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The Future of General Jurisdiction: The Effects of Daimler AG v. Bauman

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Cover Page Footnote

J.D. Candidate, 2015, Fordham University School of Law; B.B.A., 2012, Goizueta Business School at Emory University. I would like to thank my family and my friends for their support while writing this Comment. In addition, I would like to thank Professor Jeffrey Colon for his guidance. Lastly, I would like to express my gratitude to the staff and Editorial Board of the Fordham Journal of Corporate & Financial Law for their assistance

THE FUTURE OF GENERAL JURISDICTION: THE EFFECTS OF *DAIMLER AG V. BAUMAN*

*Stephanie Denker**

ABSTRACT

The Due Process Clause requires a court to have jurisdiction over a lawsuit before binding the parties to its judgment. However, before 2014, the Supreme Court had not addressed whether a court could impute a subsidiary's contacts to its parent corporation for jurisdictional purposes. Because of this oversight, the Courts of Appeals split over how to impute a subsidiary's contacts. Some courts apply the agency test, while other courts apply variations of the alter ego test. As a result, courts inconsistently asserted jurisdiction over multinational corporations, leading plaintiffs to forum shop and corporations to speculate which forums might assert jurisdiction over them.

Fortunately, the Supreme Court in *Daimler AG v. Bauman* resolved the split in favor of a restricted approach to imputing contacts—the “at home” standard. This Comment will describe the facts of the case and dissect the Court's holding. It will then explore the holding's effects on general jurisdiction, the litigation environment, the United States economy, and the Nation's international affairs. By analyzing the holding's likely impact, this Comment ultimately concludes that the Supreme Court's decision was the correct one. Despite having adopted the correct standard, this Comment acknowledges that this jurisdictional issue will come before the Court again due to the Court's lack of guidance in the application of the “at home” standard.

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INTRODUCTION

On January 14, 2014, in *Daimler AG v. Bauman*, the Supreme Court of the United States addressed whether a court may exercise general jurisdiction over a Non-U.S. corporation based on the contacts of its in-state subsidiary.¹ In a unanimous decision, the Supreme Court held that “Daimler is not amenable to suit in California for injuries allegedly caused by conduct of [Mercedes Benz] Argentina that took

1. See 134 S. Ct. 746, 748 (2014).

place entirely outside the United States.”² This Comment will not only discuss the case’s facts, the ten-year procedural history, and the Supreme Court’s holding, but it will also discuss the case’s probable effects on suing multinational corporations and on the Nation’s economy and international affairs. Although the underlying legal basis for *Daimler AG v. Bauman* is the Alien Tort Statute and Torture Victim Protection Act, this Comment will not focus on plaintiffs’ allegations, but instead will solely concentrate on the jurisdictional issue.³

This Comment will begin with a discussion of the legal background of the procedural issue in *Daimler AG v. Bauman*. In particular, Part I will explain general jurisdiction and the circuit split concerning the proper test for imputing a subsidiary’s contacts to its parent corporation for jurisdictional purposes. Part II will break down the Supreme Court’s opinion by discussing the case’s facts, its extensive procedural history, the rationale for the Court’s holding, and Justice Sotomayor’s concurrence. Part III will describe the likely effects of the Supreme Court’s holding, including the future of general jurisdiction, the correct test to apply for imputing contacts, the changes to the litigation environment, the impact on the United States economy, and the potential benefit to the Nation’s international affairs. Finally, Part IV will argue that the Supreme Court’s opinion was the proper one.

I. LEGAL BACKGROUND

According to the Constitution of the United States, “[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law.”⁴ The Due Process Clause controls the ability of courts to assert jurisdiction over defendants.⁵ To ensure a court is not violating a person’s due process, it must properly exert *in personam* or personal jurisdiction over the defendant.⁶ Since a judgment without personal jurisdiction violates due process, a judgment cannot bind a person unless

2. *Id.*

3. *See id.*

4. U.S. CONST. amend. XIV § 1.

5. *See Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 608 (1990) (“The proposition that the judgment of a court lacking jurisdiction is void traces back to the English Year Books...”); LINDA J. SILBERMAN, ALLAN R. STEIN & TOBIAS BARRINGTON WOLFF, CIVIL PROCEDURE: THEORY AND PRACTICE 64 (2d ed. 2006).

6. SILBERMAN, STEIN & BARRINGTON WOLFF, *supra* note 5, at 72.

the court properly acquired power over that person.⁷ There are two ways to satisfy personal jurisdiction: specific jurisdiction (i.e. jurisdiction over claims that arose from or are related to the forum) and general jurisdiction (i.e. jurisdiction over all claims against a defendant).⁸ The debate in *Daimler AG v. Bauman* (“*Daimler AG*”) is whether California has the ability to assert general jurisdiction over DaimlerChrysler Aktiengesellschaft’s (“Daimler”).⁹

A. IN PERSONAM JURISDICTION: GENERAL JURISDICTION

Courts exercise general jurisdiction when the defendant’s presence in the state is so strong that the courts of that state have power over the defendant without regard to where the claim arose.¹⁰ The textbook case¹¹ for general jurisdiction is *Perkins v. Benguet Consolidated Mining Co.*,¹² where the Court relied on the defendant’s “continuous and systematic” contacts with the forum to justify its conclusion that asserting jurisdiction over the Non-U.S. company would not violate due process.¹³ The Court clarified this standard by stating that a corporation’s contacts with the forum are continuous and systematic if they make the company essentially “at home” in the forum.¹⁴ Thus, for a corporation, general

7. *Pennoyer v. Neff*, 95 U.S. 714, 732 (1877).

8. SILBERMAN, STEIN & BARRINGTON WOLFF, *supra* note 5, at 89; *see, e.g.*, *Calder v. Jones*, 465 U.S. 783, 789-90 (1984) (exercising specific jurisdiction over the defendant when the forum is effected by the defendant’s activities even if the defendant did not enter the forum); *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447-48 (1952) (allowing the exercise of general jurisdiction over the defendant because of its extensive activities within the forum).

9. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014).

10. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (“Even when the cause of action does not arise out of or relate to the foreign corporation’s activities in the forum State, due process is not offended by a State’s subjecting the corporation to its *in personam* jurisdiction when there are sufficient contacts between the State and the foreign corporation.”); *see also* SILBERMAN, STEIN & BARRINGTON WOLFF, *supra* note 5, at 89.

11. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2856 (2011).

12. 342 U.S. at 437.

13. *See id.* at 438 (acknowledging that Ohio was the corporation’s principal place of business even though it was only temporary).

14. *See Goodyear Dunlop Tires Operations, S.A.*, 131 S. Ct. at 2853-54; *see, e.g.*, *McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2797-98 (2011) (holding that the

jurisdiction is typically based on (1) where a corporation is incorporated, and (2) where its principal place of business is located.¹⁵

To determine whether exercising general jurisdiction satisfies due process and is reasonable, courts apply a two-part test.¹⁶ First, the court determines whether there are sufficient contacts between the defendant and the forum to permit personal jurisdiction.¹⁷ If there are sufficient contacts, then the court decides whether it would be reasonable for the court to exercise jurisdiction in the particular case.¹⁸

defendant was not subject to general jurisdiction because it was hardly “at home” in the forum).

15. *Goodyear Dunlop Tires Operations, S.A.*, 131 S. Ct. at 2853-54 (noting that a company’s place of incorporation and its principal place of business are the two paradigm places where a corporation is regarded as “at home”). A company’s principal place of business is analogous to the nerve center of the business since it is typically where the corporation’s officers direct, control, and coordinate the corporation’s activities. *See Hertz Corp. v. Friend*, 559 U.S. 77, 89-90 (2010).

16. Even though the two-part analysis has only been applied in the special jurisdiction context and the Supreme Court has yet to decide “whether the reasonableness prong should apply in the general jurisdiction context,” Justice Sotomayor concluded that until the Supreme Court says otherwise, the two-prong test will be applied to questions about whether exercising general jurisdiction is appropriate. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 764-65 (2014) (Sotomayor, J., concurring).

17. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985).

18. *See Burger King Corp.*, 471 U.S. at 476-77. Courts under the reasonableness prong usually consider whether exercising jurisdiction would offend traditional notions of fair play and substantial justice; the burden on the defendant to litigate in the forum; “the forum State’s interest in adjudicating the dispute; the plaintiff’s interest in obtaining convenient and effective relief; . . . the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); *see also Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775-76 (1984) (holding that it would be fair to bring the claims in a court where “the State has a legitimate interest in holding respondent answerable on a claim” relating to its in-state activities); *Int’l Shoe Co. v. State of Washington, Office of Unemployment Comp. and Placement*, 326 U.S. 310, 316 (1945) (“[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”).

