

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 15- 1149

NOV 30 2015

STATE OF WEST VIRGINIA ex rel. FORD MOTOR COMPANY,

Petitioner,

v.

The HONORABLE WARREN R. MCGRAW, Judge of the Circuit Court of Wyoming County  
and DANNY S. WELLMAN, Administrator of the Estate of Jarred S. Wellman, Deceased,

Respondents.

**BRIEF OF THE WEST VIRGINIA CHAMBER OF COMMERCE,**

*AMICUS CURIAE*

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## **STATEMENT OF IDENTITY OF THE *AMICUS CURIAE***

The West Virginia Chamber of Commerce (“Chamber” or “West Virginia Chamber”) is celebrating its 79<sup>th</sup> year as the voice of business in West Virginia. The Chamber plays a major role in key issues facing the State, including education, economic development, and workforce preparedness. Chamber members are found throughout West Virginia and employ over half of the State’s workforce.

The West Virginia Chamber promotes the business viewpoint in the shaping of public policy, with the goal of ensuring West Virginia’s future as one that is economically prosperous, educationally competitive, and environmentally responsible. To this end, the West Virginia Chamber regularly files *amicus curiae* briefs in state courts on issues of interest to the business community.

The West Virginia Chamber appears as *amicus* in this matter to explain why the Circuit Court’s decision is incompatible with U.S. Supreme Court precedent and threatens significant harm to all businesses, large and small.

## **ARGUMENT**

This Court should reverse the decision below because—if not corrected—that ruling will open the doors of this State’s courthouses to lawsuits filed by out-of-State citizens against out-of-State corporations that have nothing to do with West Virginia. West Virginia should not allow itself to become a magnet jurisdiction for such litigation.

Moreover, the Circuit Court’s decision violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. In *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014), the U.S. Supreme Court held that “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there.” The Court explained that there are only

two locations with which a corporate defendant ordinarily possesses a sufficient affiliation: its state of incorporation and the state containing its principal place of business. *Id.* Indeed, the Court held that a corporation could be subject to general jurisdiction in another state only in “an exceptional case” where its operations are “so substantial and of such a nature as to render the corporation *at home* in that State.” *Id.* at 761 n.19 (emphasis added).

Under that stringent due process test, Ford is not subject to general jurisdiction in West Virginia. The Circuit Court’s reasoning, by contrast, would declare Ford (and just about every other large company) “at home” not just in West Virginia but everywhere. The decision below must therefore be reversed.

**I. THE CIRCUIT COURT’S HOLDING THAT FORD IS SUBJECT TO GENERAL JURISDICTION IN WEST VIRGINIA DIRECTLY CONFLICTS WITH BINDING U.S. SUPREME COURT PRECEDENT**

The Circuit Court held that Ford is subject to general personal jurisdiction in West Virginia. General jurisdiction permits courts to adjudicate claims against a defendant arising out of actions occurring outside the forum state. Because of its extraordinary reach, general jurisdiction ordinarily may be exercised over a defendant only by those states in which the defendant is paradigmatically “at home”—its state of incorporation and the state of its principal place of business. *Daimler*, 134 S. Ct. at 760. Ford, which is incorporated in Delaware and has its principal place of business in Michigan, is not “at home” in West Virginia under *Daimler*.

The Circuit Court held that Ford was subject to general jurisdiction simply by virtue of the fact that it is a “global operation” that “do[es] business in West Virginia.” Circuit Court Order at 2-3.<sup>1</sup> But although *Daimler* left open the possibility that a corporation could be at home

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<sup>1</sup> The Circuit Court also purported to rely on several provisions of the West Virginia Constitution. But even if the West Virginia Constitution permitted general jurisdiction in these circumstances (which *amicus* does not address here), the Due Process Clause of the Fourteenth Amendment to the U.S.

outside its state of incorporation and principal place of business in an “exceptional case,” 134 S. Ct. at 761 n.19, it explicitly *rejected* the argument that the mere fact that a corporation does business in a State is sufficient to make it “at home” there for general jurisdiction purposes.

In *Daimler*, the plaintiffs argued that Daimler AG, a German automaker, was subject to general jurisdiction in California, despite not being incorporated or having its principal place of business there, because they believed that general jurisdiction should be available “in every State in which a corporation engages in a substantial, continuous, and systematic course of business.” *Daimler*, 134 S. Ct. at 761 (internal quotation marks omitted). But the U.S. Supreme Court rejected “[t]hat formulation” of the general jurisdiction standard as “unacceptably grasping.” *Id.*

The Court explained that general jurisdiction does not exist in every jurisdiction where a defendant’s sales happen to be sizable. *Id.* Rather, it held, general jurisdiction is a relative inquiry that “calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide. *A corporation that operates in many places can scarcely be deemed at home in all of them.*” *Id.* at 762 n.20 (emphasis added).

Thus, the Court warned, it is an “obsolescing notion” to confer jurisdiction “based on nothing more than a corporation’s ‘doing business’ in a forum.” *Id.* at 756 n.8. Instead, the Court held, a corporation can be found to be at home outside its state of incorporation or its principal place of business only in extremely narrow circumstances, such as where a dramatic shift in the company’s operations has caused its de facto headquarters to differ from its nominal one.<sup>2</sup>

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Constitution, as interpreted by *Daimler*, would override that state-law rule. *See* U.S. Const. art. VI, cl. 2 (“This Constitution . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”).

