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Delaware Supreme Court Revisits Jurisdictional Impact of Foreign Corporations Registering to Do Business in Delaware

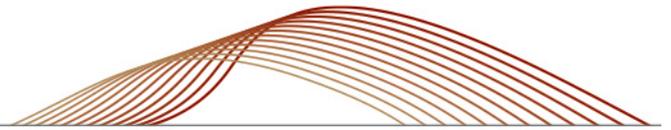
By [Kevin C. Logue](#) & [Kevin P. Broughel](#)

Delaware, like most states, requires a foreign corporation that sells products or services in the state to register to do business and to agree to the appointment of a registered agent to receive service of process. For nearly thirty years, Delaware had taken the view that qualifying to do business and appointing an in-state agent for service of process in this manner amounted to a foreign corporation's consent to general personal jurisdiction in Delaware courts (*i.e.*, even as to matters unrelated to activities in Delaware). Recently, however, in *Genuine Parts Company v. Ralph Allan Cepec, et al.*,¹ the Delaware Supreme Court (with one dissent) revisited its longstanding precedent and held that in light of recent U.S. Supreme Court decisions, Delaware's registration statutes may no longer be viewed as a broad consent to general jurisdiction over any cause of action.

Background

There are two types of personal jurisdiction, "general" and "specific." General jurisdiction allows a court to assert jurisdiction over a nonresident defendant "on the basis of wholly unrelated contacts with the forum." Specific jurisdiction, in contrast, occurs where the "suit aris[es] out of or relate[s] to the [corporation's] contacts with the forum."² To do business in Delaware, through or by branch offices, agents or representatives located in the State, a foreign corporation must register with the Secretary of State and agree to have a registered in-state agent accept service of process on its behalf.³ In 1988, the Delaware Supreme Court interpreted these requirements as conferring general jurisdiction over a registered foreign corporation via express consent.⁴

In recent years, however, the U.S. Supreme Court, while not addressing the precise consent issue presented in *Genuine Parts*, has held that merely doing business in a state is no longer enough of a basis for general jurisdiction there. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the U.S. Supreme Court held that a court "may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State."⁵ Later, in *Daimler AG v. Bauman*, the U.S. Supreme Court confirmed that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there," that the proper inquiry for general jurisdiction under *Goodyear* "is not whether a foreign corporation's in-forum contacts can be said to be in some sense continuous and systematic, [but] whether that corporation's affiliations with the State are so continuous and systematic as to render [it] essentially at home in the



forum State,” and that arguing that a corporation is subject to general jurisdiction in every state in which it engages in a “substantial, continuous, and systematic course of business” would be “unacceptably grasping.”⁶

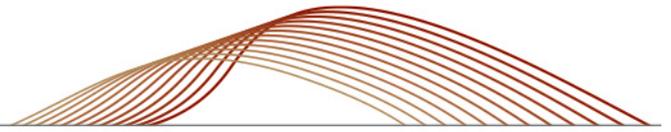
The Decision

In *Genuine Parts*, the Delaware Supreme Court had occasion to revisit the question of consent to general jurisdiction in a matter involving a foreign corporation that did not have its principal place of business in Delaware, and where there was no plausible basis to conclude that Delaware was essentially its home. The suit did not involve the corporation’s activities in Delaware, and the plaintiffs in the matter had conceded that they could not establish specific jurisdiction over the nonresident defendant under the long-arm statute or principles of due process.

In its decision, the Delaware Supreme Court acknowledged that its duty was “to give as much effect as possible to a state statute, where it is constitutional to do so.”⁷ Nevertheless, the Court found that “after *Daimler*, it is not tenable to read Delaware’s registration statutes as *Sternberg* did.”⁸ The Court held that “Delaware’s registration statutes must be read as a requirement that a foreign corporation must appoint a registered agent to accept service of process, but not as a broad consent to personal jurisdiction in any cause of action, however unrelated to the foreign corporation’s activities in Delaware. Rather, any use of the service of process provision for registered foreign corporations must involve an exercise of personal jurisdiction consistent with the Due Process Clause of the Fourteenth Amendment.”⁹

As a consequence, the Delaware Supreme Court observed that in most situations where the foreign corporation does not have its principal place of business in Delaware, “that will mean that Delaware cannot exercise general jurisdiction over the foreign corporation.”¹⁰ In such situations, “the core statute to evaluate whether the foreign corporation is subject to specific jurisdiction is Delaware’s long-arm statute.”¹¹ The long-arm statute provides for jurisdiction over specific disputes in enumerated circumstances, such as when the claim arises out of business conducted in the State. Thus, under the new *Genuine Parts* formulation, “plaintiffs with a fair basis to subject a foreign corporation to suit in Delaware may do so, but plaintiffs who do not will not.”¹² As the Court noted, “under a sensible goose-and-gander approach, Delaware should be prudent and proportionate in exercising jurisdiction over foreign corporations, and a narrower reading of [the registration/consent to service statute] accomplishes that.”¹³

Nevertheless, in reaching its decision, the Delaware Supreme Court acknowledged that some courts, subsequent to *Daimler*, have maintained that “implied consent by virtue of simple registration to do business remains a constitutionally valid basis for general jurisdiction over a nonresident corporation.”¹⁴ And, as noted above, Justice Vaughn dissented from the decision, agreeing “with those federal judicial officers who have concluded that *Daimler* and *Goodyear* have no effect upon general jurisdiction that is based upon consent through corporate registration statutes.”¹⁵ Noting that the U.S. Supreme Court has not directly addressed the issue, Justice Vaughn admonished: “It may be that the United States Supreme Court will go in the same direction as the Majority. But we won’t know until it gets there. I would not divest the trial courts of this state of significant jurisdiction unless I was sure I was right, and I am not sure the Majority is right.”¹⁶



Takeaway

While the final chapter may yet be written by the U.S. Supreme Court, the *Genuine Parts* decision is an important development for foreign corporations selling goods or services in Delaware. By foreclosing Delaware's registration statutes as a basis for general jurisdiction over a foreign corporation, it will be very difficult for Delaware courts to exercise general jurisdiction over corporations that are neither incorporated in nor maintain their principal place of business in Delaware. Accordingly, foreign corporate defendants who are sued in Delaware should keep the *Genuine Parts* decision in mind when evaluating their jurisdictional defenses.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:

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¹ 2016 WL 1569077 (Del. 2016).
² *Id.* at 4.
³ *See, e.g.*, 8 Del. C. §§ 371, 376.
⁴ *Sternberg v. O'Neil*, 550 A.2d 1105 (Del. 1988).
⁵ 131 S. Ct. 2846, 2851 (2011).
⁶ 134 S. Ct. 746, 761 (2014).
⁷ 2016 WL 1569077, at *2.
⁸ *Id.*
⁹ *Id.*
¹⁰ *Id.*
¹¹ *Id.*
¹² *Id.* at *14.
¹³ *Id.*
¹⁴ *Id.* at *15.
¹⁵ *Id.* at *18.
¹⁶ *Id.*

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