B. THE CIRCUIT SPLIT REGARDING HOW TO ATTRIBUTE A SUBSIDIARY'S
CONTACTS TO ITS PARENT COMPANY

A problem arises under the sufficient contacts prong when the defendant's alleged contacts are actually its subsidiary's contacts with the forum.¹⁹ In *Cannon Manufacturing Company v. Cudahy Packing Company*,²⁰ the Supreme Court held "that jurisdiction over a parent company does not, standing alone, establish jurisdiction over a subsidiary company, and jurisdiction over the subsidiary is not equivalent to jurisdiction over a parent, unless the parent so controls and dominates the subsidiary to disregard the latter's independent existence."²¹ The Court based its decision on the fact that a subsidiary is a separate corporate entity from the parent corporation, and, as such, a parent company is not present in a forum merely by the presence of its wholly owned subsidiary.²² However, a lot has changed in the corporate environment during the past nine decades, blurring the line of what exactly constitutes a separate entity.²³ As a result, the circuit courts have split over the proper test to apply when deciding whether a plaintiff can impute a subsidiary's contacts to its parent company.

1. The Alter Ego Test

One way to demonstrate that a subsidiary's contacts should be imputed to its parent corporation is through the alter ego test.²⁴ Under this test, a parent corporation is the alter ego of its subsidiary when the parent company controls and directs all of the subsidiary's activities,

19. See *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001) (stating that when the defendant's alleged contacts are those of its subsidiary, "the Court must engage in a preliminary inquiry to determine whether the subsidiaries contacts are properly attributed to the defendant").

20. 267 U.S. 333 (1925).

21. SILBERMAN, STEIN & BARRINGTON WOLFF, *supra* note 5, at 91. Activities that will not disrupt the subsidiary's independent existence include "monitoring of the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies and procedures[.]" *Doe*, 248 F.3d at 926 (quoting *United States v. Bestfoods*, 524 U.S. 51, 72 (1998)).

22. See *Cannon Mfg. Co.*, 267 U.S. at 335-37.

23. See generally Charles R.T. O'Kelley, *The Evolution of the Modern Corporation: Corporate Governance Reform in Context*, 2013 U. ILL. L. REV. 1001 (2013).

24. See *Jackson v. Tanfoglio Giuseppe, S.R.L.*, 615 F.3d 579, 586 (5th Cir. 2010).

and it is apparent that the creation of the subsidiary was for the sole purpose of limiting the parent's liability.²⁵ The Fourth, Fifth, Sixth, Seventh, and Eighth Circuits employ the alter ego test to demonstrate that the parent corporation and its subsidiary are not separate entities.²⁶ In these circuits, "the plaintiff must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) that failure to disregard their separate identities would result in fraud or injustice."²⁷

2. The Limited Agency Test

A second way to determine whether it is proper to attribute a subsidiary's contacts to its parent company is through an agency test that resembles the standard set forth in the alter-ego test.²⁸ The First and Eleventh Circuits employ a test that is essentially the alter ego test;

25. See, e.g., *Viasystems, Inc. v. EBM-Papst St. Georgen GMBH & Co.*, 646 F.3d 589 (8th Cir. 2011) (finding that the court cannot exercise personal jurisdiction since the parent's lack of control and domination over the subsidiary showed that the two entities were not alter egos); *Estate of Thomson v. Toyota Motor Corp. Worldwide*, 545 F.3d 357, 362-63 (6th Cir. 2008) (concluding that the parent and subsidiary are not alter egos because they have separate books, financial records, and bank accounts; file their own taxes; have separate boards of directors and workforces; and the subsidiary controls its distribution and manages its day-to-day operations); *Cent. States, Se. and Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 945 (7th Cir. 2000) (finding no personal jurisdiction over a parent company on the basis of its affiliation with a subsidiary who was a distinct corporate entity, and thus, not its alter ego); *St. Jarre v. Heidelberger Druckmaschinen*, No. 93-1848, 1994 U.S. App. LEXIS 5604, at *7-8 (4th Cir. Mar. 25, 1994) (declining to exercise personal jurisdiction when the only evidence to portray an alter ego relationship was the existence of an invoice from the subsidiary that contains the same logo that appears on the parent corporation's printing press in addition to two other logos); *Dalton v. R&W Marine, Inc.*, 897 F.2d 1359, 1363 (5th Cir. 1990) (holding that the parent corporation and its subsidiaries were not alter egos, even though the parent "own[ed] 100% of its subsidiaries, . . . remain[ed] responsible for general policy, . . . [had] subsidiaries funnel their revenues into centralized bank accounts and file a consolidated federal tax return, . . . [and] offer[ed] benefit plans to its subsidiaries' employees").

26. See *supra* note 25 and accompanying text.

27. *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (internal quotations omitted). Alternatively, the first prong can be satisfied by showing that the subsidiary is the mere instrumentality of the parent corporation. See *id.*

28. See *Petition for a Writ of Certiorari at 15, Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965), 2012 WL 379768; cf. *supra* note 27 and *infra* note 30.

however, these circuits call it the agency test.²⁹ This version of the agency test is similar to the approach for piercing the corporate veil since the court determines whether the affairs of the subsidiary and the parent corporation are “so intertwined as to demonstrate that the two corporations are, in reality, a single entity.”³⁰

3. The Agency Test

A third approach to imputing a subsidiary’s contacts to its parent company is the agency test.³¹ The agency test utilizes two prongs, allowing for an expansive approach.³² First, the court must determine whether the parent corporation would perform the tasks of the subsidiary if the subsidiary did not exist (“sufficient importance” prong).³³ Second, the court decides whether the parent corporation has the right to control the subsidiary (“control” prong).³⁴ The Second and Ninth Circuits employ this test.³⁵ Since *Daimler AG* was on appeal from the Ninth Circuit, this test is significant to the Supreme Court’s decision.

29. See, e.g., *Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1293-94 (11th Cir. 2000) (noting that the court will only exercise general personal jurisdiction if the plaintiff showed that the subsidiary’s “existence was simply a formality”); *Miller v. Honda Motor Co.*, 779 F.2d 769, 772-73 (1st Cir. 1985) (finding nothing wrong with creating a subsidiary for limiting one’s liability as long as the two entities are “not so intertwined as to demonstrate . . . a single entity”).

30. *Miller*, 779 F.2d at 772-73 (referencing the corporate disregard doctrine); cf. *Van Dorn Co. v. Future Chem. & Oil Corp.*, 753 F.2d 565, 569-70 (7th Cir. 1985) (“[A] corporate entity will be disregarded and the veil of limited liability pierced when . . . [there is] such unity of interest and ownership that the separate personalities of the corporation and the individual [or other corporation] no longer exist; and . . . adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice.”).

31. See *Bauman v. DaimlerChrysler Corp.*, 676 F.3d 774, 776 (9th Cir. 2011).

32. Petition for a Writ of Certiorari, *supra* note 28, at 17.

33. *Bauman*, 676 F.3d at 776. The tasks would be performed by the parent itself or by entering an agreement with a different subsidiary or distributor. *Id.*

34. *Id.* at 776-77.

35. See, e.g., *Doe v. Unocal Corp.*, 248 F.3d 915, 929 (9th Cir. 2001) (noting that the plaintiffs failed to provide evidence to show that the parent would conduct and control the operations of its subsidiary if it were unavailable); *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 95 (2d Cir. 2000) (finding general jurisdiction appropriate because the defendant’s relationship with its subsidiary went beyond mere solicitation, and it was obvious to the court that the parent would perform equivalent services if the subsidiary did not exist).

II. BREAKDOWN OF *DAIMLER AG V. BAUMAN*

A. FACTUAL BACKGROUND

From 1976 through 1983, there was a period of terrorism in Argentina known as the “Dirty War.”³⁶ During this period, Argentina’s military and security forces battled the guerilla organizations by torturing, kidnapping, and killing political dissidents.³⁷ Throughout this period, Mercedes Benz Argentina operated a plant in Gonzales Catan, Argentina.³⁸

Plaintiffs, respondents in the Supreme Court case, are twenty-three people who were either Mercedes Benz Argentina’s employees or relatives of an employee during the “Dirty War.”³⁹ They assert claims under the Alien Tort Statute, the Torture Victim Protection Act of 1991, and the laws of California and Argentina by alleging that Mercedes Benz Argentina collaborated with the Argentine government to commit human rights violations during the “Dirty War.”⁴⁰

Plaintiffs claim that Mercedes Benz Argentina allowed the military and police officers stationed inside the plant to raid the plant to determine which employees were “subversive.”⁴¹ The government characterized each Plaintiff as a “subversive.”⁴² Due to this status, the government kidnapped and tortured, murdered, or exiled Plaintiffs.⁴³ According to the complaint, Mercedes Benz Argentina harmed these “subversives” in order to reverse the plant’s production slowdown.⁴⁴ At the time of these events, Mercedes Benz Argentina was a wholly owned subsidiary of Daimler’s predecessor in interest.⁴⁵

36. *Daimler AG v. Bauman*, 134 S. Ct. 746, 752 (2014); ANTONIUS C. G. M. ROBBEN, *POLITICAL VIOLENCE AND TRAUMA IN ARGENTINA* 171 (2005).

