

Del. High Court Sets Example For Revisiting Daimler

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In the first decision of its kind since the U.S. Supreme Court's 2014 opinion in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), the Delaware Supreme Court revisited whether registering to do business in Delaware constitutes consent, and thereby subjects corporations to general personal jurisdiction in the state. In *Genuine Parts Co. v. Cepec*, No. 528, 2015, (Del. Apr. 18, 2016), the Delaware Supreme Court revisited and modified a prior decision and held that compliance with the state's corporate registration statute alone is not a sufficient basis for general jurisdiction. Prior to *Daimler*, several states, including Delaware, had held that corporations consented to jurisdiction by registering to do business in the state. *Genuine Parts*, the first decision by a state supreme court on the issue, may serve as an example for other states to revisit their previous holdings on consent-by-registration theories on personal jurisdiction.

Nearly 30 years ago, the Delaware Supreme Court's leading decision on the issue of consent-based jurisdiction was *Sternberg v. O'Neil*, 550 A.2d 1105 (Del. 1988), where it held that a non-Delaware corporation that was duly registered to do business in the state as a foreign corporation, and was therefore required to appoint an agent to receive service of process in the state, had consented to general jurisdiction in Delaware courts. *Id.* at 1109. The court reasoned that "express consent is a valid basis for the exercise of general jurisdiction in the absence of any other basis for the exercise of jurisdiction" and interpreted Delaware's corporate registration statute as requiring such consent. The court, however, also found that the defendant had sufficient contacts with the state to justify the exercise of specific jurisdiction. *Id.* at 1124-25.

The U.S. Supreme Court's landmark 2014 decision in *Daimler* clarified the scope of general personal jurisdiction as it applies to corporations. The court held that a corporation is only subject to general personal jurisdiction — and thus may be sued without reference to the sufficiency of its contacts with a forum — if it is "at home" in the state. *Daimler*, 134 S. Ct. at 751. The "paradigm" fora in which a corporation is said to be "at home," the court explained, are its place of incorporation and its principal place of business because they are "unique" and "easily ascertainable." *Id.* at 760. The *Daimler* decision did not, however, address whether a corporation consents to general personal jurisdiction by registering to do business in a state.[1]



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In light of *Daimler*, the Delaware Supreme Court revisited the *Sternberg* holding in *Genuine Parts Co. v. Cepec*, No. 528, 2015, (Del. April 18, 2016). In *Genuine Parts*, the plaintiff sued a Georgia corporation in Delaware and asserted personal jurisdiction on the basis that, pursuant to *Sternberg*, the trial court had general personal jurisdiction over the company because it was registered as a foreign corporation and had appointed an agent for the service of process in the state. *Id.* at *1. The court found its prior holding in *Sternberg* to be in tension with *Daimler*, although *Daimler* did not involve issues of consent.

“[A]fter *Daimler*,” the Delaware Supreme Court held, “it is not tenable to read Delaware’s registration statutes as *Sternberg* did” — that simply by complying with the registration statute and appointing an agent for service of process, a corporation consents to general personal jurisdiction in the state. *Id.* The court held that the crux of the question was whether the “exercise of personal jurisdiction [is otherwise] consistent with the Due Process Clause of the Fourteenth Amendment,” not just whether a corporate registration statute can be construed as requiring some form of consent to jurisdiction. *Id.* at *2. The court then explained that unless Delaware is the place of incorporation or principal place of business of the defendant corporation, “[i]n most situations ... Delaware cannot exercise general jurisdiction over the foreign corporation.” *Id.*

The Delaware Supreme Court also cited to policy considerations in support of its decision, calling consent-by-registration an “unreasonable toll simply for the right to do business” in a state. *Id.* at *3. The court explained that “businesses select their states of incorporation and principal places of business with care” and must be able to structure their affairs in a way that provides them with advance notice as to where they might be subject to general personal jurisdiction. *Id.* The court emphasized that “we have long ago become a truly national — even international — economy, and the ability of foreign corporations to operate effectively throughout our nation is critical to our nation’s economic vitality and ability to create jobs.” *Id.* at *10. Because of the now-interconnected nature of the economy, the court noted that the protections animating the *Sternberg* decision — ensuring that states can provide a forum for the redress of harms by corporations — are no longer an important concern, because we no longer “live in a time when states have no effective bases to hold foreign corporations accountable for their activities within their borders.” *Id.*

