



MEDIA CONTACT: Misty Seemans, [EarthRights International](http://EarthRightsInternational.org), (302) 547-2076 (cell),
misty@earthrights.org

Human rights victims to seek justice before the U.S. Supreme Court: *DaimlerChrysler AG v. Bauman*

Human rights victims claiming that DaimlerChrysler played a role in the torture and murder of Mercedes-Benz workers during Argentina's "Dirty War" of the 1970s are headed to the U.S. Supreme Court. On Tuesday, October 15, 2013, the Court will decide in *DaimlerChrysler AG v. Bauman* whether the German carmaker can be sued in a U.S. court for allegedly reporting suspected political dissidents who worked in their plant to the abusive Argentinean military and security forces.

Background on the case

- **Facts of the original claim:**
The *Bauman* case involves claims by former employees and family members of deceased employees of the González Catán Mercedes-Benz plant in Argentina, who were violently kidnapped, tortured and otherwise disappeared, against DaimlerChrysler AG, a German corporation that wholly owns the plant. DaimlerChrysler's wholly owned subsidiary, Mercedes-Benz Argentina, and a number of its high ranking employees are accused of conspiring with, directing, and aiding and abetting state security forces to carry out egregious human rights violations during Argentina's "Dirty War."
- **Argentina's Dirty War and Mercedes-Benz Argentina's alleged role:**
The Dirty War was a period of terror in Argentina in the 1970s and 1980s, in which roughly 30,000 people were tortured, disappeared, or killed on suspicion of being "subversive," and who were often labor union members and organizers. Mercedes-Benz Argentina (MBA) is alleged to have identified workers at its plant as subversive to state security forces, knowing that as a result, those workers would be tracked down, kidnapped, tortured and often murdered. The police chief behind the raids of the plant, who oversaw the detention and torture of prisoners, was thereafter hired by MBA as its Chief of Security. The arrangement helped MBA silence union activists and keep the company's production levels normal.

Procedural history of the case

- **District Court:**
Plaintiffs brought suit in federal court in California in 2004, where DaimlerChrysler conducts business through a wholly owned subsidiary, Mercedes-Benz USA (MBUSA).

The claims were brought under two federal laws, the Alien Tort Statute and the Torture Victim Protection Act, and state law, alleging DaimlerChrysler should be held accountable for the acts of its subsidiary and that the suit was proper in California because DaimlerChrysler conducted substantial and systematic business in that state through its wholly owned subsidiary, MBUSA. Although technically “separate” corporate entities, MBUSA and DaimlerChrysler shared the same chairman; MBUSA sold cars solely for DaimlerChrysler; and DaimlerChrysler set prices for the cars and had authority over virtually all aspects of MBUSA’s operations. Moreover, all of MBUSA’s profits went to DaimlerChrysler.

- **Appeal:**
Initially, the district court dismissed the case in 2007, holding that the court didn’t have jurisdiction over DaimlerChrysler. The Ninth Circuit, however, reversed that decision in 2011, holding that a court may exercise general jurisdiction over a foreign corporation when one of its subsidiaries acts as its agent in the forum state, performing a role important enough that if the subsidiary went out of business or otherwise could not perform that role, the parent corporation would sell the product itself or through a new representative. The Ninth Circuit found that Mercedes-Benz USA acted as an agent for DaimlerChrysler in California, and jurisdiction was reasonable.
- **Supreme Court:**
DaimlerChrysler petitioned for review to the Supreme Court, arguing that the due process clause prevents a court from exercising jurisdiction over it on the basis of its U.S. subsidiaries, even where the subsidiary carries out the parent’s business, on the parent’s behalf, and for the parent’s benefit. The Supreme Court agreed in April to hear the case.

Issue before the Supreme Court

- 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.

What are the implications?

- **There is a disconcerting trend in the Supreme Court to rule in favor of corporations.**
 - The corporate winning streak in the Supreme Court has never been higher. In the first five years of the Roberts Court, business interests won 61 percent of the time, compared with 46 percent in the last five years of the Rehnquist Court, and 42 percent by all of the Supreme Court legacies since 1953. When corporations commit the worst of all crimes — human rights abuses — the Court should not immunize them from suit.

- **Post-Citizens United, if corporations have rights, they should also have responsibilities.**
 - In 2010, the Supreme Court held that corporations have First Amendment rights in *Citizens United v. FEC*. In *Bauman*, DaimlerChrysler, and the U.S. Chamber of Commerce in an *amici* brief, have gone so far as to argue that there is a *constitutional right* for a parent corporation to be treated as separate from its subsidiary — an argument that has never before been recognized, and is fundamentally at odds with the history of the corporate form — and, if accepted, could cast doubt on a significant number of foreign and state laws in fields as diverse as tax, pensions, and anti-trust.

- **Justice for human rights victims is at stake.**
 - Everyday, people’s lives are impacted by the actions of enormous multinational corporations operating around the world through a seemingly endless number of subsidiaries. When corporations like DaimlerChrysler work in tandem with brutal dictators, militaries and even terrorist organizations, playing a part in horrific human rights violations, they must be held to account. There are far-reaching implications of this case to ongoing conflicts, like in Syria and elsewhere, where corporations should know that collaborating with human rights abusers will not be tolerated.
 - The Supreme Court agreed to hear this case in April 2013, just after restricting the ability of victims of human rights abuse to bring suit against foreign corporations in federal court under the Alien Tort Statute (ATS) in *Kiobel v. Royal Dutch Shell Petroleum*. Like *Kiobel*, *Bauman* involves claims against a foreign corporation under the ATS for egregious human rights abuse that occurred outside the United States. But *Bauman* presents a much broader issue that could have a far more dramatic impact. While *Kiobel* addressed only the question of whether an ATS claim could be brought in a case involving foreign conduct, *Bauman* raises the question of when *any* claim can be brought against a foreign corporation.

- **A pro-DaimlerChrysler decision would hurt the competitive advantage of U.S. corporations.**
 - The Supreme Court’s decision could fundamentally change the ability of state and federal courts to assert jurisdiction over foreign corporations and give significant competitive advantages to foreign corporations operating in the United States. If the Court accepts DaimlerChrysler’s argument, it would give foreign multinational corporations an enormous advantage over domestic companies – the license to enjoy all the privileges of doing business in the United States with the guarantee that their operations will not be subjected to scrutiny by U.S. courts.

[Conrad & Scherer](#) has offices in the United States and Ecuador and represents clients with high quality legal services in the areas of commercial litigation, labor and employment law, personal injury, general liability, medical malpractice, health law, international law, and other areas of complex litigation. Conrad & Scherer Partner Terry Collingsworth is the lead attorney representing the *Bauman* plaintiffs.

[EarthRights International](#), is a Washington-D.C. based non-profit organization specializing in legal actions against perpetrators of human rights and environmental abuses, and which submitted [an amicus brief in this case](#).

The [International Corporate Accountability Roundtable](#) is a Washington-D.C. based coalition of human rights, environmental, labor, and development organizations that creates, promotes and defends legal frameworks to ensure corporations respect human rights in their global operations.