37. ROBBEN, *supra* note 36, at 164-65.

38. *Daimler AG*, 134 S. Ct. at 752.

39. *Id.* at 750-51; *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2005 WL 3157472, at *1 (N.D. Cal. Nov. 22, 2005).

40. *Daimler AG*, 134 S. Ct. at 751; *see also* First Amended Complaint at 17, *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW (N.D. Cal. Nov. 22, 2005), ECF No. 11.

41. First Amended Complaint, *supra* note 40, at 10.

42. *Id.* at 11.

43. *Id.* at 11-14.

44. *Id.* at 15.

45. *Daimler AG*, 134 S. Ct. at 752.

In 1998, Chrysler Corporation and Daimler-Benz AG became subsidiaries wholly owned by Daimler.⁴⁶ After this corporate change, Chrysler Corporation renamed itself DaimlerChrysler Corporation, but kept its principal place of business in Michigan.⁴⁷ In addition, Daimler continued to be a German corporation with its headquarters in Stuttgart, Germany.⁴⁸ Daimler “manufactures Mercedes-Benz vehicles in Germany,” and “does not import, manufacture, sell, service, or warranty cars in California.”⁴⁹ Instead, Mercedes-Benz United States (“MBUSA”), a Delaware corporation with its headquarters in New Jersey and multiple facilities in California, purchases vehicles from Daimler and then imports and distributes them throughout the United States.⁵⁰ Daimler lays out its relationship with MBUSA in a General Distributor Agreement, which establishes MBUSA as an independent contractor.⁵¹

Plaintiffs bring their claims against Daimler, asserting that it should be vicariously liable for Mercedes Benz Argentina’s actions since they were “committed in furtherance of [Mercedes Benz Argentina]’s business interests and activities and with the advance knowledge, acquiescence and subsequent ratification of” Daimler’s predecessor in interest.⁵² Likewise, Plaintiffs believe that Daimler is vicariously liable for the actions of Mercedes Benz Argentina’s employees.⁵³ Furthermore, Plaintiffs assert that Argentina is an inadequate forum because the courts are comprised of corrupt judges, the police and military forces are likely

46. *Daimler AG*, 134 S. Ct. at 750; *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2005 WL 3157472, at *1 (N.D. Cal. Nov. 22, 2005).

47. *Bauman*, 2005 WL 3157472, at *1.

48. *Id.*

49. *Id.*

50. *Daimler AG*, 134 S. Ct. at 752; *Bauman*, 2005 WL 3157472, at *1. In addition to importation and distribution, MBUSA advertises, services, and sells cars in the United States. *Bauman*, 2005 WL 3157472, at *1. “According to the record . . . , MBUSA is the largest supplier of luxury vehicles to the California market. In particular, over 10% of all sales of new vehicles in the United States take place in California, and MBUSA’s California sales account for 2.4% of Daimler’s worldwide sales.” *Daimler AG*, 134 S. Ct. at 752.

51. *Daimler AG*, 134 S. Ct. at 752. MBUSA “has no authority to make binding obligations for or act on behalf of [Daimler] or any DaimlerChrysler Group Company.” *Id.*

52. Complaint at 15, *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW (N.D. Cal. Nov. 22, 2005), ECF No. 1.

53. *Id.*

to retaliate, civil cases take years to resolve, and the available remedy is inadequate.⁵⁴

In 2004, Plaintiffs first served their complaint upon Daimler in Germany; however, the German appellate court issued a stay order, which held that service would violate sovereignty rights and prohibited their complaint.⁵⁵ Because of this, Plaintiffs attempted to serve Daimler in Michigan at DaimlerChrysler Corporation's headquarters, but once again were unable to serve their complaint.⁵⁶

Subsequently, Daimler "filed a motion to dismiss for insufficiency of service, and to dismiss for lack of personal jurisdiction."⁵⁷ Only the motion to dismiss for lack of personal jurisdiction was pending before the Court.⁵⁸

B. PROCEDURAL HISTORY

Plaintiffs' suit against Daimler was in the court system for approximately ten years before the Supreme Court of the United States made its decision.⁵⁹ The United States District Court for the Northern District of California rendered the first decision in 2005.⁶⁰ The issue before the District Court was whether "a federal court [could] exercise personal jurisdiction over a case arising under federal subject matter jurisdiction in which plaintiffs are all foreign nationals and the defendant is a foreign corporation which has subsidiaries doing business in the United States."⁶¹ After reviewing the parties' papers and conducting a hearing, the District Court tentatively granted Daimler's motion to dismiss for lack of personal jurisdiction, but before finalizing its decision, it allowed Plaintiffs limited jurisdictional discovery.⁶²

54. *Id.*

55. *Bauman*, 2005 WL 3157472, at *1.

56. *Id.* at *2.

57. *Id.*

58. *Id.* Daimler withdrew its motion for insufficient service after plaintiffs' opposition, but it continued to assert that personal jurisdiction was improper since plaintiffs will be unable to establish general jurisdiction and they do not seek to establish specific jurisdiction. *See id.*

59. Plaintiffs filed their first complaint on January 13, 2004, and the Supreme Court issued its decision on January 14, 2014.

60. *Bauman*, 2005 WL 3157472.

61. *Id.* at *3.

62. *Id.* at *1, 19 (granting limited discovery on "whether an agency relationship exists between [Daimler] and MBUSA and the ability of plaintiffs to pursue their claims in Germany . . . or Argentina" before making its final decision).

Although the court did not make a final decision, it concluded that Plaintiffs failed to establish that Daimler had continuous and systematic contacts with California, and that more factors weighed in favor of finding the assertion of jurisdiction unreasonable.⁶³

Upon the conclusion of the limited discovery, the District Court affirmed its tentative ruling and granted Daimler's motion to dismiss for lack of personal jurisdiction.⁶⁴ From discovery, the court found that MBUSA is not Daimler's agent since there was evidence to show that Daimler had used alternative automobile distribution channels in the past, illustrating that Daimler could use them if MBUSA did not exist.⁶⁵ In addition, Argentina and Germany are both adequate alternative forums.⁶⁶ Accordingly, the District Court dismissed Plaintiffs' claims.

Plaintiffs appealed this decision, and the Ninth Circuit affirmed the dismissal.⁶⁷ Upon reviewing the case de novo, the court found that "[b]ecause there [was] insufficient control and because MBUSA does not serve as [Daimler]'s representative, the contacts of MBUSA cannot

63. *Id.* at *4-19. In regards to whether Daimler has systematic and continuous contacts with California, the court found that Daimler provided enough evidence to show that its alleged contacts with California are only attributable to Daimler's subsidiaries, and, as such, they are not direct contacts of Daimler. *Id.* at *6-7. In addition, the court noted that "designing a product specifically for the forum market . . . [is] helpful for establishing purposeful availment . . . [h]owever, purposeful availment alone is not enough to establish general jurisdiction." *Id.* at *8. Moreover, the court applied the agency test and determined that MBUSA's activities should not be imputed to Daimler. *Id.* at *11-12. In regards to whether the assertion of general jurisdiction was reasonable, the court concluded that Daimler's personal interjection and Plaintiff's ability to obtain convenient and effective relief favored jurisdiction, whereas the burden on Daimler of litigating in California, the potential conflicts with the sovereignty of Argentina and Germany, and California's interest in adjudicating the dispute weighed against exercising jurisdiction. *Id.* at *13-19. Additionally, the court felt that it was difficult to balance whether another forum would be an adequate alternative in providing an efficient judicial resolution of the dispute. *Id.* at *18-19.

64. *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2007 U.S. Dist. LEXIS 13116, at *3 (N.D. Cal. Feb. 12, 2007).

65. *See id.* at *8-9.

66. *Id.* at *18. Argentina is an adequate alternative because some of the Plaintiffs in this case are already pressing criminal charges in Argentina, and there is a similar lawsuit pending in Argentina against Ford. *Id.* at *10-11. Germany is also an adequate alternative since the claims may not be time-barred and "the German legal system is designed to vigorously safeguard basic individual and human rights." *Id.* at *12-18.

