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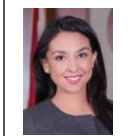
In October 2015, this newsletter examined court decisions finding that a corporation is subject to general jurisdiction simply by registering to do business in the state. This article examines subsequent decisions from both federal and state courts, of which a majority conclude that consent jurisdiction by registration is inconsistent with Daimler.

General Jurisdiction via State Registration Statute – Consistent with *Daimler*? – Part II

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Introduction

The October 2015 IADC Transportation newsletter examined the post-*Daimler* cases in which some courts continued to find that a corporation is subject to general jurisdiction simply by registering to do business in the state, as required by state statute. Since then, there has been some dissension amongst both federal and state courts as to whether or not consent by business registration and appointment of a registered agent is a proper basis for establishment of general personal jurisdiction. Ultimately, though, a majority of the courts addressing this issue have concluded that consent by registration does not fit within the constitutional strictures for conferring general personal jurisdiction after *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014).¹

New Legal Developments

The question of whether a state's business registration statute creates consent-based general jurisdiction has been taken up by a number of federal and state courts and rejected on constitutional grounds. In *Brown v. Lockheed Martin Corp.*,² the Second Circuit noted that the Supreme Court's analysis in *Goodyear*³ and *Daimler* "suggests that federal

due process rights likely constrain an interpretation that transforms a run-of-the-mill registration and appointment statute into a corporate 'consent' ... to the exercise of general jurisdiction."⁴ The Second Circuit did not reach that issue, though, because it ultimately concluded that the registration statute at issue did not require the defendant to consent to general jurisdiction in exchange for the right to do business in the state.⁵ In reaching that holding, the Second Circuit examined the history of registration statutes and concluded they were almost always intended to confer no more than specific jurisdiction:

Business registration statutes such as Connecticut's were enacted primarily to allow states to exercise jurisdiction over corporations that, although not formed under its laws, were transacting business within a state's borders and thus potentially giving rise to state citizens' claims against them. The jurisdiction thus created—subject to satisfaction of certain procedural and other requirements—is now generally known as “specific” personal jurisdiction.⁶

¹ When the Delaware Supreme Court held that the state's business registration statute cannot be construed as a consent to general jurisdiction, the court noted, “the majority of federal courts that have considered the issue ... after *Daimler* have taken the position that we adopt.” See *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 145, 145 n.119 (Del. 2016) (citing *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016); *U.S. Bank Nat. Ass'n v. Bank of Am., N.A.*, 2015 WL 5971126 (S.D. Ind. Oct. 14, 2016) (not reported); *Pitts v. Ford Motor Co.*, 127 F.Supp.3d 676 (S.D. Miss. 2015); *Keeley v. Pfizer Inc.*, 2015 WL 3999488 (E.D. Mo. July 1, 2015) (not reported); *Neeley v. Wyeth LLC*,

2015 WL 1456984 (E.D. Mo. March 30, 2015) (not reported); *McCourt v. A.O. Smith Water Products Co.*, 2015 WL 4997403 (D. N.J. Aug. 20, 2015) (not reported); *Chatwal Hotels & Resorts LLC v. Dollywood Co.*, 90 F.Supp.3d 97 (S.D. N.Y. 2015); *Hazim v. Schiel & Denver Publishing Ltd.*, 2015 WL 5227955 (S.D. Tex. Sept. 8, 2015) (not reported)).

² 814 F.3d 619 (2d Cir. 2016).

³ *Goodyear v. Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

⁴ *Brown*, 814 F.3d at 637.

⁵ *Id.* at 641.

⁶ *Id.* at 632 (citations omitted).

After *Brown*, the Delaware Supreme Court was presented with the issue of whether Delaware may exercise general jurisdiction over a foreign corporation that has complied with the state's business registration statute. In *Genuine Parts Company v. Cepec*, the court applied *Daimler* in finding that a corporation's compliance with the registration statute only requires a foreign corporation to allow service of process to be made upon it in the state, and the statute does not provide consent to general jurisdiction.⁷ The court noted, "a foreign corporation would have the protection of the Due Process Clause if a plaintiff tried to use [the registration statute] by suing the corporation for a cause of action that was not addressed by the long-arm statute."⁸ Interestingly, the Delaware Supreme Court acknowledged itself as "the home of a majority of the United States' largest corporations" and discussed important policy considerations behind a limitation on general jurisdiction over corporate defendants.⁹ "Our citizens benefit from having foreign corporations offer their goods and services here. If the cost of doing so is that those foreign corporations will be subject to general jurisdiction in Delaware, they rightly may choose not to do so."¹⁰ Further, the court noted that allowing general jurisdiction in any state where a corporation is registered to do business would create a "disproportionate toll on commerce," which is itself constitutionally problematic.¹¹

At the time the Delaware Supreme Court reached its decision in *Genuine Parts*, a number of courts across the country were reaching similar decisions. For example, a Missouri state court held that Missouri's registration statutes must be read as requiring corporations to appoint a registered agent to accept service of process, "but are not commensurate with ... broad consent to personal jurisdiction in *any* cause of action."¹² Instead, any exercise of general jurisdiction must be consistent with the Due Process considerations envisioned by the *Daimler* court. In that action, the court dismissed plaintiff's claims for lack of personal jurisdiction and certified the matter for appeal. Currently, the case is pending in the Missouri Court of Appeals for the Western District, and the result should provide some caselaw in what the circuit court described as an "unsettled issue in Missouri post-*Daimler*."

