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Kaitlin Hanigan

J.D. Candidate, May 2015, Loyola Law School, Los Angeles

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A BLUNDER OF SUPREME PROPORTIONS: GENERAL JURISDICTION AFTER *DAIMLER* *AG v. BAUMAN*

*Kaitlin Hanigan**

I. INTRODUCTION

As with all facets of the judicial process, personal jurisdiction should be fair, uniform, and predictable.¹ This fundamental doctrine should not favor plaintiffs over defendants.² Instead, personal jurisdiction should provide nonresident defendants guidance on how to avoid the reach of a foreign state.³ However, this doctrine should also ensure plaintiffs a convenient forum without undue burden or delay. Despite the weight of these fundamental policy concerns, the jurisprudence surrounding general jurisdiction remains rife with ambiguity and inconsistency, even after the Supreme Court's most recent opinion in *Daimler AG v. Bauman*.⁴

Part II of this Comment discusses the factual background of *Daimler*. Part III then examines the historical background of personal jurisdiction, including the origins of general jurisdiction. Part IV analyzes the Supreme Court's interpretation of general jurisdiction after *Daimler*. Part V presents the ramifications of *Daimler*. Finally,

* J.D. Candidate, May 2015, Loyola Law School, Los Angeles; B.A. English Literature, Stanford University, June 2012. Thank you to Professor Simona Grossi for her guidance and feedback on this Comment. And thank you to the editors and staffers of the Loyola of Los Angeles Law Review for their work on this Issue.

1. See generally Simona Grossi, *Personal Jurisdiction: A Doctrinal Labyrinth with No Boundaries*, 47 AKRON L. REV. 617 (2014) (examining the Supreme Court's jurisprudence and the lower courts' confusion, and suggesting a new rule based on connecting factors and expectations).

2. See Patrick J. Borchers, *One Step Forward and Two Back: Missed Opportunities in Refining the United States Minimum Contacts Test and the European Union Brussels I Regulation*, 31 ARIZ. J. INT'L & COMP. L. 1, 1–2 (2014).

3. See *id.* (“[A] foreign corporation that decides to make a significant sales effort in the United States or the European Union (E.U.) should be able to know (or at least get reasonably certain advice on) whether and to what extent those commercial activities expand the horizon of forum choices in suits against them.”).

4. 134 S. Ct. 746 (2014).

Part VI concludes that the Court should have avoided *Daimler* altogether, and clarified the standard for general jurisdiction on a more appropriate occasion.

II. STATEMENT OF FACTS

In 2004, twenty-two individuals (“Plaintiffs”) filed suit in the United States District Court for the Northern District of California.⁵ Plaintiffs alleged that Mercedes-Benz Argentina (MBA) had collaborated with Argentinian state security forces to kidnap, detain, torture, and kill Plaintiffs and their relatives during Argentina’s “Dirty War.”⁶

Plaintiffs advanced claims under the Alien Tort Statute and the Torture Victim Protection Act of 1991 as well as wrongful death and intentional infliction of emotional distress claims.⁷ The complaint described incidents that occurred in Gonzalez Catan, Argentina while Plaintiffs worked at an MBA plant.⁸ Plaintiffs never alleged that MBA’s “collaboration with the Argentinian authorities took place in California or anywhere else in the United States.”⁹

In the complaint, Plaintiffs named one defendant, DaimlerChrysler (“Daimler”).¹⁰ Daimler, a German public stock company, manufactured Mercedes-Benz vehicles in Germany and maintained its corporate headquarters in Stuttgart, Germany.¹¹ After “a merger in 1998, the American Chrysler Corporation became one of [Daimler]’s wholly owned subsidiaries.”¹² At the commencement of the action, Daimler maintained “no offices or persistent operations in California.”¹³ One of Daimler’s California contacts was its counsel

5. *Id.* at 751. One of the Plaintiffs was a resident of Argentina but a citizen of Chile. The other twenty-one Plaintiffs were Argentinean citizens and residents. *Id.* at 750, n.1; see 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, 112 (2013) (noting that the *Daimler* Plaintiffs filed in California because the Ninth Circuit has a “reputation as one of the most liberal and plaintiff-friendly courts in the nation”).