67. *Bauman v. DaimlerChrysler Corp.*, 579 F.3d 1088 (9th Cir. 2009).

be imputed.”⁶⁸ Therefore, Daimler does not have continuous and systematic contacts, and the court cannot exercise personal jurisdiction over Daimler.⁶⁹

Unhappy with the decision, Plaintiffs petitioned for a rehearing, which the Ninth Circuit Court of Appeals granted.⁷⁰ A three-judge panel reheard the case and subsequently reversed the district court’s decision, denying Daimler’s motion to dismiss.⁷¹ During the rehearing, the court concluded that the agency test was in fact satisfied and that exercising jurisdiction over Daimler would be reasonable.⁷² In regards to holding that MBUSA was Daimler’s agent, the court found that MBUSA’s services are so sufficiently important to Daimler that if MBUSA did not exist, Daimler would have to conduct the services itself or replace MBUSA with another distributor.⁷³ Additionally, the court determined that the General Distributor Agreement illustrated a clear intent that Daimler “has the right to control nearly all aspects of MBUSA’s operations.”⁷⁴ Regarding reasonableness, the court concluded that “exercising personal jurisdiction over [Daimler] comports with fair play and substantial justice” since Daimler “has purposefully and extensively interjected itself into the California market through MBUSA.”⁷⁵ Moreover, California, as a part of the United States, has “a strong interest in adjudicating and redressing international human rights abuses.”⁷⁶

68. *Id.* at 1096-97.

69. *See id.* at 1097.

70. *Bauman v. DaimlerChrysler Corp.*, 603 F.3d 1141 (9th Cir. 2010). Upon granting the rehearing, the court vacated the Ninth Circuit’s prior opinion. *See id.*

71. *See Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909 (9th Cir. 2011).

72. *See id.* at 921-30.

73. *See id.* at 921-22.

74. *Id.* at 923-24. For example, MBUSA must comply with all current and future requirements set forth by Daimler, and must notify Daimler of all of its actions, “including personnel changes, customer information, and marketing strategy.” *Id.* at 924.

75. *Id.* at 925, 929-30. The court found that factors one (the extent of purposeful interjection) and four (the forum state’s interest in adjudicating the suit) outweighed the other five factors. *See id.* at 924-30 (concluding that the evidence showed only a slight burden on the parties to litigate in another country, Daimler has a strong presence in the United States market, the United States may not have a more efficient judicial resolution than Germany, there is a conflict of whether a claim could be brought in Germany, and there is a substantial doubt that Argentina is an adequate alternative forum).

76. *Id.* at 927.

Opposing the Ninth Circuit's decision, a circuit judge petitioned for a rehearing en banc.⁷⁷ The vote resulted in a majority of the active judges declining to rehear the case.⁷⁸ Upon failing to obtain a rehearing en banc, Daimler petitioned for a writ of certiorari to the Supreme Court of the United States.⁷⁹ The writ was granted to determine "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 corporate subsidiary performs services on behalf of the defendant in the forum State."⁸⁰

C. SUPREME COURT'S HOLDING

The Supreme Court unanimously reversed the Ninth Circuit's decision and held that California cannot assert general jurisdiction over Daimler.⁸¹

The Court begins its analysis with a discussion of the appropriate test for determining whether a plaintiff can impute an in-state subsidiary's contacts to its parent company, making the parent company subject to general jurisdiction.⁸² In addition, the Court recognizes that there is a circuit split on whether to apply the alter ego test or the agency test to attribute contacts of a subsidiary to its parent corporation, and explains that it is difficult to pin down exactly when a subsidiary is and

77. See *Bauman v. DaimlerChrysler Corp.*, 676 F.3d 774, 774 (9th Cir. 2011). Under Federal Rule of Civil Procedure 35(f), a judge can call for a vote to determine whether the case will be reheard en banc. FED. R. APP. P. 35(f). "A majority of the circuit judges who are in regular active service . . . may order that an appeal . . . be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance." FED. R. APP. P. 35(a).

78. See *Bauman*, 676 F.3d at 774. Of all the active judges, only eight judges voted for the rehearing. See *id.*

79. Petition for a Writ of Certiorari, *supra* note 28.

80. *DaimlerChrysler AG v. Bauman*, 133 S. Ct 1995, 2013 WL 1704716 (2013); Petition for a Writ of Certiorari, *supra* note 28, at i.

81. See *Daimler AG v. Bauman*, 134 S. Ct 746, 748 (2014) (holding that "Daimler is not amenable to suit in California for injuries allegedly caused by conduct of MB Argentina that took place entirely outside the United States").

82. See *id.* at 758-60. This is a case of first impression. See *id.* at 759 (stating that the court has yet to address this question).

is not an agent.⁸³ Ultimately, the Court concluded that it could not uphold the Ninth Circuit's analysis because it would always lead to a court having general jurisdiction over a Non-U.S. parent corporation based on its in-state subsidiary.⁸⁴

Next, the Court evaluated Daimler's contacts with California to determine whether it is "at home" within the forum.⁸⁵ Even though the Court assumes that MBUSA is "at home" in California, the Court holds that Daimler is not "at home" there.⁸⁶ The Court emphasizes that corporations are amenable to suit based on their affiliations in easily ascertainable places, such as its place of incorporation and its principal place of business.⁸⁷ Although these two places are paradigm, they are not inclusive.⁸⁸ Applying Plaintiffs' argument that jurisdiction should be exercised in every forum where a "corporation engages in a substantial, continuous, and systematic course of business" would lead to "unacceptably grasping" results.⁸⁹ Instead, the Court explains that general jurisdiction relies on a corporation's activities that are continuous and "are so substantial and of such a nature as to justify suit."⁹⁰ Using this rationale, the Court found that California is neither the place of incorporation nor the principal place of business for either Daimler or MBUSA.⁹¹ Additionally, Daimler's operations in California do not rise to the level that would render it "at home" in the forum.⁹² Because of the foregoing, the Court found that the Ninth Circuit erred in its decision to hold Daimler susceptible to suit in California for activities that did not involve or impact the forum.⁹³

83. *See id.* at 759 (noting that "the fact that one may be an agent for one purpose does not make him or her an agent for every purpose").

84. *See id.* at 759-60 (explaining that "anything a corporation does through an independent contractor, subsidiary, or distributor is presumably something that the corporation would do 'by other means' if the independent contractor, subsidiary, or distributor did not exist").

85. *See id.* at 760-62.

86. *See id.* at 758, 760.

87. *See id.* at 760.

88. *Id.*

89. *Id.* at 760-61.

90. *Id.* at 761 (recognizing that "the inquiry under *Goodyear* . . . is whether that corporation's affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State") (internal quotations omitted).

91. *See id.*

92. *See id.* at 758, 761 n.19.

93. *See id.* at 758, 762.

D. JUSTICE SOTOMAYOR'S CONCURRENCE

Justice Sotomayor concurred only in the Court's judgment (i.e. California could not exercise personal jurisdiction over Daimler) since she believed that the Court was wrong both procedurally and substantively.⁹⁴ Instead of following the Court's rationale, Justice Sotomayor explains that the same outcome would result if the Court based its decision only on the reasonableness inquiry.⁹⁵ To her, it is clear that it would be unreasonable for California to assert jurisdiction over Daimler in this case.⁹⁶

Justice Sotomayor makes several critiques of the majority's rationale.⁹⁷ Her main criticism is that the majority failed to apply the Court's established precedent correctly since it did not focus solely on the extent of Daimler's in-state contacts.⁹⁸ If it had, the Court would have concluded that Daimler had sufficient contacts in California to render it "at home."⁹⁹ In addition, Justice Sotomayor believes that the current rule (i.e. continuous and substantial contacts) is more predictable than the Court's new approach with the proportionality inquiry.¹⁰⁰

94. *See id.* at 763-64 (Sotomayor, J., concurring). Regarding procedure, Justice Sotomayor notes that the majority's holding is based on a proposition "that was neither argued nor passed on below" *Id.* at 764. Whereas, the substantive issue relates to how the majority ignored the fact that personal jurisdiction may be asserted when a "defendant has sufficiently taken advantage of the State's laws and protections through its contacts in the State[.]" *Id.*

95. *See id.* at 764 (Sotomayor, J., concurring) (concluding that the "exercise of jurisdiction would be unreasonable given that the case involves foreign plaintiffs suing a foreign defendant based on foreign conduct, and given that a more appropriate forum is available").

96. *See id.* at 765 (Sotomayor, J., concurring) (comparing the case at bar with *Asahi Metal Industry Co. v. Superior Court of California, Solano County*, 480 U.S. 102 (1987), and recognizing that in both cases, there was insufficient evidence to prove that litigating in California would be more convenient than in Germany).

