On January 14, 2014, the U.S. Supreme Court released its decision in *Daimler AG v. Bauman,* holding that general personal jurisdiction, under which a corporation may be sued in a state regardless of whether the claim has any relationship to the state, may not be asserted over a foreign corporate parent based on the in-state conduct of one of its indirect subsidiaries. In overturning a decision from the Ninth Circuit that upheld the assertion of general personal jurisdiction based upon a broad agency test, the Supreme Court, reinforcing its recent decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown,* held that a foreign corporation may be subject to general personal jurisdiction in a forum only when its activities in the state are so continuous and systematic “as to render [it] essentially at home in the forum State.”

Importantly, the fact that a corporation has substantial activities within a forum is not itself sufficient to confer general personal jurisdiction over it, a holding contrary to many lower federal and state court holdings permitting general jurisdiction where a corporation is “doing business” in the state. Rather, even substantial activity within a forum will not confer general personal jurisdiction unless the corporation can be said to be “at home” there. Although the rule is not absolute, in general, a foreign corporation will be found to be “at home” and, therefore, subject to general personal jurisdiction only in the place where it is incorporated or where it has its principal place of business.

**Background**

The *Bauman* decision arose out of a lawsuit brought by twenty-two Argentine residents under the Alien Tort Statute, the Torture Victim Protection Act, and other state and local laws, seeking redress for human rights abuses allegedly committed or abetted in the 1970s by a wholly-owned subsidiary of Daimler AG (“*Daimler*”) in Argentina. Notwithstanding that the plaintiffs and defendants were all foreign, and that the conduct in question had nothing to

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do with the United States, the plaintiffs filed suit in federal court in California against, among others, Daimler, a German corporation.

The exercise of personal jurisdiction may be either specific (that is, related to a defendant’s activities within a forum) or general (that is, arising from any matter, even those unrelated to a defendant’s activities in the forum). Because the conduct at issue in the case had nothing to do with the United States, the plaintiffs could maintain their suit in California only if Daimler was subject to general personal jurisdiction there. Plaintiffs asserted exactly that, arguing that Daimler was subject to general personal jurisdiction in California based on the activities there of its indirect subsidiary, Mercedes-Benz USA LLC (“MBUSA”), an entity incorporated in Delaware with its primary place of business in New Jersey.

The trial court dismissed the action for lack of personal jurisdiction. After initially affirming the dismissal, on rehearing the Ninth Circuit reversed, holding that Daimler, which has no facilities or employees in California or the United States, was subject to general personal jurisdiction in the State of California based on the activities of MBUSA in the state. The court based its finding on a broad agency theory, holding that MBUSA was subject to general jurisdiction in the state and that MBUSA’s activities in the state were “sufficiently important” to Daimler that it would have performed the services in California itself if MBUSA did not perform those services for it. The Supreme Court granted certiorari to consider “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.”

**The Court’s Decision**

Reversing the Ninth Circuit, the Supreme Court held that Daimler’s slim contacts with California based on its relationship with MBUSA were not a sufficient basis to assert general personal jurisdiction over Daimler in the state. Writing for the Court, Justice Ginsburg dismissed the Ninth Circuit’s “less than rigorous” agency test. The Ninth Circuit’s test focused primarily on whether the activities of a foreign corporation’s in-state subsidiary were “important” to the foreign corporation, measured by whether the foreign corporation hypothetically would perform those services itself if the subsidiary did not exist. As framed by the Ninth Circuit, the inquiry would always militate in favor of exercising jurisdiction, because, presumptively, the fact that a corporation does something through an agent suggests that it would do so through other means if the agent were not available. Accordingly, the Ninth Circuit’s agency test rendered foreign corporations presumptively subject to general personal jurisdiction whenever they had an in-state subsidiary.³

³ Although not at issue in the case, in dicta the Supreme Court appears to approve the notion that general jurisdiction may be asserted based upon the acts of a subsidiary in cases where the in-state subsidiary is “so dominated by the [parent] as to be its alter ego.”
Importantly, the Court also rejected the plaintiffs’ contention that a corporation is subject to general jurisdiction wherever it “engages in a substantial, continuous, and systematic course of business,” a criteria primarily used to determine the propriety of exercising specific jurisdiction. If that test were upheld, then large corporations with (for example) substantial sales or operations in many states could be subject to general jurisdiction in each of those states. The Court held, however, that general jurisdiction does not depend solely on the “magnitude of the defendant’s in-state contacts,” but instead requires an appraisal of a corporation’s activities in their entirety, nationwide and worldwide, in order to determine in which jurisdiction(s) the corporation may be deemed “at home.” In general, the Court stated, a corporation will be deemed at home in the place where it is incorporated or where it has its principal place of business. Applying this precedent to Daimler, the Court held that it was in error to conclude that Daimler, even with MBUSA’s contacts attributed to it, was at home in California. Helpfully for non-U.S. corporations, the Court chided the Ninth Circuit for ignoring “the risks to international comity [as a result of] its expansive view of general jurisdiction,” referring to the international relations issues that could arise if United States courts purported to exercise general jurisdiction over foreign corporations even for conduct wholly unrelated to the United States. By limiting the circumstances under which foreign corporations may be subject to general personal jurisdiction in United States courts, the Court’s decision should enable foreign corporations to more reliably structure their operations with reasonable assurance as to where they will and will not be subject to general jurisdiction.
Conclusion

The Supreme Court’s decision in *Bauman* emphasizes that the bases on which a court may exercise general personal jurisdiction over a corporation are narrow. For foreign corporate parents, the presence of an in-state subsidiary that is subject to general jurisdiction does not automatically confer general jurisdiction over the parent corporation as well. The *Bauman* decision should provide not only a measure of predictability to jurisdictional determinations, but should also give significant comfort to foreign corporations, allowing them to predict with more certainty where they may be subject to general personal jurisdiction.