

Justices Raise Bar for Suing Foreign Companies

By ADAM LIPTAK

The Supreme Court on Tuesday **made it harder to sue foreign companies in American courts**, prompting a justice in a concurrence to accuse the majority of creating **“a new rule of constitutional law that is unmoored from decades of precedent.”**

In a second decision, the justices unanimously ruled that an antitrust case brought by Mississippi’s attorney general could not be moved from state court to federal court.

The first case, Daimler AG v. Bauman, No. 11-965, arose from abuses committed during **Argentina’s so-called Dirty War**, which occurred from 1976 to 1983. Twenty-two residents of Argentina, contending **that Daimler’s Argentine subsidiary had collaborated with state security services in killings, torture and other abuses, sued Daimler in California**. The suit was proper there, the plaintiffs said, in light of business conducted in the state by an American subsidiary of Daimler that was incorporated in Delaware.

The Supreme Court unanimously rejected the contention, though for sharply different reasons.

Justice Ruth Bader Ginsburg, writing for eight justices, said the link between what happened in Argentina and Daimler’s connections to California was too slender. Even assuming the American subsidiary could be sued in California for all purposes and its contacts with the state could be imputed to its corporate parent, Justice Ginsburg wrote, “there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler’s slim contacts with the state hardly render it at home there.”

“Exercises of personal jurisdiction so exorbitant, we hold, are barred by due process constraints,” she wrote.

The decision is the **latest in a series of cases cutting back on the ability of American courts to hear cases asserting corporate complicity in human rights abuses abroad**. In April, in Kiobel v. Royal Dutch Petroleum Company, **the court limited the sweep** of a 1789 law that had been used to address such abuses.

Justice Ginsburg wrote that Tuesday’s decision was informed by attentiveness to “risks to international comity” and “considerations of international rapport,” suggesting that it would be preferable to bring such suits where the conduct occurred or where the plaintiffs or defendants are primarily based.

In a concurrence, Justice Sonia Sotomayor said the majority’s analysis was “wholly foreign to our due process analysis.”

“In recent years, Americans have grown accustomed to the concept of multinational corporations that are supposedly ‘too big to fail’; today the court deems Daimler ‘too big for general jurisdiction.’” she wrote.

Still, she said that the result reached by the court was correct and that allowing the suit “would be unreasonable given that the case involves foreign plaintiffs suing a foreign defendant based on foreign conduct, and given that a more appropriate forum is available.”

Justice Ginsburg responded that this approach lacked a governing principle and that Justice Sotomayor “favors a resolution fit for this day and case only.”

Justice Sotomayor wrote that the majority’s approach, which took account of the proportion of the American subsidiary’s sales in California, was novel, wrong and counterproductive.

“The majority announces the new rule,” she wrote, “that in order for a foreign defendant to be subject to general jurisdiction, it must not only possess continuous and systematic contacts with a forum state, but those contacts must also surpass some unspecified level when viewed in comparison to the company’s ‘nationwide and worldwide’ activities.”

Justice Sotomayor said this would “produce deep injustice” in four ways. It will, she said, cut back on the ability of states to adjudicate disputes involving companies that do substantial business within their borders. It will put small, local businesses at a disadvantage. It will treat individuals and companies differently. And it will, she concluded, “shift the risk of loss from multinational corporations to the individuals harmed by their actions.”