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Delaware Supreme Court Holds That Business Registration Does Not Constitute Consent to General Personal Jurisdiction

On April 18, 2016, the Delaware Supreme Court held that corporations not incorporated in Delaware that register to do business in that state are not subject to the “general” jurisdiction of the Delaware courts. In *Genuine Parts Co. v. Cepec*, the Court held that under the U.S. Constitution, Delaware’s business registration statute cannot be read to constitute a “consent”

to general jurisdiction by out-of-state corporations. Business conduct in Delaware leading to a claim – and not just registration to do business – is now the key to the Delaware courthouse door for plaintiffs seeking to sue in that forum. As one of the most important jurisdictions addressing claims against business entities, Delaware now joins the growing list of states that will refuse to adjudicate cases arising out of business activity conducted elsewhere, and that has nothing to do with the forum state.

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The “Consent By Registration” Theory of General Jurisdiction

Every U.S. state requires companies organized elsewhere to register to do business and to appoint an agent for service of process as a condition to conducting business operations in the state. “Foreign” corporation registration statutes have been a means to control corporate activity in the state, and to provide a basis for taxation of business operations or otherwise generate fee income. Those statutes have also served as a jurisdictional hook through which state courts could exercise jurisdiction over “foreign” corporations. State registration statutes either explicitly provide that registration constituted “consent” to jurisdiction in the state, or have been interpreted to imply “consent” to be sued there. Whether express or implied, that consent was held to be the basis for “general” jurisdiction over business entities for acts committed anywhere, in contrast to “specific” jurisdiction for acts with direct and tangible connections to the forum state.

In 2014, the U.S. Supreme Court dramatically altered the jurisdictional landscape by ruling that a state ordinarily may exercise “general” jurisdiction only over corporations considered “at home” in a state. In *Daimler AG v. Bauman*, the Supreme Court held that, as a matter of due process, and subject only to rare circumstances it did not describe, a state may subject a corporation to general jurisdiction only where the corporation is incorporated or has its principal place of business. *Daimler* represented a tectonic shift in the Court’s theory of general jurisdiction. The Court interpreted its prior description of “general” jurisdiction – which required a “substantial, continuous, and systematic course of business in a state” – to mean either incorporation or the location of a corporation’s principal headquarters.

Daimler’s holding threatened to dramatically limit plaintiffs’ ability to sue corporations where they wanted by foreclosing suits that invoked “general” jurisdiction for acts committed anywhere. In *Daimler’s* wake, a plaintiff presumably had to sue a corporation where it was “at home” by virtue of incorporation or headquarters, or invoke “specific” jurisdiction by alleging conduct tied directly to the favored forum. To avoid that effect on favorable forum shopping, plaintiffs have increasingly contended that the “consent” to jurisdiction provided by state registration statutes supplied a basis for “general” jurisdiction and the escape hatch from *Daimler*. Courts have split on whether this gambit can succeed.

Delaware Rejects “General” Jurisdiction Forum Shopping

In *Genuine Parts*, the Delaware Supreme Court weighed in on the issue and rejected the notion that plaintiffs could use Delaware courts to resolve disputes arising elsewhere just because the corporate defendant registered to do business in Delaware.

The case arose when two residents of Georgia sued a corporation – organized under Georgia law and headquartered in Atlanta – in the Delaware Superior Court on asbestos-related claims. They alleged that by registering to do business in Delaware, the corporation consented to the general jurisdiction of the Delaware courts. Relying on the Delaware Supreme Court’s 1988 decision in *Sternberg v. O’Neil*, which interpreted Delaware’s requirement to appoint an agent for service of process as a “consent” to jurisdiction, the Superior Court agreed to hear the case.

The Delaware Supreme Court reversed. In an *en banc* ruling, the court held that reading the foreign corporation registration statute as a “consent” to jurisdiction would enlarge Delaware courts’ jurisdiction beyond the reach of the U.S. Constitution and “collide[] directly” with *Daimler*. According to the court, extending Delaware courts’ authority based on registration to do business would constitute an “unacceptably grasping” and “exorbitant” exercise of jurisdiction, permitting foreign corporations to be sued even in “cases having nothing at all to do with [their] activities in or event directed towards Delaware.” In the view of the Delaware Supreme Court, granting such a broad authority to sue in Delaware was flatly inconsistent with the limited view of “general” jurisdiction espoused in *Daimler*.

Looking Ahead

In our view, the Delaware Supreme Court in *Genuine Parts* got it right. Subjecting corporations to suits in states for conduct having nothing to do with those states just because they are registered to do business means jurisdiction is limitless. And that would afford plaintiffs unfettered freedom to shop for the most favorable forum.

But the issue is still being tested in other courts. Indeed, Ropes & Gray is now handling matters addressing the problem in the Second Circuit Court of Appeals for a major retailer under New York’s registration statute, as well as in Kansas on behalf of an investment bank. *Genuine Parts* is certainly a step in the right direction. The decision already means that Delaware is off the list of states in which plaintiffs can sue non-Delaware corporations for conduct elsewhere. And it is an important opinion from an important state to which judges in other states are likely to pay attention. If the Delaware Supreme Court’s reasoning in *Genuine Parts* is adopted by other judges in other states, it can have the effect of sharply curtailing the expansive view of “general” jurisdiction based on registration that the plaintiffs’ bar has advocated in *Daimler*’s wake. That will confine *Daimler* to its intended meaning, and shrink the risk that business entities can be haled into court before hostile tribunals.