Furthermore, in *Beard v. Smithkline Beecham Corp.*, the U.S. District Court of the Eastern District of Missouri held that the appointment of a registered agent in Missouri is not enough to establish personal jurisdiction because "more substantial contacts are required to hale a litigant into the court's forum."¹³ The reasoning in *Beard* was applied again by the same district court in *Addelson v. Sanofi, S.A.*, holding a corporate defendant does not consent to jurisdiction in a state because they have registered to do business in that state.¹⁴ In *Addelson*, the court noted that many states require businesses to register with the

⁷ 137 A.3d at 142.

⁸ *Id.*

⁹ *Id.* at 143.

¹⁰ *Id.* at 142.

¹¹ *Id.* at 143.

¹² *Madlock v. Westar Energy, Inc.*, No. 1516-CV18173, Jackson County Circuit Court (April 29, 2016).

¹³ No. 4:15-cv-1833, 2016 WL 1746113, at *2 (E.D. Mo. May 3, 2016).

¹⁴ No. 4:16-cv-01277, 2016 WL 6216124, at *4 (E.D. Mo. Oct. 25, 2016).

secretary of state and maintain a registered agent.¹⁵ “If these requirements create jurisdiction, national companies would be subject to suits in almost every state in the country. This would not comport with the principles of personal jurisdiction the Supreme Court established in *Daimler*.”¹⁶ Accordingly, the court held that compliance with the state’s business registration statutes does not create personal jurisdiction.

In addition to finding that imposing general jurisdiction via registration statutes is a violation of Due Process, there is an argument for another constitutional restriction: the Dormant Commerce Clause. *In re Sygenta AG MIR 162 Corn Litigation*, presented the U.S. District Court for the District of Kansas with the question of whether giving effect to consent jurisdiction by registration violates the Dormant Commerce Clause.¹⁷ Following a case from the Supreme Court of the United States, the court concluded that giving effect to consent jurisdiction under the registration statute “discriminates against interstate commerce in practical effect, and thus is invalid under the Commerce Clause.”¹⁸

Even though a majority of federal and state courts have held that general jurisdiction cannot be imposed by a business registration statute, some courts have held otherwise. However, some of those cases can be distinguished based on the language of the particular statute at issue. For example, in *Bors v. Johnson & Johnson*, the U.S. District Court for the Eastern District of Pennsylvania

found that it was proper to exercise general jurisdiction because the defendant registered to do business in the state.¹⁹ The statute at issue, though, specifically notified registrants that the effect of registering under the statute “shall constitute a sufficient basis of jurisdiction to enable the tribunals [of Pennsylvania] to exercise **general personal jurisdiction**” over the registrants.²⁰ Thus, the Pennsylvania statute specifically addresses general personal jurisdiction while many other business registration statutes do not. This consent jurisdiction in Pennsylvania is not without limitation, though. In *George v. A.W. Chesterton Co.*, the U.S. District Court for the Western District of Pennsylvania found that a defendant’s registration to do business in Pennsylvania only provides a basis for exercising jurisdiction when the alleged injury occurred during a time the defendant was registered to do business.²¹ Stated differently, a defendant can only be subjected to personal jurisdiction on the basis of the registration statute, if the alleged cause of action occurred during a time the defendant was actually registered under the statute.

Both federal and state decisions show that a majority of courts have applied *Daimler* as a strong limitation on general jurisdiction, but this may not be the case in every court. In *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, an Illinois appellate court found that the plaintiff established general jurisdiction over a nonresident defendant by showing that defendant has a warehouse in Illinois and that the defendant has registered

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 2016 WL 2866166, at *4 (D. Kan. May 17, 2016).

¹⁸ *Id.* at *5 (citing *Davis v. Farmers’ Co-operative Equity Co.* 262 U.S. 312 (1923)).

¹⁹ 2016 WL 5172816, at *4 (E.D. Pa. Sept. 20, 2016).

²⁰ *Id.* at *2.

²¹ 2016 WL 4945331, at *3 (W.D. Pa. Sept. 16, 2016).

to do business in Illinois.²² The court concluded that this is sufficient to show that “defendant has affiliations with Illinois that are ‘so continuous and systematic’ as to render it essentially ‘at home’ in Illinois.”²³ While this is a departure from what is going on in federal and state courts across the country, it is worth noting this court supports its holding with an Illinois case decided in 2001 – several years before *Daimler* heavily curtailed the availability of contacts-based jurisdiction.²⁴ Thus, *Aspen American Insurance* may not serve as a complete indication on which way Illinois courts may go on this issue in the future. Since *Aspen*

American Insurance was decided, plaintiffs in another case did not even argue that Illinois may exercise general jurisdiction over a nonresident defendant, but only asserted an argument for specific jurisdiction.²⁵

While the question is still being raised and answered in federal and state courts across the country, the developments over the past year clearly show that a majority of courts reinforce the belief that simply registering to do business in a state implies consent to general jurisdiction is specifically at odds with *Daimler*.

²² 57 N.E.3d 656, 667 (Ill. App. 5th 2016).

²³ *Id.*

²⁴ See *id.* (citing *Alderson v. Southern Co.*, 747 N.E.2d 926 (Ill. App. 1st 2001)).

²⁵ See *M.M. ex rel. Meyers v. GlaxoSmithKline LLC*, 2016 IL App (1st) 151909 (Aug. 26, 2016).

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