6. Sherry, *supra* note 5, at 111–12.

7. 28 U.S.C. § 1350 (2012); *Daimler*, 134 S. Ct. at 751.

8. *Daimler*, 134 S. Ct. at 751–52.

9. *Id.* at 752.

10. *Id.*

11. *Id.*

12. 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, 19 (2013), available at http://scholarship.law.duke.edu/djclpp_sidebar/105/ (internal citation omitted).

13. *Id.*

in San Francisco, hired to represent Daimler in several lawsuits challenging the state's clean air laws.¹⁴ Daimler also manufactured products specifically tailored to California's market and maintained a listing on the Pacific Stock Exchange in San Francisco and a corporate partnership with the California-based Global Nature Fund.¹⁵

Plaintiffs sought to hold Daimler vicariously liable for the acts of MBA, a subsidiary wholly owned by Daimler's predecessor in interest.¹⁶ However, Daimler moved to dismiss the action for lack of personal jurisdiction.¹⁷ In opposing the motion, Plaintiffs submitted declarations and exhibits, which attempted to establish Daimler's contacts in California.¹⁸ As an alternative, Plaintiffs urged the district court to find jurisdiction by imputing Mercedes-Benz USA's (MBUSA's) California contacts to Daimler.¹⁹

At the time Plaintiffs filed the complaint, Daimler exclusively exported Mercedes-Benz automobiles to MBUSA, which then distributed the cars to independent dealerships throughout the United States.²⁰ Although it maintained a principal place of business in New Jersey and incorporated in Delaware, MBUSA operated multiple facilities in California, "including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine."²¹ Indeed, "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."²²

The district court granted Daimler's motion to dismiss on the ground that Daimler's own California affiliations were insufficient to support the exercise of general jurisdiction over the corporation.²³ Additionally, the district court declined to attribute MBUSA's

14. *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2005 WL 3157472, at *8 (N.D. Cal. 2005).

15. *Id.* at *7-8.

16. *Daimler*, 134 S. Ct. at 752.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* The "General Distributor Agreement" described MBUSA as an independent contractor, as opposed to an "agent, partner, joint venturer or employee of" Daimler. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* "Plaintiffs have never attempted to fit this case into the *specific* jurisdiction category." *Id.* at 758.

contacts to Daimler on an agency theory because Plaintiffs had failed to demonstrate that MBUSA acted as Daimler's agent.²⁴

On appeal, Plaintiffs did not challenge the district court's holding that Daimler's own California contacts were insufficient to support the exercise of general jurisdiction.²⁵ Instead, Plaintiffs appealed whether MBUSA's contacts with California could be imputed on a general jurisdiction theory.²⁶

Initially, the Ninth Circuit affirmed the district court's judgment.²⁷ Only addressing the question of agency, the Ninth Circuit held that Plaintiffs had not adequately demonstrated an agency relationship between MBUSA and Daimler.²⁸ Judge Reinhardt dissented, and argued that MBUSA and Daimler's relationship satisfied the agency test and "considerations of reasonableness did not bar the exercise of personal jurisdiction."²⁹

After granting Plaintiffs' petition for rehearing, however, "the panel withdrew its initial opinion and replaced it with the one provided by [Judge] Reinhardt."³⁰ The Ninth Circuit held that "at least for the limited purpose of determining general jurisdiction, MBUSA was [Daimler's] agent."³¹ In its conclusion, the Ninth Circuit noted that the Supreme Court had moved away from "mechanical tests that fail to take account of reality," and pointed out that corporations like Daimler establish subsidiaries like MBUSA for the sole purpose of reaping the economic benefits of the American marketplace without facing any jurisdictional consequences.³² According to Judge Reinhardt, "it would seem off, indeed, if the manufacturer of Mercedes-Benz vehicles, which are sold in

24. *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2005 WL 3157472, at *19–20 (N.D. Cal. 2005). The district court tentatively granted the motion to dismiss on November 22, 2005, but before making a final decision, ordered plaintiffs to undertake limited jurisdictional discovery. *Id.* On February 12, 2007, the district court affirmed its tentative order to grant the motion to dismiss because Daimler's "contacts with California [were] not 'systematic and continuous.'" *Bauman v. DaimlerChrysler AG*, No. C-04-00194 RMW, 2007 WL 486389, at *2 (N.D. Cal. 2007).

