DaimlerChrysler AG v. Bauman: An Introduction

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Employees of one of DaimlerChrysler's Argentine automotive plants claim that the German automaker committed human rights violations against plant workers during Argentina's "Dirty War" in the 1970s and 1980s. Among the allegations are that DaimlerChrysler collaborated with the Argentine government, helping facilitate the "disappearance" of several workers deemed "subversives." A group of these former employees and their relatives filed suit against DaimlerChrylser in the Northern District of California, contending that these and similar actions by Mercedes-Benz Argentina ("MBA")—a wholly owned corporate subsidiary of DaimlerChrysler—ran afoul of two federal statutes, the Alien Tort Statute ("ATS") and the Torture Victim Prevention Act ("TVPA").

At the trial level, DaimlerChrysler argued that the district court lacked jurisdiction. Though the judge ultimately dismissed the case, he noted that it was a "close question."[1] On appeal, the Ninth Circuit overruled the district court, finding that the German company's "continuous corporate activity" within California was substantial enough to give the court general jurisdiction.[2] To justify its jurisdictional finding, the Ninth Circuit emphasized the California contacts of Mercedes-Benz USA ("MBUSA"), another wholly owned corporate subsidiary of DaimlerChrysler. The court emphasized that DaimlerChrysler "simply could not afford to be without [MBUSA as] a distribution system."[3] By the time *Bauman* reached the Supreme Court in its current iteration, the plaintiffs' TVPA claims had been

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1. *Bauman v. DaimlerChrysler AG* (*Bauman I*), 2005 U.S. Dist. LEXIS, 31929, at *12 (N.D. Cal. 2005).

2. *Bauman v. DaimlerChrysler AG* (*Bauman III*), 644 F.3d 909, 922 (9th Cir. 2011).

3. *Id.* at 922.

foreclosed by *Mohamed v. Palestinian Authority*,[4] leaving only the ATS claim and several state- and Argentine-law claims.[5]

There are at least two potential reasons the Court granted certiorari in *Bauman*. First, the Court might seek to fine-tune its ATS jurisprudence in light of its ruling in *Kiobel v. Royal Dutch Petroleum*.[6] Although the *Kiobel* Court appeared to all but close the door to ATS cases in which the plaintiffs and defendants are foreign, and the claims arise out of incidents occurring abroad ("foreign cubed" cases), it is possible that a sufficient connection to the United States could still generate ATS jurisdiction. The fact that the Court waited until immediately after deciding *Kiobel* to grant cert in *Bauman* could indicate that the Court wants to clarify the level of connection necessary to sustain ATS jurisdiction in federal courts.

Bauman could also allow the Court to amend or refine its general jurisdiction jurisprudence. Only a month after the Ninth Circuit's *Bauman* decision (*Bauman II*), the Supreme Court issued a seminal opinion on general personal jurisdiction, *Goodyear Dunlop Tires Operations, S.A. v. Brown*.[7] *Goodyear* suggested an "at home" general jurisdiction test, holding that general jurisdiction over a corporation is proper in the state in which it the corporation can be "fairly regarded as at home."[8] However, lower courts have distinguished *Goodyear*, finding jurisdiction in some cases even where no physical headquarters exists.[9] Thus, *Bauman* might provide an opportunity for the Court to rein in (or let loose) federal circuit and district courts by clarifying the proper general jurisdiction inquiry.

A corollary to this second issue (and perhaps an independent question in its own right) is that *Bauman* allows the Justices to comment on what role federal courts should have in policing transnational forum shopping.

This *Vanderbilt Law Review En Banc* Roundtable features writings by some of the country's most prominent civil procedure and international law scholars, each of whom has a unique perspective on what the Court will and *should* do in *Bauman*. In the First Impressions essays, the authors draw on their individual experiences and expertise to answer important questions related to the case.

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4. In *Mohamed*, the Court unanimously held that the TVPA does "not extend liability to organizations, sovereign or not." Thus, DaimlerChrysler could not be held liable, as a corporation.

5. Wrongful death and intentional infliction of emotional distress.

6. *Kiobel v. Royal Dutch Petroleum*, 569 U.S. ___ (2013).

7. *Goodyear Dunlop Tires Operations S.A. v. Brown*, 131 S. Ct. 2846 (2011).

8. *Id.* At 2854.

9. Suzanna Sherry, *Don't Answer That! Why (and How) the Supreme Court Should Duck the Issue in DaimlerChrysler v. Bauman*, 66 VAND. L. REV. EN BANC 111, 117 (2013).

Shortly after the First Impressions are published, the authors will respond to the First Impressions of the other authors. The Responses will be posted online in early November, shortly after the oral argument takes place. On behalf of the entire *Vanderbilt Law Review* staff, we hope you enjoy this Roundtable and find the commentary lively and intriguing.