Cognizant of its status as a leader in commercial law, the court noted that if it held that simple compliance with the Delaware registration statute constituted consent to general personal jurisdiction, it would “also encourage other states to do the same” and that Delaware “has a strong interest in avoiding overreaching in this sensitive area.” *Id.* at *14. The court emphasized that a contrary holding would mean that “major Delaware public corporations with national markets could be sued by ... stockholders on an internal affairs claim in any state in the nation because the corporations have had to register to do business in every state.” *Id.*

While Delaware appears to be the first state supreme court since *Daimler* to revisit a prior holding that compliance with a registration statute represents consent to general personal jurisdiction, many other state supreme courts are likely to do so in the future.[2] Indeed, several state courts, like *Sternberg*, have previously interpreted compliance with their registration statutes as constituting consent to general personal jurisdiction. See, e.g., *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 111 N.E. 1075 (N.Y. 1916); *Confederation of Canadian Life Insurance Co. v. Vega y Arminan*, 144 So. 2d 805 (Fla. 1962); *Mittelstadt v. Rouzer*, 328 N.W.2d 467 (Neb. 1982); *Rykoff-Sexton Inc. v. American Appraisal Associations Inc.*, 469 N.W.2d 88 (Minn. 1991); *Allstate Insurance Co. v. Klein*, 422 S.E.2d 863 (Ga. 1992); *Werner v. Wal-Mart Stores Inc.*, 861 P.2d 270 (N.M. 1993); *Merriman v. Crompton Corp.*, 282 Kan. 433 (Kan. 2006). The impact of *Daimler* on these holdings is currently pending before at least one other state supreme court, in Oregon. See *Figueroa v. BNSF Railway Co.*, No. S063929 (Or.). Other states have

previously interpreted their corporate registration statutes in the opposite direction — that is, as not conferring general personal jurisdiction over a corporation. See, e.g., *Wainscott v. St. Louis-S.F. Ry. Co.*, 351 N.E.2d 466 (Oh. 1976); *Freeman v. Second Judicial District Court ex rel. County of Washoe*, 1 P.3d 963 (Nev. 2000); see also *Genuine Parts*, (noting that “[n]othing in the registration statutes explicitly says that a foreign corporation registering thereby consents to the personal jurisdiction of this state.”)

Some states have specified via statute the jurisdictional import of registering to do business in the state. The majority of states to have addressed the issue through legislation have done so to clarify that mere compliance with registration requirements does not constitute consent to general personal jurisdiction. See Ark. Code Ann. § 4-20-115; D.C. Code § 29-104.02; Idaho Code § 30-21-414; Me. Rev. Stat. Ann. tit. 5 § 115; Miss. Code Ann. § 79-35-15; Mont. Code Ann. § 35-7-115; N.D. Cent. Code § 10-01.1-15; S.D. Codified Laws § 59-11-21; Utah Code Ann. § 16-17-401. Notably, Pennsylvania has taken the opposite approach — its statute expressly states that registering to do business in Pennsylvania will subject a corporation to general personal jurisdiction there. 42 Pa. Cons. Stat. Ann. § 5301. New York is also considering a bill that would explicitly equate registration to do business in the state with consent to personal jurisdiction. See 2015 New York Senate Bill No. 4846.

Regardless of the outcome of these cases and legislative proposals, the Supreme Court’s holding in *Daimler* has provided many states with the opportunity to revisit their positions on the interplay between corporate registration to do business and general personal jurisdiction. Accordingly, this area of law is likely to see much activity in the near future, and corporate defendants being sued under a theory of general personal jurisdiction should consider challenging that theory if the forum is not one where they are truly “at home.”

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DISCLAIMER: Gibson Dunn represented Daimler before the U.S. Supreme Court in Daimler AG v. Bauman.

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[1] Before *Genuine Parts* but post-*Daimler*, federal courts interpreting Delaware’s registration statutes issued conflicting rulings on this issue. Compare *AstraZeneca AB v. Mylan Pharms., Inc.*, 72 F. Supp. 3d 549, 556 (D. Del. 2014) (no general personal jurisdiction), with *Acorda Therapeutics, Inc. v. Mylan Pharms. Inc.*, 78 F. Supp. 3d 572, 588-89 (D. Del. 2015) (consent to general personal jurisdiction).

[2] The Supreme Court of Tennessee recently discussed the issue of consent jurisdiction, but it did not rule on the issue because it was not properly before the court on appeal. See *First Cmty. Bank, N.A. v. First Tenn. Bank, N.A.*, -- S.W.3d --, (Tenn. Dec. 14, 2015).