25. *Daimler*, 134 S. Ct. at 758.

26. *Id.* at 753.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 931 (9th Cir. 2011).

32. *Id.*

California in vast numbers . . . could not be required to appear in the federal courts of that state.”³³

The Supreme Court then granted certiorari to decide “whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler was amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad.”³⁴ The Court held that Daimler was not amenable to suit in California for injuries allegedly caused by MBA’s conduct in Argentina.³⁵

III. HISTORICAL BACKGROUND

The standards applied to personal jurisdiction can be largely attributed to United States Supreme Court decisions.³⁶ The Court’s jurisprudence has developed two categories under which jurisdiction may be exercised: the traditional bases and the “minimum contacts” test.³⁷ In *Pennoyer v. Neff*,³⁸ the Court recognized the traditional bases of personal jurisdiction: domicile, voluntary appearance, consent to process, and physical presence.³⁹ Later, in *International Shoe Co. v. Washington*,⁴⁰ the Supreme Court developed the minimum contacts test, holding that even if the defendant were not physically present in the forum, he could still have “certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”⁴¹ *International Shoe*’s conception of “fair play and substantial justice” presaged the later development of specific and general jurisdiction.

While the Court has often addressed specific jurisdiction, it has only ever issued two opinions on general jurisdiction before granting

33. *Id.*

34. *Daimler*, 134 S. Ct. at 753.

35. *Id.* at 748. Justice Ginsburg delivered the opinion of the Court, in which Chief Justice Roberts, and Justices Scalia, Kennedy, Thomas, Breyer, Alito, and Kagan joined. *Id.* at 750. Justice Sotomayor filed an opinion concurring only in judgment. *Id.*

36. Grossi, *supra* note 1, at 621.

37. *Id.*

38. 95 U.S. 714 (1877).

39. See Grossi, *supra* note 1, at 621 (“The traditional bases of personal jurisdiction include domicile, voluntary appearance, consent to service of process, and physical presence. Each of these forms is consistent with the sovereignty principle announced in *Pennoyer v. Neff*.”) (citing *Pennoyer v. Neff*, 95 U.S. 714 (1877)).

40. 326 U.S. 310 (1945).

41. *Id.* at 316 (internal quotation marks omitted).

certiorari on *Daimler: Perkins v. Benguet Consolidated Mining Co.*⁴² and *Helicopteros Nacionales de Colombia v. Hall*.⁴³ In *Perkins*, the Court found the exercise of general jurisdiction proper over a corporation's president who had established an office in Ohio while the Japanese occupied its corporate headquarters during World War II.⁴⁴ In *Helicopteros*, the Court precluded a Texas court from exercising general jurisdiction over a helicopter supplier whose Texas contacts consisted of depositing money in a Texas bank and occasionally sending personnel to Texas for training.⁴⁵

After remaining silent for a quarter century and only a month after granting certiorari on *Daimler*, the Court issued its third opinion on the subject in *Goodyear Dunlop Tires Operations v. Brown*.⁴⁶ There, a unanimous Court set forth an "essentially at home" standard by announcing that "[a] court may assert general jurisdiction over foreign corporations . . . when their affiliations with the State . . . render them *essentially at home* in the forum State."⁴⁷ While the *Goodyear* court did introduce a new standard for general jurisdiction, the Court did not entirely flesh out the concept. *Goodyear* did not guide lower courts "tasked with determining the level of business contacts that may subject a foreign corporation to a forum's general personal jurisdiction."⁴⁸ *Goodyear* suggested that a company could be "essentially at home" outside of its state of incorporation or principal place of business, but provided no example for lower courts.⁴⁹

42. 342 U.S. 437 (1952).

