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Supreme Court Ruling Shields Corporations from Accountability

Lauren Carasik
Western New England University School of Law, Carasik@law.wne.edu

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Supreme Court ruling shields corporations from accountability

Lack of global justice regime burdens victims of human rights abuses

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by **Lauren Carasik** @LCarasik

Less than a year after the United States Supreme Court ruling in Kiobel v. Royal Dutch Petroleum dealt a major blow to corporate accountability for human rights abuses, a second decision issued last month in Daimler AG v. Bauman further eroded the ability of plaintiffs to sue multinational corporations in U.S. courts for human rights claims.

The decision in the Kiobel case made it far more difficult for plaintiffs to file lawsuits under the Alien Tort Statute (ATS), which allows foreigners to sue foreign defendants in U.S. courts for human rights abuses committed abroad. The latest ruling erects yet another structural impediment to holding corporate wrongdoers accountable by limiting the scope of jurisdiction against corporate defendants.

Daimler v. Bauman was filed by 22 Argentine plaintiffs against the German corporation DaimlerChrysler (Daimler) in a federal court in California. Plaintiffs allege that Daimler's subsidiary in Argentina conspired and collaborated with the Argentine military in the arrest, torture and murder of labor union activists working at its Mercedes plant during that country's "Dirty War."

In order to hear cases, courts must have both personal jurisdiction over the parties and subject matter jurisdiction over the legal issue in dispute. Courts can exercise two kinds of personal jurisdiction: general and specific. General jurisdiction requires a finding that a defendant's contacts with a given state are so extensive that a plaintiff can sue the defendant in that state for any claim, including activities that occurred elsewhere. Specific jurisdiction is more limited, allowing a plaintiff to sue in a state's courts only when the claims arise out of the defendant's conduct within that state.

The plaintiffs in Daimler did not claim that the suit arose out of Daimler's conduct in California, but rather that California could exercise general jurisdiction over Daimler, citing the German automaker's extensive contacts with the state through its U.S. subsidiary, Mercedes-Benz USA (MBUSA). MBUSA is incorporated in Delaware, with its principal place of business in New Jersey. It distributes Daimler products in all U.S. states, including California, making it amenable to suit in the state. In fact, the U.S. Court of Appeals for the Ninth Circuit in 2011 upheld this general jurisdiction claim, citing MBUSA's substantial business operations in California.

'Too big' to stand trial

Many observers expected the Daimler decision to clarify the standard for exercising jurisdiction over corporations through their subsidiaries. Instead, on Jan. 14, the Supreme Court reversed the lower court's decision. The high court held that general jurisdiction against a foreign corporation in states other than where the company is incorporated or has its principal place of business applies only in very limited circumstances. In analyzing whether the company's "continuous and systematic" contacts in the state could render it "at home," the court applied a relative standard for contacts, ignoring the fact that substantial aggregate contacts could render a company at home in other states. A global company such as Daimler, whose subsidiaries operate in 40 countries and all U.S. states, is simply "too big" to be confined to one home state.

In a stinging opinion concurring with the court's decision but objecting to its reasoning, Justice Sonia Sotomayor called the court's rationale a "deep injustice," claiming that it in effect held Daimler to be "too big for general jurisdiction."

Sotomayor disparaged the focus of the majority's opinion on Daimler's substantial contacts with other states instead of analyzing whether its contacts with California were sufficient to establish general jurisdiction. In evaluating the corporation's amenability to suit, Sotomayor opined that Daimler's $4.6 billion annual revenue from California, although it accounted for only 2.4 percent of the company's global sales, was substantial in real dollars. This revenue, combined with MBUSA's multiple facilities in California, including its regional headquarters, could make Daimler essentially "at home" in that state. Yet the court ruled that subjecting Daimler to the general jurisdiction of courts in California would violate the "fair play and substantial justice" required by due process, despite the substantial benefits it derives from operating in the state.

Economic rationale

On closer analysis, however, the court's reasoning was largely a matter of international economic policymaking. The justices held that expansive exercise of jurisdiction would lead to unpredictability about where corporations could be sued, thereby discouraging foreign investment. However, Sotomayor pointed out that this logic overlooks the uneven and undesirable result of placing larger foreign corporations at a comparative advantage over small businesses that cannot claim immunity from lawsuits in local courts for overseas or even domestic events. It also sets unjustifiably different jurisdictional standards for companies and individuals. While companies can escape jurisdiction even when they derive billions of dollars of revenue from a given state, a person can be "tagged" for personal jurisdiction and served legal papers as soon as she sets foot in the state, however brief the visit.