97. *See id.* at 767-73 (Sotomayor, J., concurring).

98. *See id.* at 767-69 (Sotomayor, J., concurring). In Justice Sotomayor's opinion, the majority based its decision on Daimler's in-state contacts in comparison to its out-of-state contacts. *See id.* at 767. The majority rebuts this by stating that "[g]eneral jurisdiction . . . calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide" and that the test is not synonymous with "doing business." *Id.* at 762 n.20.

99. *See id.* at 769 (Sotomayor, J., concurring).

100. *Id.* at 770 (Sotomayor, J., concurring) (noting that in actuality, the majority's approach adds an additional layer of uncertainty). In addition, the new approach will

Furthermore, she explains that the majority's approach will create injustice by preventing courts from having the ability to assert jurisdiction over corporations "who have engaged in continuous and substantial business operations within their boundaries."¹⁰¹ Similarly, this new standard will treat small businesses unfairly in comparison with national and multinational companies, it will allow a court to assert jurisdiction over an individual defendant if served when visiting the forum, and it will shift the risk of loss to the harmed individuals.¹⁰²

III. IMPLICATIONS

Since the Supreme Court of the United States has not previously addressed whether a subsidiary's contacts can be attributed to its parent company for the basis of general jurisdiction, there are bound to be implications for future lawsuits.¹⁰³ Ninth Circuit Judge O'Scannlain believes that the outcome of this case could result in "a gratuitous threat to our nation's economy, international relations, and international comity."¹⁰⁴ In order to minimize the potential dangers anticipated by Judge O'Scannlain, the Supreme Court has decided that in situations similar to the one at hand, fairness to defendants outweighs justice for plaintiffs.¹⁰⁵ Moreover, the well-established principles of protecting the corporate veil probably influenced the Supreme Court's decision.¹⁰⁶

This Part will address five expected effects of the *Daimler AG* holding. First, it will discuss the future of general jurisdiction. Second, it will argue that the agency test does not survive *Daimler AG*, and therefore, plaintiffs cannot use the agency test to impute an in-state subsidiary's contacts to its parent corporation. Third, it will explain how the Supreme Court's decision will alter the litigation environment.

lead to greater unpredictability since it radically expands the scope of jurisdictional discovery because courts will have to compare a company's in-state contacts with all of its contacts. *See id.* at 770-71.

101. *Id.* at 772-73 (Sotomayor, J., concurring).

102. *See id.* (Sotomayor, J., concurring).

103. *See supra* note 82 and accompanying text.

104. *Bauman v. DaimlerChrysler Corp.*, 676 F.3d 774, 779 (9th Cir. 2011).

105. Lauren Carasik, *Supreme Court Ruling Shields Corporations from Accountability*, AL JAZEERA AMERICA, Feb. 20, 2014, <http://america.aljazeera.com/opinions/2014/2/supreme-court-daimlerbaumanhumanrightsargentina.html> (arguing that the Supreme Court's decision promotes corporate interests, limits redress for corporate misconduct, and fails to advance justice for human rights victims).

106. *Cf. Bauman*, 676 F.3d at 777 (noting that the Ninth Circuit's holding rejects corporate separateness).

Fourth, it will emphasize the holding's positive impact on the Nation's economy and the likely economic consequences if the Supreme Court held otherwise. Finally, it will comment on how the Supreme Court's decision will benefit the country's international affairs.

A. *DAIMLER AG* DOES NOT CHANGE EXISTING FEDERAL LAW REGARDING
GENERAL JURISDICTION

The Supreme Court in *Daimler AG* essentially affirmed its decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*.¹⁰⁷ Throughout its opinion, the Court relied heavily on its previous 2011 opinion and emphasized how precedent in the realm of general jurisdiction is controlling.¹⁰⁸ The Court's reliance on *Goodyear's* "at home" standard and the Court's application of the paradigm forums stated in the *Goodyear* opinion indicates its reluctance to stray from precedent.¹⁰⁹ However, even though the Supreme Court followed the same reasoning as its prior decisions, this affirmation can potentially create a new split among the circuits concerning what deems a corporation "at home" in a

107. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011); *see also infra* notes 109-110 and accompanying text.

108. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 757-58 (2014) (declining "to stretch general jurisdiction beyond limits traditionally recognized"); *see also* Burton N. Lipshie, *Daimler AG v. Bauman: Supreme Court Rewrites the Law of Presence Jurisdiction*, STROOCK SPECIAL BULLETIN, at 2 (Jan. 21, 2014), <http://www.stroock.com/SiteFiles/Pub1435.pdf> (recognizing that the Supreme Court relied and expanded upon its previous 2011 opinion). The expansion can be seen through the clarification of the "at home" standard. *See* Robert A. Matthews, Jr., Annotation, *Test for Determining General Personal Jurisdiction*, 5 Annotated Patent Digest § 36:100 (2014) (quoting *Daimler AG*, 134 S. Ct. at 762 n.20) (pointing out that the determination "requires 'an appraisal of a corporation's activities in their entirety, nationwide' and 'does not focu[s] solely on the magnitude of the defendant's in-state contacts'").

109. *See Daimler AG*, 134 S. Ct. at 760 (using the locations of *Daimler's* principal place of business and place of incorporation as the appropriate forums for exercising jurisdiction to conclude that its "slim contacts with [California] hardly render it at home there"). In addition, the Court referenced *Goodyear* throughout its analysis of determining whether the Court should exercise general jurisdiction over *Daimler* and refused to sway from *Goodyear's* logic. *See id.* at 760-62 (explaining that going beyond the reasoning of *Goodyear* is "unacceptably grasping"). By affirming its previous decision, "the Court unambiguously articulated the standard for general jurisdiction." Daniel B. Goldman & Adam W. Braveman, *Eroding Theory of General Personal Jurisdiction: Effect of 'Bauman'*, N.Y. L.J. 1, 2 (Feb. 3, 2014).

forum where the corporation is not incorporated and where it does not operate its principal place of business.¹¹⁰

B. THE AGENCY TEST FOR IMPUTING CONTACTS DOES NOT SURVIVE
DAIMLER AG

By following precedent and complying with the well-established piercing the corporate veil doctrine, the Court finally resolved a long-standing circuit split in favor of due process and the test applied by a majority of the circuits.¹¹¹ It is clear from the Supreme Court's opinion that the agency test is improper for imputing a subsidiary's contacts to its parent company.¹¹² The Court's rationale for this holding seemed to be fairness and foreseeability.¹¹³ Regarding fairness, the Court emphasized how the agency test would always result in finding jurisdiction; hence, it is too broad.¹¹⁴ In regards to foreseeability, the

110. See Vivek Krishnamurthy, *United States: Daimler AG v. Bauman: In Latest ATS Decision, The Supreme Court Limits Jurisdiction of U.S. Courts Over Multinational Corporations*, FOLEY HOAG LLP (Jan. 22, 2014), <http://www.mondaq.com/unitedstates/x/287768/Corporate+Governance/Daimler+AG+v+Bauman+In+Latest+ATS+Decision+The+Supreme+Court+Limits+Jurisdiction+Of+US+Courts+Over+Multinational+Corporations> (noting that a circuit court could interpret the new standard in a way that would lead a corporation to have homes in many forums).

111. See *Bauman*, 676 F.3d at 777-78 (stating that it violates due process to impute a subsidiary's contacts to its parent company when the two are separate entities, and recognizing that the Ninth Circuit's holding "would be improper in many other circuits"); accord. discussion *supra* Part I.B.1.

112. See *Daimler AG*, 134 S. Ct. at 758-60. The Court stated that "in no event can the appeals court's analysis be sustained." *Id.* at 759.

113. See generally *id.* at 759-62.

114. See *Daimler AG*, 134 S. Ct. at 759 (noting that the agency test "will always yield a pro-jurisdiction answer"); see also Goldman & Braveman, *supra* note 109, at 2. The Court further explains that the test "appears to subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the 'sprawling view of general jurisdiction' we rejected in *Goodyear*." *Daimler AG*, 134 S. Ct. at 759-60; see also Donald Earl Childress III, *General Jurisdiction and the Transnational Law Market*, 66 VAND. L. REV. EN BANC 67, 79 (2013) [hereinafter *General Jurisdiction and the Transnational Law Market*] (finding the agency test broad since it would subject every Non-U.S. company to a forum's jurisdiction based on the presence of its subsidiary). In addition, "fairness requires U.S. courts to exercise restraint in cases such as this" in order to prevent domestic corporations from being held liable wherever their Non-U.S. subsidiaries are conducting business. *General Jurisdiction and the Transnational Law Market* at 79.

agency test is unpredictable.¹¹⁵ Under the agency test, corporations are unable to predict which forums could hold them liable, especially because a lawsuit could be based on a subsidiary's contacts that the parent corporation did not know existed.¹¹⁶ Furthermore, the Court described the agency test as unacceptably grasping.¹¹⁷ Thus, the agency test is improper to use for attributing contacts to a parent corporation.