43. 466 U.S. 408 (1984); see Borchers, *supra* note 2, at 10 ("From 1945 to 2011, the Court issued only two opinions exploring the general jurisdiction side of the minimum contacts test.")

44. *Perkins*, 342 U.S. at 437.

45. *Helicopteros*, 466 U.S. at 408.

46. 131 S. Ct. 2846 (2011); see Borchers, *supra* note 2, at 2 (noting that the Supreme Court had "remained silent on the contours of its 'minimum contacts' test for a quarter century"). In 2011, the Court agreed to hear two jurisdictional cases, *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011), and *Goodyear*. In *Nicastro*, the Court "failed to produce a majority opinion . . . [and] continued to remain hopelessly divided over the boundaries of so-called 'stream of commerce' jurisdiction." Borchers, *supra* note 2, at 2 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980)).

47. *Goodyear*, 131 S. Ct. at 2851 (emphasis added). Notably, the Court issued *Goodyear* after it had already granted certiorari on *Daimler*.

48. Danielle Tarin & Christopher Macchiaroli, *Refining the Due-Process Contours of General Jurisdiction over Foreign Corporations*, 11 J. INT'L BUS. & L. 49, 49 (2012).

49. *Goodyear*, 131 S. Ct. at 2851. As a result, confusion as to the application of general jurisdiction plagued most states. Tarin & Macchiaroli, *supra* note 48, at 58. Most often, courts struggled in situations where large revenues represented only a small portion of a corporation's total revenue. *Id.* For example, the Ninth Circuit examined the volume of MBUSA's sales in

IV. REASONING OF THE COURT

In granting certiorari on *Daimler*, the Court attempted to further define the contours of general jurisdiction by answering the open-ended questions posed by *Goodyear*. The Court initiated its analysis by tracing the history and development of general jurisdiction.⁵⁰ The Court attributed the fundamental principles of personal jurisdiction to *International Shoe*,⁵¹ and noted that after that case, specific jurisdiction came to occupy center stage in the modern jurisprudence.⁵² The Court acknowledged that after *International Shoe*, it had only ever visited general jurisdiction in *Perkins*, *Helicopteros*, and *Goodyear*, and as such, general jurisdiction occupied a “less dominant place in the contemporary scheme.”⁵³

Next, the Court addressed the Ninth Circuit’s imputation of MBUSA’s contacts to *Daimler*.⁵⁴ The Court dismissed the Ninth Circuit’s analysis because it resulted in a “sprawling view of general jurisdiction,” which the Court had previously rejected in *Goodyear*.⁵⁵ The Court emphasized that *Goodyear* presented only a limited set of circumstances that would render a defendant amenable to general jurisdiction.⁵⁶ The paradigmatic bases for general jurisdiction, as established in *Goodyear*, include the corporation’s principal place of business and its place of incorporation.⁵⁷ However, the Court emphasized that *Goodyear* did not hold that a corporation could only be subject to general jurisdiction in a forum where it is incorporated or has its principal place of business.⁵⁸ Again, the Court opened the door to a possibility outside of the paradigmatic bases, but did not provide any guidance for lower courts. Instead, it merely reiterated the *Goodyear* standard that the forum state should be equivalent to

California, which accounted for 2.4 percent of *Daimler*’s worldwide sales, and could not overlook that nearly 50 percent of *Daimler*’s overall revenue originated in the United States. *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 931 (9th Cir. 2011).

50. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014).

51. *Id.*

52. *Id.* at 755.

53. *Id.* at 757–58.

54. *Id.* at 758–59.

55. *Id.* at 760.