The decision also curtails states' abilities to adjudicate harms alleged against companies engaging in substantial business within their borders. Sotomayor noted that limiting the venues that can resolve disputes ultimately "shift(s) the risk of loss from multinational corporations to the individuals harmed by their actions."

Many corporations are already structured through a tangled and impenetrable web of subsidiaries that leaves plaintiffs without an effective remedy.

The court also argued that the friction created by exercising jurisdiction when a company merely "does business" with a state could put the U.S. at odds with the international community. It expressed a particular concern regarding the European Union, where jurisdiction is generally limited to the state in which a company is domiciled. As outlined in an amicus brief submitted by the human rights organization EarthRights International, the court's characterization of European law presents an inaccurate and narrow portrait of how those courts exercise jurisdiction. Moreover, its selective respect for international comity only when such principles advance American economic and geopolitical interests reinforces our repeated failures to adhere to international standards on human rights.

After Somalia and South Sudan, the U.S. is one of only three countries that have not ratified the Convention on the Rights of the Child. It declines to ratify a number of international covenants while continually committing egregious human rights violations in the name of the "war on terror," including extrajudicial and extraterritorial killings through the use of unmanned drones and the torture and indefinite detention of detainees at the Guantanamo Bay prison in Cuba.

Forum shopping?

Corporate defense counsel cheered the court's decision as an appropriate barrier to forum shopping by plaintiffs seeking a more favorable climate for the adjudication of their claims. But the decision rewards only corporations that become large enough to escape general jurisdiction. And it leaves human rights victims such as those in the Daimler case with few viable options to seek justice.

In the Daimler case, the plaintiffs and their supporters argued that they lacked an alternative venue for the adjudication of their claims. Germany was not an appropriate forum for a number of reasons. First, German law would effectively bar the plaintiffs from pursuing claims by applying an already expired Argentine statute of limitations in its courts. Second, filing in Germany would be cost-prohibitive for the poorly resourced plaintiffs. The country's cost-shifting provisions require non-European plaintiffs to pay up front the costs the defendant would owe in the event their claim fails. Third, Germany's rigid discovery limitations, which require plaintiffs to identify the documents they seek from defendants in advance, would also be an impediment to justice, as the plaintiffs are less likely to know exactly which documents might contain incriminating information. German laws also make it difficult for plaintiffs to pursue class action suits, a vehicle that enables individuals to pool resources. Finally, the impoverished Argentine plaintiffs lack alternatives to seek financial assistance to cover the costs of litigation in Germany.

'Instrument of the wealthy'

The court's decision provides a road map for corporate actors to further shield themselves from liability. Many corporations are already structured through a tangled and impenetrable web of subsidiaries that leaves plaintiffs without an effective remedy. The decision could even make it more difficult for domestic plaintiffs to hold a local corporation accountable if it is sufficiently sheltered by corporate presence in multiple states and operating through scaffolded subsidiaries.

Not surprisingly, the business community applauded the Daimler decision. But this case does not exist in a vacuum, and some observers are denouncing this evolving, aggressively pro-business jurisprudence evident in the federal judiciary. Last year, commenting on a study by the Minnesota Law Review that found that five U.S. conservative justices constituted half of the "top 10 most pro-corporate justices" in the last 50 years, Sen. Elizabeth Warren, D-Mass., criticized the "corporate capture of the federal courts," calling the Supreme Court "an instrument of the wealthy that regularly sides with the U.S. Chamber of Commerce."

Deficient global governance

The court’s willingness to restrict access to legal mechanisms in cases against large multinational companies occurs against the backdrop of inadequate mechanisms of global governance to hold corporations to account. Given the increasing power and economic might wielded by transnational firms, the international community has recognized the importance of filling this void. In 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights, which set out detailed standards designed to advance transparency and accountability mechanisms for businesses. But these principles are largely aspirational. Last September, an Ecuadorean delegationimplored the council to develop “a legally binding framework to regulate the work of transnational corporations and to provide appropriate protection, justice and remedy to the victims of human rights abuses” emanating from transnational business transactions.

A coalition of broad-based human rights groups, including the International Corporate Accountability Roundtable, are also advocating for evolving standards of corporate accountability. But resistance by business interests is fierce, and progress comes too late for many victims of human rights abuses.

In an increasingly globalized political and economic system, the court’s ruling in the Daimler case only further promotes corporate interests while limiting avenues of redress for corporate misconduct. And while it protects well-resourced and omnipresent corporations, it fails to advance the foundational principles of fair play and substantial justice for victims of human rights abuses whose efforts to seek justice are thwarted by the international community’s intransigence about adopting enforceable global standards on corporate governance.

Lauren Carasik is a clinical professor of law and the director of the international human rights clinic at the Western New England University School of Law.