C. *DAIMLER AG* CHANGES THE LITIGATION ENVIRONMENT, IN PARTICULAR THE ABILITY TO SUE A NON-U.S. PARENT COMPANY IN A UNITED STATES' FORUM

Since *Daimler AG* provides a clear, narrow rule that denotes where a Non-U.S. corporation is subject to liability, plaintiffs will have a harder time justifying a lawsuit against a Non-U.S. corporation.¹¹⁸ In particular, the Court's holding will substantially affect courts that follow the agency test, especially those that comprise the Second and Ninth Circuits.¹¹⁹ For instance, plaintiffs will only be able to sue a Non-U.S. corporation if they can prove that the subsidiary and the parent company are not separate entities.¹²⁰ Because the Court's holding makes the

115. See *Bauman*, 676 F.3d at 775 (stating that the agency test gives the parent corporation "no minimum assurance as to where . . . conduct will and will not render [it] liable to suit") (internal citations omitted).

116. See *Daimler AG*, 134 S. Ct. at 761-62 (explaining that exorbitant exercises of jurisdiction would lead to a parent corporation's inability to structure its business "with some minimum assurance as to where" it could be brought into court).

117. See *supra* notes 89, 109 and accompanying text.

118. See Dwight Healy & Owen Pell, *Daimler AG v. Bauman: The US Supreme Court Significantly Limits Where Companies May Be Sued for Claims Unrelated to Their Activities in a State*, WHITE & CASE LLP, at 1 (Jan. 27, 2014), <http://www.jdsupra.com/legalnews/daimler-ag-v-bauman-the-us-supreme-cou-19242> ("*Daimler* [] is likely to focus attention on how personal jurisdiction is pled and how difficult courts will make it for plaintiffs to try to plead around corporate separateness to establish personal jurisdiction over non-resident companies with affiliated companies in a forum.").

119. See, e.g., Goldman & Braveman, *supra* note 109, at 3 (Feb. 3, 2014) (discussing how "*Bauman* significantly changes the landscape of personal jurisdiction in New York," and noting that general jurisdiction over a corporation in forums where it is not incorporated and does not operate its principal place of business will only be appropriate in exceptional cases).

120. See Dennis P. Ziemba & Heather R. Fine, *Personal Jurisdiction and Foreign Defendants: Issues to Consider*, 78 PA. B. ASS'N. Q. 167, 170 (2007) (noting that separate entities exist when both the parent corporation and the subsidiary "maintain[]

burden of proving general jurisdiction over a multinational corporation more difficult, the number of American lawsuits against Non-U.S. corporations will be limited.

Additionally, *Daimler AG*'s holding will probably affect the way plaintiffs forum-shop.¹²¹ Typically, plaintiffs look to sue in the forum that will be most favorable both substantively and procedurally.¹²² Naturally, the United States is an advantageous choice for filing a lawsuit for many reasons, including the United States' generous substantive laws, its liberal discovery rules, and the potential to be awarded punitive damages and attorney's fees.¹²³ Not only do these characteristics assist in obtaining a favorable verdict, but they also provide the plaintiff with "significant leverage to force defendants to settle."¹²⁴ Nevertheless, the *Daimler AG* holding curtails a plaintiff's ability to sue a Non-U.S. corporation in the Second or Ninth Circuits for actions taking place outside the forum since a plaintiff can no longer utilize the expansive agency test to justify exercising general jurisdiction.¹²⁵ Instead, all circuits will follow the same constitutionally based jurisdictional standard.¹²⁶

its own corporate books and financial records, [hold] its own bank accounts and file[] its own tax returns").

121. Forum-shopping is "[t]he practice of choosing the most favorable jurisdiction or court in which a claim might be heard." BLACK'S LAW DICTIONARY 726 (9th ed. 2009).

122. See *General Jurisdiction and the Transnational Law Market*, *supra* note 114, at 68.

123. See *General Jurisdiction and the Transnational Law Market*, *supra* note 114, at 73. American courts attract numerous claims by Non-U.S. citizens because of its favorable policies toward plaintiffs, including a more liberal granting of damages, the availability of aggregation devices, a right to jury trial, and an allowance for contingency fees. See MARCUS, SHERMAN & ERICHSON, COMPLEX LITIGATION: CASES & MATERIALS ON ADVANCED CIVIL PROCEDURE 130-31 (5th ed. 2010). The fact that "the U.S. has been a major producer nation in the global economy" allows access to these benefits regardless of citizenship because of a company's significant ties to the United States. See *id.* at 131. However, corporations try to dismiss a Non-U.S. citizen's lawsuit with the doctrine of *forum non conveniens* claiming that the country where the harm occurred has the primary interest in resolving the suit. See *id.*

124. *General Jurisdiction and the Transnational Law Market*, *supra* note 114, at 73; see also MARCUS, SHERMAN & ERICHSON, *supra* note 123, at 130.

125. See discussion *supra* Part II.C; see also U.S. Supreme Court Severely Circumscribes "Presence" as Basis for Personal Jurisdiction of Foreign Corporations Claim Itself Must Have Local Roots; If It Hasn't, Corporation's Overall Contacts with State Won't Support Jurisdiction, 265 SIEGEL'S PRAC. REV. 1 (Jan. 2014) (recognizing

D. *DAIMLER AG* WILL POSITIVELY AFFECT THE NATION'S ECONOMY

The Supreme Court's decision in *Daimler AG* will have a positive effect on the Nation's economy. Companies prefer to invest and do business in places where they can predict the jurisdictional consequences of their actions.¹²⁷ When jurisdictional consequences are unpredictable, there is a disincentive to invest or do business in a forum because a corporation could be liable in that forum for any of its actions anywhere worldwide; thus, increasing costs.¹²⁸ However, when a corporation can predict which forums have the capability of holding it liable, it has the ability to buy insurance, the opportunity to incorporate the costs of potential litigation into its products' prices, and the chance to decide whether to operate in a state whose costs outweigh its benefits.¹²⁹ Since "corporations have become accustomed to working under the alter ego doctrine," the Court's holding will increase predictability by aligning a court's jurisdictional reach with a corporation's established business practices for making investment decisions.¹³⁰ Because the type of "litigation environment critically

that plaintiffs will no longer be able to "enthusiastically exploit[]" the vast jurisdiction opportunities, but noting that it is still possible to sue a Non-U.S. corporation).

126. See discussion *supra* Part III.B; see also Petition for a Writ of Certiorari, *supra* note 28, at 19.

127. See Brief for the United States as Amicus Curiae Supporting Petitioner at 2, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965), 2013 WL 3377321 (stating that the inability to make accurate jurisdictional predictions is a disincentive to conducting a particular activity); Brief of Economiesuisse, the Swiss Bankers Ass'n, ICC Switzerland, Ass'n of German Banks, and the European Banking Federation as Amici Curiae in Support of Petitioner at 12, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965), 2013 WL 3421893 (recognizing that "[p]redictable legal rules . . . provide a climate conducive to foreign investment").

128. See Brief for the United States as Amicus Curiae Supporting Petitioner, *supra* note 127, at 2 (stating that "the price of admission [to a forum] is consenting to answer in that forum for all of its conduct worldwide," and therefore unpredictability discourages a company from setting up distribution channels).

129. See Amici Curiae Brief in Support of Petition for Rehearing or Rehearing En Banc at 15-17, *Bauman v. DaimlerChrysler AG*, 676 F.3d 774 (2011) (No. 07-15386), 2011 WL 2784327. Companies want the ability to foresee which forum they could be held liable in, so they can minimize the risk of litigation as much as possible. *Id.* at 16.

130. See Todd W. Noelle, *At Home in the Outer Limits: DaimlerChrysler v. Bauman and the Bounds of General Personal Jurisdiction*, 9 DUKE J. CONST. L. & PUB. POL'Y SIDEBAR 17, 33 (2013) (explaining that the easier a corporate business decision is, the more likely commerce will be facilitated).

influences a foreign company's decision to invest in the United States," it is clear that lower anticipated costs will lead to more capital investment.¹³¹

Moreover, corporate defendants favor places with a narrow general jurisdiction doctrine.¹³² This is to be expected because corporations create subsidiaries to limit their liability and to ensure that they will not be sued in a forum where they cannot satisfy the minimum jurisdiction requirements.¹³³ U.S. corporate law encourages Non-U.S. companies to set up subsidiaries, which are separate corporate entities, to promote foreign direct investment.¹³⁴ Additionally, international investors want to

131. Brief of The Chamber of Commerce of the United States of America, the National Foreign Trade Council, and the Federation of German Industries as Amici Curiae in Support of the Petitioner at 13, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965), 2012 WL 769612.