56. *Id.*

57. *Id.*

58. *Id.*

an individual's domicile, one in which the corporation is fairly regarded as "essentially at home."⁵⁹

The Court then briefly turned to Daimler's affiliations with California and concluded that because neither Daimler nor MBUSA were incorporated or maintained their principal places of business in California, the exercise of general jurisdiction would not be proper.⁶⁰ Justice Sotomayor criticized the majority's analysis: "The problem, the Court says, is not that Daimler's contacts with California are too few, but that its contacts with other forums are too many."⁶¹ The Court viewed Daimler's California contacts in the context of Daimler's global operation.⁶² In doing so, the Court refined its "essentially at home" standard into a proportionality test that measures in-state contacts against the company's out-of-state contacts.⁶³

Notably, the Court did not arrive at its conclusion after closely scrutinizing Daimler or MBUSA's contacts with California. Instead, the Court overlooked the fact-intensive analysis required in answering jurisdictional questions and hung its hat on policy.⁶⁴ The Court turned to the transnational context of the dispute as a justification for its holding.⁶⁵ According to the Court, if Daimler's activities were sufficient for general jurisdiction, the "same global reach would presumably be available in every other State in which MBUSA's sales [were] sizable."⁶⁶ The Court found such an expansive view of general jurisdiction to be troublesome because of

59. *Id.* at 761 (quoting *Goodyear Dunlop Tire Operations v. Brown*, 131 S. Ct. 2846, 2851 (2011)).

60. *Id.* at 761–62.

61. *Id.* at 764 (Sotomayor, J., concurring).

62. *Id.* at 762, n.20 (majority opinion). The Court clarified that "[g]eneral jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them." *Id.*

63. *Id.* at 762.

64. "The majority's decision is troubling all the more because the parties were not asked to brief this issue." *Id.* at 766 (Sotomayor, J., concurring). "At no point in Daimler's petition for certiorari did the company contend that, even if this attribution question were decided against it, its contacts in California would still be insufficient to support general jurisdiction. The parties' merit briefs . . . focused on the attribution-of-contacts question, addressing the reasonableness inquiry (which had been litigated and decided below) in most of the space that remained." *Id.* at 766.

65. *Id.* at 762 (majority opinion).

66. *Id.* at 761.

the risks it posed to international comity.⁶⁷ The Court noted that “[o]ther nations do not share the uninhibited approach to personal jurisdiction advanced by the [Ninth Circuit] in this case”.⁶⁸ Such “expansive views of general jurisdiction,” the Court asserted, have impeded international negotiations and foreign investment.⁶⁹ The Court compared the Ninth Circuit’s approach to the European Union’s standard, which provides that a corporation may only be sued in a nation in which it maintains its principal place of business.⁷⁰ The Court concluded that subjecting Daimler to general jurisdiction would not accord with notions of “fair play and substantial justice” in the transnational context.⁷¹

Justice Sotomayor concurred in the judgment alone.⁷² Justice Sotomayor deemed the majority’s approach “wrong as a matter of both process and substance.”⁷³ She argued that the Court should have decided the case on reasonableness grounds.⁷⁴ According to Justice Sotomayor, the Ninth Circuit’s holding could have been reversed simply because “the case involve[d] foreign plaintiffs suing a foreign defendant based on foreign conduct.”⁷⁵

V. ANALYSIS

This part first explains that the Court should have avoided the general jurisdiction inquiry altogether. It then examines how the Court’s attempt at clarification resulted in an even more restrictive interpretation of the doctrine. Next, it explains that the *Daimler* opinion marks a shift away from concerns of fairness and predictability—the very principles underpinning personal jurisdiction—in favor of protecting big business from jurisdictional vulnerability.

67. *Id.* at 763.

68. *Id.*

69. *Id.* (quoting Brief for United States as *Amicus Curiae* Supporting Petitioner at 2, 2013 WL 3377321).

70. *Id.*

71. *Id.*

72. *Id.* at 763 (Sotomayor, J., concurring).

73. *Id.* at 764.

