond dispute. Daimler itself is not subject to personal jurisdiction in California (general or specific) based on its contacts with the forum state because it is incorporated abroad, maintains its principal place of business abroad, and does not own property, manufacture or sell products, or employ workers in the United States. Daimler is, therefore, in no sense "at home" in California. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2850 (2011). Respondents

argue that general jurisdiction over Daimler is nonetheless constitutionally permissible because Mercedes-Benz USA LLC ("MBUSA"), an indirect subsidiary of Daimler that is incorporated in Delaware and distributes Daimler vehicles to dealerships in California, is itself subject to general jurisdiction in California. Neither Daimler nor MBUSA is alleged to have committed any tortious conduct in California. Importantly, Daimler and MBUSA are separate corporate entities. Indeed, Respondents concede as much and rest their argument on an agency theory of jurisdiction.

The court of appeals held that an agency relationship between MBUSA and Daimler subjected Daimler to general jurisdiction in California. We hold that the fact that a foreign corporation has an in-state, indirect subsidiary is insufficient to establish general personal jurisdiction over the foreign parent unless the companies are alter egos. Because the facts do not establish such a relationship here, we reverse.

The test for general personal jurisdiction is now well established. "A court may assert general jurisdiction over foreign (sister-state or foreign country) corporations to hear any and all claims against them when their affiliations with the forum state are so 'continuous and systematic' as to render them essentially at home in the forum state." *Goodyear*, 131 S. Ct. at 2851. The Court has imposed heightened requirements for the exercise of general jurisdiction because a state may legitimately exercise adjudicative power over a defendant's worldwide conduct only when the defendant is so closely connected to the forum state as to be analogous to a citizen or resident. *See Milliken v. Meyer*, 311 U.S. 457, 462-64 (1940). In light of this, only in cases where a foreign corporation is incorporated in the forum state, has its principal place of business there, or is otherwise "at home" in the forum state is general jurisdiction warranted. *Goodyear*, 131 S. Ct. at 2853-54. Without such a close relationship between the forum and the defendant, "those who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter." *J. McIntyre Machinery v. Nicastro*, 131 S. Ct. 2780, 2787 (2011) (plurality opinion of Kennedy, J.). Important to the facts here, when a corporate parent and subsidiary are involved, "[e]ach defendant's contacts with the forum state must be assessed individually." *Keeton v. Hustler Magazine, Inc*., 465 U.S. 770, 781 n.13 (1984).

Our cases do not embrace the idea of attribution or merger for jurisdictional purposes. Indeed, our recent case law has required a forum-by-forum and defendant-by-defendant approach to personal jurisdiction. *Nicastro*, 131 S. Ct. at 2789. The only attribution that has been countenanced is in the case of specific jurisdiction, where the defendant has actively directed the contacts of its agent in the forum state where the harm occurred. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 n.22 (1985).

We have never found general jurisdiction based on agency. We decline to do so here. It would be inappropriate and a violation of due process for a foreign corporation to be subject to suit in a forum state for any and all claims based on such an expansive theory of jurisdiction. To hold otherwise risks not only violating a defendant's due process rights but also enmeshing U.S. courts in matters far from our shores. It also creates significant risk of clashes between sovereigns that comity counsels in favor of avoiding. Indeed, no other country in the world, in so far as we are aware, would permit such an expansive theory of jurisdiction.

In light of the foregoing, this case is an easy one. The tortious activity occurred, if at all, by an indirect subsidiary of Daimler in Argentina. Daimler itself has not created a relationship with California. The parties agree that Daimler and MBUSA are not alter egos. On these facts, we can discern no contacts

with California that would create a relationship with Daimler akin to being a citizen, resident, or "at home" sufficient to render it subject to suit for all purposes in California. We thus hold that Daimler is not subject to general personal jurisdiction in California.

Dissenting View:
Matt Wessler
Public Justice

I respectfully dissent. This Court has made clear, time and again, that due process "requires *only* . . . that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (emphasis added); *Asahi Metal Indus. Co., Ltd. v. Superior Court of California, Solano Cnty.*, 480 U.S. 102, 109 (1987); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011). Under this flexible standard, a corporate entity that "purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws," *Asahi Metal*, 480 U.S. at 109, will subject itself to personal jurisdiction in that forum for "any and all claims" against it. *Goodyear*, 131 S. Ct. at 2851.