132. See Donald Earl Childress III, *Supreme Court Observations: Bauman v. DaimlerChrysler*, THE WLF LEGAL PULSE (Jan. 30, 2014), <http://wlflegalpulse.com/2014/01/30/supreme-court-observations-bauman-v-daimlerchrysler/> ("the Court's decision will be welcomed by many corporate defendants seeking to resist expansive theories of general jurisdiction"); see, e.g., Michael R. Bloomberg & Charles E. Schumer, *Sustaining New York's and the US' Global Financial Services Leadership*, CITY OF NEW YORK, OFFICE OF THE MAYOR & UNITED STATES SENATE, 73 (noting that a major factor of the market's competitiveness is the quality of the legal system, and as the jurisdictional reach expands and becomes more unpredictable, New York is viewed as a negative place to conduct business).

133. Subsidiaries are separate entities created to limit a parent corporation's liability. See William A. Voxman, Comment, *Jurisdiction Over A Parent Corporation In Its Subsidiary's State of Incorporation*, 141 U. PA. L. REV. 327, 327-28 (1992) (stating that "[t]he imposition of such burdens [associated with having to litigate in a forum with which the parent may have virtually no contacts] on the nonresident parent corporation undermines the very purpose of creating the subsidiary—namely, limiting the parent's liability"). The Court's holding which respects corporate separateness will allow a corporation to avoid liability, eliminating its fear of being sued in a forum where it cannot satisfy the minimum requirements test. See Brief of Amici Curiae Viega GmbH & Co. KG and Viega International GmbH in Support of Petitioner DaimlerChrysler AG at 6-7, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965), 2013 WL 3421894. Accordingly, the company will be willing to do business in the United States. Cf. Brief of The Chamber of Commerce of the United States of America, the National Foreign Trade Council, and the Federation of German Industries as Amici Curiae in Support of the Petitioner, *supra* note 131, at 13-14 (explaining that the Ninth Circuit's agency test discourages foreign direct investment).

134. See, e.g., Brief of Amici Curiae Viega GmbH & Co. KG and Viega International GmbH in Support of Petitioner DaimlerChrysler AG, *supra* note 133, at 7-8 (mentioning that when the German Viega Companies wanted "to diversify and take advantage of opportunities for new revenue and business growth outside of Germany,"

ensure that their “investment[s] will not be arbitrarily taken or diminished once it is made.”¹³⁵ Thus, the more expansive and unpredictable the legal system is, the less likely companies will be willing to continue funding its business in that forum.¹³⁶

What would have happened if the court affirmed the Ninth Circuit’s decision and deemed the agency test an acceptable method for attributing a subsidiary’s contacts to its parent corporation?¹³⁷ Since one result of an expansive jurisdictional rule would be a substantial increase in the number of lawsuits in the United States concerning foreign conduct, companies would have reacted by taking precautionary measures and limiting their ties to the United States’ market or by completely eliminating the distribution of their goods in the United States.¹³⁸ In addition, those Non-U.S. companies who choose to continue exposing their products to the United States’ market would probably change to an independent distribution network to avoid exposure to general jurisdiction in various forums.¹³⁹ Moreover, these reactions would decrease foreign direct investment because companies would likely close their subsidiaries leading to a reduction of business taxes and increased unemployment.¹⁴⁰ Furthermore, Non-U.S. manufacturers

it chose to create a subsidiary in the United States so that it could engage in the United States’ market, while avoiding direct liability and significant tax exposure).

135. Charles G. Schott, *The U.S. Litigation Environment and Foreign Direct Investment: Supporting U.S. Competitiveness by Reducing Legal Costs and Uncertainty*, DEP’T OF COMMERCE 3 (Oct. 2008) (noting that a legal system with predictable and enforceable rules should protect an investor’s investment).

136. *See id.* at 5.

137. *See* Bauman v. DaimlerChrysler Corp., 676 F.3d 774, 775, 777-79 (9th Cir. 2011) (O’Scannlain, J., dissenting).

138. *See* Petition for a Writ of Certiorari, *supra* note 28, at 26; Brief of Economiesuisse, the Swiss Bankers Ass’n, ICC Switzerland, Ass’n of German Banks, and the European Banking Federation as Amici Curiae in Support of Petitioner, *supra* note 127, at 11. Expansive jurisdiction will likely result in a limited variety of available goods in the market, ultimately depriving Americans of the benefits of international trade. *See* Petition for a Writ of Certiorari, *supra* note 28, at 26.

139. *See* Brief of Economiesuisse, the Swiss Bankers Ass’n, ICC Switzerland, Ass’n of German Banks, and the European Banking Federation as Amici Curiae in Support of Petitioner, *supra* note 127, at 11.

140. *See* Brief of Economiesuisse, the Swiss Bankers Ass’n, ICC Switzerland, Ass’n of German Banks, and the European Banking Federation as Amici Curiae in Support of Petitioner, *supra* note 127, at 12; *see also* Brief of the Chamber of Commerce of the United States of America, the National Foreign Trade Council, the Federation of German Industries, the Ass’n of German Chambers of Industry and Commerce, and the

would be unwilling to “certify their products as complying with standards and procedures in use in the United States.”¹⁴¹ This could prevent countries from implementing standards and procedures similar to those in the United States, which would create exportation barriers for United States’ products.¹⁴² Similarly, a decrease in exports may occur if American companies are hesitant to conduct business in other nations in fear of retaliatory rulings by their courts.¹⁴³ Ultimately, any reduction in international trade will hurt the Nation’s long-term economic health.¹⁴⁴ Likewise, the potential threat of more lawsuits in the United States will harm the Nation’s economic health since the threat will discourage Non-U.S. corporations from investing in the United States.¹⁴⁵ Therefore, in light of the Nation’s economic health, the Court correctly declined to follow the Ninth Circuit’s decision.

Organization for International Investment as Amici Curiae in Support of the Petitioner at 13, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965), 2013 WL 3421897 (noting that “[f]oreign direct investment plays a vital role in the health of the United States Economy” because it creates jobs, provides for economic growth, enhances productivity, and supports nearby communities).

141. See Brief for the United States as Amicus Curiae Supporting Petitioner at 33, *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011) (No. 10-76), 2010 WL 4735597 (recognizing that conforming products to United States’ standards and procedures may subject the manufacturer to general jurisdiction).

142. See *id.*

143. See Petition for a Writ of Certiorari, *supra* note 28, at 25; see also *Bauman v. DaimlerChrysler Corp.*, 676 F.3d 774, 779 (9th Cir. 2011) (acknowledging that “countries have enacted retaliatory jurisdictional laws”); Amici Curiae Brief in Support of Petition for Rehearing or Rehearing En Banc, *supra* note 129, at 15 (noting that companies are dissuaded from exporting goods when they can be faced with an expansive jurisdictional rule).

144. Cf. JAMES K. JACKSON, CONG. RESEARCH SERV., RL31932, TRADE AGREEMENTS: IMPACT ON THE U.S. ECONOMY, 10 (2007) (“Economists generally agree that consumption gains for consumers comprise the largest long-term gains for an economy that arise from international trade A change in trade policies should lead to changes in prices for traded goods and, therefore, in consumers’ real incomes, as well as to changes in the efficiency of production, which will also improve a nation’s overall economic welfare.”).

145. See Petition for a Writ of Certiorari, *supra* note 28, at 25; Matthew Davis, *Effects of Multinational Company Investments*, THE NATIONAL BUREAU OF ECONOMIC RESEARCH, <http://www.nber.org/digest/may03/w9293.html> (concluding that “foreign investment significantly boosts exports and economic growth in the host country”).

E. THE *DAIMLER AG* HOLDING SHOULD AID THE COUNTRY'S
INTERNATIONAL AFFAIRS

An expansive jurisdictional test violates international comity by allowing any forum in the United States to resolve any dispute arising anywhere in the world.¹⁴⁶ Likewise, an expansive test discounts other nations' legal systems by ignoring the fact that they can adequately resolve disputes that occur within their country.¹⁴⁷ This raises tensions between the United States and other nations.¹⁴⁸ The Court's holding in *Daimler AG* should minimize this tension by decreasing the number of lawsuits based on conduct occurring outside the United States, which will prohibit American courts from deciding lawsuits in lieu of other jurisdictions and force American courts to accept foreign judgments.¹⁴⁹ Furthermore, the Court's holding should curtail the tension since it aligns with the European belief that "jurisdiction by imputation is discouraged."¹⁵⁰

146. See *Daimler AG v. Bauman*, 134 S. Ct. 746, 763 (2014); Brief of the Alliance of Automobile Manufacturers, Inc. and the Ass'n of Global Automakers as Amici Curiae in Support of Petitioner at 30-31, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965), 2013 WL 3728810.