74. *Id.*

75. *Id.*

A. *A New, More Restrictive Approach to General Jurisdiction*

The Court should have denied certiorari on *Daimler* because either granting or reversing the Ninth Circuit's ruling had the potential to "make very bad law."⁷⁶ Affirming the Ninth Circuit would have greatly expanded the scope of general jurisdiction. Plaintiffs relied on MBUSA's California contacts because, although MBA had connections to the alleged atrocities committed in Argentina, it had no California contacts.⁷⁷ If parent corporations were subject to general jurisdiction due to subsidiary relationships like the relationship between *Daimler* and MBUSA, the scope of general jurisdiction would be seemingly limitless.⁷⁸

In reversing the Ninth Circuit, *Daimler* further limits the *Goodyear* standard for general jurisdiction. Although the Court did not explicitly restrict the scope of general jurisdiction to the place of incorporation or the principal place of business, *Daimler* presents a significant obstacle for plaintiffs establishing general jurisdiction outside of these two paradigmatic bases.⁷⁹ The Court expressly declined approving the exercise of general jurisdiction in all states "in which a corporation engages in substantial, continuous and systematic course of business."⁸⁰ Although the Court did not preclude the rare instance in which a corporation may be "essentially at home" outside of its place of incorporation or principal place of business, *Daimler* seems to suggest that it should be viewed as a very narrow exception to the general rule.⁸¹

Additionally, *Daimler*'s restrictive standard casts doubt on *Perkins*, the Court's textbook example of general jurisdiction.⁸² According to Justice Sotomayor, if the Court had applied its "newly minted proportionality test," *Perkins* would have "come out the other way."⁸³ In *Perkins*, the Court found the exercise of general jurisdiction to be proper even though the company was not

76. Sherry, *supra* note 5, at 111.

77. *See id.* at 114 ("MBA [had] connections to the atrocities but no connection to California.").

78. *See id.* at 114 ("If this combination of subsidiaries means that the parent corporation is subject to general jurisdiction in California, then effectively every global corporation will be subject to general jurisdiction in the United States for any of its activities worldwide.").

79. *Daimler*, 134 S. Ct. at 773 (Sotomayor, J., concurring).

80. *Id.* at 761 (majority opinion) (internal quotation marks omitted).

81. *See id.*

82. *Id.* at 769 n.8 (Sotomayor, J., concurring).

83. *Id.*

incorporated and did not maintain a principal place of business in Ohio.⁸⁴ There, the contacts included the corporate president keeping files in his Ohio home, maintaining active bank accounts, distributing salary checks, and hosting directors' meetings.⁸⁵ By the time the suit had commenced, the company had actually resumed operations in the Philippines.⁸⁶ There, the Court did not look at the company's contacts in the Philippines, but instead, focused on its Ohio contacts.⁸⁷ "In light of these facts, it is all but impossible to reconcile the result in *Perkins* with the proportionality test" that the Court sets forth in *Daimler*.⁸⁸ Even though the Court did not explicitly overturn *Perkins*, its reasoning in *Daimler* undermines the validity of *Perkins*, which previously served as the standard for general jurisdiction outside the paradigmatic bases.⁸⁹

B. The Lopsided Consequences Post-Daimler

The Court's test breeds unfair results and undermines notions of "fair play and substantial justice."⁹⁰ First, the majority's approach will lead to an expanded "scope of jurisdictional discovery."⁹¹ Although the Court noted that its decision would not change the scope of discovery, it is impossible to imagine how *Daimler* would not result in increased jurisdictional discovery at the district court level.⁹² Now, lower courts will need to identify the scope of a company's contacts in other forums in addition to its in-state contacts.⁹³ This increased jurisdictional burden on lower courts runs afoul of the principle that simple jurisdictional rules ensure greater predictability.⁹⁴

Second, the new test makes individuals and small businesses more amenable to suit than corporations that conduct substantially

84. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952).

85. *Id.*

86. *Daimler*, 134 S. Ct. at 769 n.8 (Sotomayor, J., concurring).

87. *Perkins*, 342 U.S. at 447-48.

88. *Daimler*, 134 S. Ct. at 769 n.8 (Sotomayor, J., concurring).

89. *Id.*

90. *See Grossi, supra* note 1 ("[T]he fundamental principles are submerged beneath opaque formulas that are both too broad and too narrow and all too often open to conflicting interpretations and applications.").