<sup>2</sup> Indeed, the sole example of such an “exceptional case” cited in *Daimler* was *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), where a nonresident corporation had relocated its headquarters and operations to Ohio while its country of incorporation and nominal headquarters, the Philippines, was occupied by the Japanese army. *See Daimler*, 134 S. Ct. at 761 n.19 (citing *Perkins*, 342

The Circuit Court’s holding that Ford is subject to general jurisdiction in West Virginia is in direct conflict with *Daimler*. Although Ford does a certain amount of business in West Virginia, that fact is plainly insufficient to make it “at home” here; *Daimler* held that Daimler was not “at home” in California even though Daimler’s subsidiary had several facilities in California and California accounted for 10% of Daimler’s U.S. sales (*id.* at 752); Ford’s operations in West Virginia do not rise even close to that level. Nor are any other “exceptional” circumstances present that indicate that West Virginia has somehow become Ford’s de facto corporate home.

Moreover, if Ford were subject to general jurisdiction everywhere it does business, it would be subject to personal jurisdiction in *every* state. That result would be plainly inconsistent with *Daimler*’s clear holding that “[a] corporation that operates in many places can scarcely be deemed at home in all of them.” *Id.* at 762 n.20.

Indeed, the Circuit Court’s decision is in such clear tension with *Daimler* that it can only be the result of the court’s disregarding that decision, whether intentionally or not.<sup>3</sup> But irrespective of the reasoning behind the lower court’s decision, it must be reversed: the unmistakable import of *Daimler* is that Ford is not subject to general jurisdiction in West Virginia.

## **II. THE CIRCUIT COURT’S DECISION WILL HAVE DELETERIOUS EFFECTS ON THE STATE AND ITS ECONOMY**

It is imperative that this Court correct the Circuit Court’s error. If permitted to stand, the decision below will greatly expand the scope of general personal jurisdiction in West Virginia,

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U.S. at 447-48). The *Daimler* Court held that in those extraordinary circumstances, Ohio was properly “considered a surrogate for the place of incorporation or head office.” *Id.* at 756 n.8.

<sup>3</sup> The Circuit Court’s emphasis on Ford’s “globe” logo—which has no legal significance whatsoever—is strong evidence that the court paid *Daimler* little heed.

making it far less attractive for out-of-state corporations to operate in the State and increasing the burden on the State's court system. It will thereby impose serious costs on the State and its citizens.

The due process limits on personal jurisdiction confer “a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). A corporation's place of incorporation and principal place of business—the jurisdictions in which it is subject to general jurisdiction under *Daimler*—“have the virtue of being unique.” *Daimler*, 134 S. Ct. at 760. “[T]hat is, each ordinarily indicates only one place”—a forum that is “easily ascertainable.” *Id.* *Daimler*'s rule thus allows corporations to predict that they will be subject to general jurisdiction in only a few (usually one or two) well-defined jurisdictions. This “[p]redictability . . . is valuable to corporations making business and investment decisions.” *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

Permitting general jurisdiction based on the Circuit Court's expansive notion of “doing business” would destroy that predictability, making it impossible for corporations to structure their affairs to limit the number of jurisdictions in which they can be haled into court on any claim by any plaintiff residing anywhere. Many corporations do some amount of business in a large number of states; thus, if merely doing business in a forum were deemed sufficient to give rise to general jurisdiction, a corporation could be sued throughout the country on claims arising from anywhere. “Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants” to structure their affairs to provide some assurance regarding where a

claim might be asserted. *Daimler*, 134 S. Ct. at 761-62. Indeed, a corporation would be completely unable to predict where any particular claim might be brought.

If companies were required to face all-purpose liability merely by virtue of their doing business in West Virginia, any rational business would have little choice but to reconsider the benefits of investing in West Virginia—and creating West Virginia jobs—when balanced against a substantial risk of litigation covering all claims arising anywhere in the world. Nonresident companies already operating in West Virginia would have to reexamine their operations and sales, and companies planning new investment in West Virginia would have to reconsider those plans in light of their jurisdictional implications.

Put simply, to exercise general jurisdiction over Ford based solely on its having operations and sales in West Virginia would be to declare open season on nonresident companies doing business in the state. The likeliest consequence would be the flight of jobs and capital away from West Virginia while new investment in the State is deferred. And even companies that chose to remain in West Virginia might well have to pass on their increased legal costs to consumers, creating a new burden on West Virginia residents.

Expanding general jurisdiction to all corporations that “do business” in West Virginia would also impose significant new burdens on the State’s court system. Welcoming cases to West Virginia that lack any connection to this State would distort and impair the justice system and encourage limitless forum-shopping by out-of-state plaintiffs. When faced with an overwhelming influx of out-of-state plaintiffs with out-of-state cases, the West Virginia courts will become less able to deliver justice—both to in-state plaintiffs with claims properly brought here and to defendants who never should have been sued here.

\* \* \*

In sum, the Circuit Court's decision is irreconcilable with the U.S. Supreme Court's rulings regarding the federal due process limits on general personal jurisdiction, and the potential consequences of the lower court's decision are a cause of great concern for West Virginia, its citizens, and all of the out-of-state businesses that participate in West Virginia's economy. It is therefore vital that this Court reverse the decision below and clarify that corporations can do business in this State without automatically making themselves subject to suit here for claims arising far from West Virginia.

### CONCLUSION

The Circuit Court's order denying Ford Motor Company's motion to dismiss should be reversed.

Respectfully submitted this 20<sup>th</sup> day of November, 2015.

THE WEST VIRGINIA CHAMBER OF  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of November, 2015, true and accurate copies of the foregoing "**Brief of the West Virginia Chamber of Commerce, *Amicus Curiae***" were deposited in the U.S. Mail contained in postage-paid envelopes addressed to counsel for all other parties to this appeal as follows:

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