

Supreme Court to Hear Another ATS Case

Following on the heels of the Supreme Court's decision in *Kiobel* (highlighted here), the Court today granted certiorari in the case of *DaimlerChrysler AG v. Bauman, et al.* In granting cert., the Supreme Court will either resolve the cryptic reference in Chief Justice Roberts's opinion for the Court that "mere corporate presence" cannot suffice to avoid the presumption against extraterritoriality, or it might resolve the case purely on personal jurisdiction grounds. If the former, we will know significantly more about how much the ATS will be contracted. If the latter, we will know much more about agency and affiliate jurisdiction, which is an area of increasing importance in transnational litigation.

To be clear, here is the Question Presented in *Daimler*:

Daimler AG is a German public stock company that does not manufacture or sell products, own property, or employ workers in the United States. The Ninth Circuit nevertheless held that Daimler AG is subject to general personal jurisdiction in California—and can therefore be sued in the State for alleged human-rights violations committed in Argentina by an Argentine subsidiary against Argentine residents—because it has a different, indirect subsidiary that distributes Daimler AG-manufactured vehicles in California. It is undisputed that Daimler AG and its U.S. subsidiary adhere to all the legal requirements necessary to maintain their separate corporate identities. The question presented is 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.

While this case is before the Court on the personal jurisdiction question, the Court would, I think, also be able to decide the broader ATS question, assuming, as in *Kiobel*, the Court treats the question as one going to jurisdiction and not the merits.

In related ATS news, the Court today also vacated and remanded *Rio Tinto PLC, et al. v. Sarei, et al.* to the Ninth Circuit for further proceedings in light of the

Kiobel decision.