Technical corporate separateness does not alter this approach. While a corporation should be able to "structure [its] primary conduct with some minimum assurance as to where that conduct will and will not render [it] liable to suit," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980), it cannot structure its business to benefit directly from a forum, while avoiding personal jurisdiction altogether. *See, e.g., Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952). Thus, "[t]o the extent that a subsidiary enters the forum state as an agent for the parent, or in circumstances where the parent is exercising an unusual hegemony over the subsidiary's operations and has dictated the entry . . . the parent has plainly made a choice to avail itself of the forum's benefices." *Donatelli v. Nat'l Hockey League*, 893 F.2d 459, 466 (1st Cir. 1990). That choice and the benefits that flow from it justify a court's exercise of jurisdiction over the parent.

Petitioner more or less concedes this, agreeing that it would not offend the due process clause for a court to exercise personal jurisdiction over a parent company by applying the "alter ego" test to a subsidiary company doing business in the home state. Pet. Br. 11-12. But, according to Petitioner, this is the "*only*" corporate law test that comports with due process. *Id.* at 11. That position, however, proves too much. There is no constitutional difference between the "alter ego" test and the "agency" test that is applied in many states to impute legal responsibility to corporate parents; both are driven by the same principle—that a corporation "should not be able to insulate itself from the jurisdiction of the states in which it does business by the simple expedient of separately incorporating its . . . operations in each state." *IDS Life Ins. Co. v. SunAmerica Life Ins. Co.*, 136 F.3d 537, 541 (7th Cir. 1998). And both tests empower a court to look beyond mere formal corporate structures to determine if a subsidiary "manifests no separate corporate interests of its own and functions solely to achieve the purpose of the dominant corporation." *Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino*, 447 F.3d 1357, 1362 (11th Cir. 2006).

The upshot is that under either test, if a parent corporation uses a subsidiary to "purposefully avail" itself of a forum state, it has established the "continuous and systematic" contacts required by due process. *Goodyear*, 131 S. Ct. at 2851. Certainly there can be little doubt that, here, Daimler "purposefully availed" itself of California's benefits—2.4% of its *total* yearly business comes from the state. For constitutional purposes, that is enough.

That a court's application of the "agency" test satisfies due process does not mean, as Petitioner suggests, that a corporation will be exposed to jurisdiction "in any State where [it has] a subsidiary, distributor, or independent contractor that regularly conducts business." Pet. Br. 2. Two reasons explain why. First, a court can only find general jurisdiction over a parent corporation premised on a finding of control—and not just generic control of the sort that exists in many corporate relationships; instead, the control must be pervasive—of a degree that satisfies the principal-agent standard adopted by, in this case, California law. *See, e.g., United States v. Bonds*, 608 F.3d 495, 506 (9th Cir. 2010) (requiring that both parties assent to confer the principal's unfettered right to control the agent). That standard is difficult to meet, *see, e.g., Doe v. Unocal Corp.*, 248 F.3d 915, 920 (9th Cir. 2001), but here, Daimler has the absolute right to control nearly every aspect of MBUSA's operations, right down to its signage design.

Second, a court's exercise of personal jurisdiction over the parent must be reasonable. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Although this requirement imposes a high bar for the exercise of jurisdiction over a foreign entity, it is easily met here. Daimler has taken full advantage of the California market, and its claim that it is too great a burden to litigate in the same jurisdiction rings hollow—especially given that it has initiated lawsuits in federal court in California in order to challenge laws that were unfavorable to its business. *Bauman*, 644 F.3d at 925. Further, due to procedural disputes abroad, it is unclear if *any* other fora exist for this litigation. *See id.* at 928-29.

At bottom, the Due Process Clause does not enshrine one corporate law doctrine over any other for purposes of personal jurisdiction law. Rather, it establishes "the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear*, 131 S. Ct. at 2853. Because the premise of personal jurisdiction is to bring responsible parties before a court, it does not breach this outer boundary to hale into court a corporation that is actually responsible for—and benefits from—its subsidiary's pursuit of in-state activities. The Ninth Circuit's decision should be affirmed.

Donald Earl Childress III is associate professor of law at Pepperdine University School of Law where he teaches civil procedure and international litigation. **Matt Wessler** is a staff attorney at Public Justice in Washington, D.C. where he routinely litigates in cases involving significant issues affecting the public interest.

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