147. See Brief of the Alliance of Automobile Manufacturers, Inc. & the Ass'n of Global Automakers as Amici Curiae in Support of Petitioner, *supra* note 146, at 30-31 (arguing that United States' courts should not be permitted to exercise universal jurisdiction over any dispute anywhere because it violates principles of international comity and disregards other nation's sovereign rights).

148. See Brief of the Chamber of Commerce of the United States of America, the National Foreign Trade Council, the Federation of German Industries, the Ass'n of German Chambers of Industry and Commerce, and the Organization for International Investment as Amici Curiae in Support of the Petitioner, *supra* note 140, at 20-21.

149. See *United States v. First Nat'l City Bank*, 379 U.S. 378, 404 (1965) ("Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field"); Brief of Economiesuisse, the Swiss Bankers Ass'n, ICC Switzerland, Ass'n of German Banks, and the European Banking Federation as Amici Curiae in Support of Petitioner, *supra* note 127, at 9 (acknowledging that tensions rise when foreign judgments are not recognized).

150. *Bauman v. DaimlerChrysler Corp.*, 676 F.3d 774, 779 (9th Cir. 2011); see also Brief of the Chamber of Commerce of the United States of America, the National Foreign Trade Council, the Federation of German Industries, the Ass'n of German Chambers of Industry and Commerce, and the Organization for International Investment as Amici Curiae in Support of the Petitioner, *supra* note 140, at 22 (recognizing that "[a]nchoring the United States law of general jurisdiction in similar reference points facilitates efforts to help the world's legal systems work together, in harmony, rather than at cross purposes") (internal quotations omitted).

Moreover, an expansive jurisdictional test impedes the executive branch's ability to conduct its international affairs duties.¹⁵¹ In the past, the law of general jurisdiction has hindered negotiations with other nations concerning the enforcement of international judgments.¹⁵² The Court's clarification on general jurisdiction should help diplomats achieve some degree of consensus.¹⁵³ If it assists the country in obtaining foreign policy agreements, then Americans will be provided with "a fair, sufficiently predictable, and stable system for the resolution of disputes that cross national boundaries."¹⁵⁴

IV. THE HOLDING IN *DAIMLER AG* WAS THE RIGHT DECISION

The Court's holding is a step in the right direction not only for protecting businesses, but also for the country as a whole. The Court-endorsed clear, uniform framework should decrease the likelihood that numerous forums will subject a corporation to liability where it did not anticipate liability.¹⁵⁵ Since the increased predictability will allow a corporation "to manage their liabilities, predict risks, raise capital and enter into mutually beneficial business relationships," a Non-U.S. corporation will not be deterred from selling its goods in the United

151. See *Bauman*, 676 F.3d at 777-79.

152. See Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. CHI. LEGAL F. 141, 161 (2001); Brief for the United States as Amicus Curiae Supporting Petitioner, *supra* note 127, at 2.

153. See Brief of the Chamber of Commerce of the United States of America, the National Foreign Trade Council, the Federation of German Industries, the Ass'n of German Chambers of Industry and Commerce, and the Organization for International Investment as Amici Curiae in Support of the Petitioner, *supra* note 140, at 21 (noting that "[t]he United States . . . is not a party to any bilateral or multilateral convention governing jurisdiction or judgment enforcement," and that diplomats have been unsuccessful because of the differences between American principles of jurisdiction and other country's doctrines).

154. Brief for the United States as Amicus Curiae Supporting Petitioner, *supra* note 127, at 2-3.

155. See Howard Wasserman, *Quick Thoughts on Personal Jurisdiction*, PRAWFSBLAWG (Jan. 16, 2014, 9:31 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2014/01/download-daimler.html>; Petition for a Writ of Certiorari, *supra* note 28, at 27 (explaining that the Court's framework will provide defendants "with some minimum assurance as to where [their] conduct will and will not render them liable to suit"); *cf.* *supra* notes 113-116 and accompanying text.

States' market.¹⁵⁶ In addition, the Court's holding respects the corporate form (i.e. the parent-subsidary relationship) by recognizing corporate separateness and applying it consistently to all aspects of a company's operations.¹⁵⁷ Moreover, the Court's holding respects fair play and substantial justice, which will likely aid in foreign policy negotiations and maintain foreign direct investment.¹⁵⁸

However, the Court failed to specify how the "at home" standard should be applied, which could lead to potential future problems. "The . . . Court did not resolve . . . when and how the contacts of a subsidiary can form the basis for gaining jurisdiction over a parent."¹⁵⁹ Although the Court clearly discounts the agency test, it does not specify how to apply the appropriate standard to similar situations.¹⁶⁰ The Court mentions two paradigm places where a corporation is "at home," but it also states that these are not the only forums that can exercise general personal jurisdiction.¹⁶¹ Because of this, it would have been more effective for the Court to state explicitly that a court can only exercise jurisdiction over a Non-U.S. parent company in a forum that does not contain its principal place of business or its place of incorporation when the parent and subsidiary are essentially alter egos.¹⁶² Moreover, the Court should have provided an example of how to properly apply the "at home" standard to determine jurisdiction in a forum where a company does not meet either of the paradigm places.¹⁶³ By further clarifying what additional forums can adequately exercise general jurisdiction, the

156. Brief of The Chamber of Commerce of the United States of America, the National Foreign Trade Council, and the Federation of German Industries as Amici Curiae in Support of the Petitioner, *supra* note 131, at 8-9.

157. Mr. Dupree argued that corporate separateness should be applied to all aspects of a business's operations since it is already applied to a company's taxes. *See* Transcript of Oral Argument at 9-11, *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014) (No. 11-965), 2013 WL 5629592. Likewise, Mr. Kneedler argued that corporate separateness is the general rule in American corporate law. *Id.* at 24.

158. *See* discussion *supra* Parts III.D, III.E.

159. Wasserman, *supra* note 155.

160. *See* discussion *supra* Part III.B.

161. *See supra* notes 15, 87-88 and accompanying text.

162. *See supra* note 121 and accompanying text.

163. *See* Donald Earl Childress III, *General Jurisdiction After Bauman*, 66 VAND. L. REV. EN BANC 197, 202 (questioning how district courts will interpret the term "exceptional circumstances").

Court would have enhanced predictability to a greater degree.¹⁶⁴ Nevertheless, the logical application of the Court's standard is to permit only a few forums that do not constitute the paradigm places to exercise jurisdiction over a parent corporation, and not to allow every forum in which a subsidiary is present to hold a parent company liable.¹⁶⁵

CONCLUSION

The above analysis reveals that a plaintiff can only attribute a subsidiary's contacts to its parent corporation in limited circumstances. Such a result is clearly justified and efficient because it creates one standard for courts to apply when imputing a subsidiary's in-state contacts to its parent company. This will decrease the number of American lawsuits against Non-U.S. parent corporations for actions of its subsidiaries and will curtail a plaintiff's ability to forum shop. In addition, it will increase a Non-U.S. parent corporation's ability to predict and foresee where it could be held liable, facilitating a Non-U.S. corporation's willingness to do business in the United States and increasing foreign direct investment. Moreover, this ruling will alleviate some of the legal tensions between the United States and other countries since the Court's standard narrows an American court's jurisdictional reach.

Although every decision is bound to have some complications, the Court's decision in *Daimler AG v. Bauman* provides guidance for lower courts by establishing the appropriate test for satisfying the first step of the general jurisdiction inquiry. This decision was imperative since personal jurisdiction is an essential element of every lawsuit and there was a split among the circuit courts. By aligning the test with well-established corporate law principles, the Court is protecting corporations at the expense of a plaintiff's potential inability to plead personal jurisdiction successfully. Nevertheless, this result will "restore the predictability that the due process clause is designed to afford potential defendants."¹⁶⁶ The Court's holding enhances fairness, predictability, and foreseeability, directs courts to respect a defendant's due process rights, and leads to economic and political benefits for the Nation as a

164. *See id.* (noting that the meaning of "exceptional circumstances" is uncertain, and could lead to "creative lawyering and continued uses of general jurisdiction beyond what the Court appears to intend").

165. *See supra* note 119 and accompanying text.

166. Petition for a Writ of Certiorari, *supra* note 28, at 19.

whole. Thus, the needs of the Nation supersede the trivial unfairness that the holding may create.