91. *Daimler*, 134 S. Ct. at 770 (Sotomayor, J., concurring).

92. *Id.* at 762 n.20 (majority opinion).

93. *Id.* at 770 (Sotomayor, J., concurring).

94. *See Grossi, supra* note 1 ("[A]t its heart, the law of personal jurisdiction is simple and elegant.").

more business within a state.⁹⁵ For example, an individual defendant, whose only contact with the forum state is a “one-time visit[,] will be subject to general jurisdiction if served with process during the visit.”⁹⁶ However, a large company that owns property, employs workers, and conducts substantial business will be immune to suit because it has greater contacts elsewhere.⁹⁷ Similarly, a small business will be amenable to suit in California for any cause of action “even if the small business incorporates and sets up headquarters elsewhere.”⁹⁸ Unlike *Daimler*, the small business’ California sales will be considered substantial enough when viewed in light of its entire operation.⁹⁹ Such results seem unfair, especially given the intimate link between personal jurisdiction and due process rights.¹⁰⁰

Third, *Daimler* presents a roadblock for plaintiffs deciding where to file suit against both foreign and domestic corporations. The Court’s approach shifts the risk of loss from corporations to the individuals harmed by their actions.¹⁰¹ As Justice Sotomayor states in her concurrence, “a parent whose child is maimed due to the negligence of a foreign hotel owned by a multinational conglomerate will [now] be unable to hold the hotel [accountable] in a single U.S. court, even if the hotel has a massive presence in multiple States.”¹⁰² The majority’s approach in *Daimler*, Justice Sotomayor posited, precludes such plaintiffs from seeking recourse anywhere in the United States.¹⁰³

Importantly, the principle announced in *Daimler* applies to U.S. companies. Even though the present case involved foreign plaintiffs and a foreign corporate defendant, the Court did not frame the issue

95. *Daimler*, 134 S. Ct. at 772–73 (Sotomayor, J., concurring).

96. *Id.* at 772.

97. *Id.* at 773.

98. *Id.* at 772.

99. *Id.*

100. *See* Grossi, *supra* note 1 (“The importance of personal jurisdiction cannot be overstated . . . [P]ersonal jurisdiction is deeply intertwined with the litigants’ due process rights. Also, the outcome of cases is significantly influenced, if not entirely determined, by decisions on jurisdiction and choice of law, with the latter often deeply influenced by the former.”).

101. *Daimler*, 134 S. Ct. at 773 (Sotomayor, J., concurring).

102. *Id.* Similarly, a U.S. business that contracts with a “foreign country to sell its products to a multinational company there may be unable to seek relief in any U.S. court if the multinational company breaches the contract, even if that company has considerable operations in numerous U.S. forums.” *Id.*

103. *Id.*

as exclusively applicable to foreign corporations.¹⁰⁴ As a result, moving forward, the standard will also preclude general jurisdiction over a U.S. company that maintains its principal place of business and place of incorporation in another state.¹⁰⁵ As indicated by Justice Sotomayor's example, the ramifications of *Daimler* will greatly impact a plaintiff's choice of and access to a convenient forum.

VI. CONCLUSION

In reversing the Ninth Circuit, the Court picked a poor platform to clarify the *Goodyear* standard. Instead of refining its "essentially at home" standard in a case that implicated transnational concerns, the Court should have denied certiorari on *Daimler AG v. Bauman* and avoided the general jurisdiction inquiry altogether. The Court's attempt to further elucidate *Goodyear* resulted in an even more restrictive standard for general jurisdiction, which loses sight of the "traditional notions of fair play and substantial justice."¹⁰⁶

104. *Id.* at 773 n.12.

105. *Id.* Justice Sotomayor provided the example of "a General Motors autoworker who retires to Florida." *Id.* Under the new principle, he "would be unable to sue GM in [Florida] for disabilities that develop[ed] from the retiree's labor at a Michigan parts plant, even though GM undertakes considerable business operations in Florida." *Id.*

106. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

