EFiled: Jan 04 2016 03:52PM EST
Filing ID 58368871
Case Number 528,2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GENUINE PARTS COMPANY,	:	
	:	
Defendant Below, Appellant,	:	No. 528, 2015
	:	
v.	:	
	:	On Appeal from the Superior
RALPH ALLAN CEPEC AND	:	Court of the State of Delaware,
SANDRA FAYE CEPEC,	:	in and for New Castle County,
	:	C.A. No.: N15C-02-184 ASB
Plaintiffs Below, Appellees.	:	

APPELLANT'S REPLY BRIEF ON APPEAL

MARON MARVEL BRADLEY & ANDERSON LLC
Paul A. Bradley
Delaware Bar ID No. 2156
Stephanie A. Fox
Delaware Bar ID No. 3165
1201 N. Market Street, Suite 900
P.O. Box 288
Wilmington, DE 19899-0288
Telephone: (302) 425-5177
pab@maronmarvel.com
saf@maronmarvel.com
Counsel for Defendant Below, Appellant,
Genuine Parts Company

Dated: January 4, 2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION AND SUMMARY OF ARGUMENT

The issue in this appeal is whether corporate compliance with a state's mandatory business registration statute and appointment of an agent for service of process satisfies the Constitutional limitations on general personal jurisdiction as outlined by the United States Supreme Court. In arguing the affirmative, Plaintiffs confuse compliance with consent, and registration for service with jurisdiction, advancing a result at odds with *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014).

Prior to *Daimler*, foreign corporations were traditionally thought to be subject to jurisdiction in any state in which they had some minimum contacts.[1] Business registration was considered tantamount to "doing business" in that state. After *Daimler*, there can be no doubt that a corporation cannot be subject to general personal jurisdiction in every forum in which it "does business". The exercise of general jurisdiction is, absent exceptional circumstances, limited to a corporate entity's place of incorporation or principal place of business. In this context, a state cannot simply condition the right to do business on mandatory registration, and then deem that registration consent to personal jurisdiction without regard to the constitutional due process protections articulated in *Daimler*.

---

[1] *See,* Kevin D. Benish, Note, *Pennoyer's Ghost: Consent, Registration Statutes, and General Jurisdiction After Daimler AG v. Bauman*, 90 N.Y.U.L. Rev. 1609 at 1641-1642 (2015) (the author argues that registration statutes possessed no coercive effect when "doing business" or "continuous and systematic" contacts justified jurisdiction. Post-*Daimler*, however, consent by registration means a company forfeits its due process rights.)

ARGUMENT

I. GPC Is Not Subject To General Personal Jurisdiction In Delaware.

GPC is not "at home" in Delaware. *Daimler,* 134 S. Ct. at 751. GPC is a Georgia company with its principal place of business in Atlanta, Georgia. Opening Br. 5. GPC's operations in Delaware, in the context of its nationwide business, are minimal and "unexceptional." Opening Br. 6. Plaintiffs concede as much.

Nevertheless, Plaintiffs contend that GPC is subject to general personal jurisdiction in Delaware in any suit involving a non-Delaware resident simply because GPC complied with Delaware's mandatory requirement that any corporation that "does business" in Delaware register and appoint an in-state agent for service of process.[2] *See* 8 *Del. C.* § 371(b); S*ternberg v. O'Neil,* 550 A.2d 1105 (Del. 1988). Indeed, the Delaware registration statute nowhere provides that registration equals consent resulting in general jurisdiction and has not been amended in all these years to provide such insight. Moreover, the forms required to be completed to register do not state anything about jurisdiction[3], despite Plaintiffs claim that such should have been obvious. Answering Br. 10.

---

[2] As stated by Plaintiffs in their Answering Brief, GPC first registered in Delaware in 2012 – decades AFTER the alleged exposure occurred in this matter. Plaintiffs now seek to have this Court use that registration to compel GPC to defend those claims in a state that has no connection to any of the issues in this case and no interest in the case.

[3] *See* State of Delaware Qualification of Certification of Foreign Corporation form attached hereto as Exhibit A. *See also,* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent,* 36 CARDOZO L.R. 1343, 1395-96 (2015) (there are different ways to interpret the actions of a corporation that has registered to do business).

In *Daimler*, the Supreme Court definitively proclaimed that, barring an exceptional case, the exercise of general jurisdiction over a non-forum corporation is acceptable in just one or two "paradigm forums" – its place of incorporation and principal place of business. The mere fact that a foreign corporation regularly conducts business in the forum is not, per the Court, sufficient to trigger the application of general personal jurisdiction. *Daimler*, 134 S. Ct. at 761; Opening Br. 11.

Plaintiffs attempt to circumvent the clear import of *Daimler* by arguing that *Daimler* did not disturb the longstanding principle that a party can consent to jurisdiction. Answering Br. at 17. In so doing, Plaintiffs urge this Court to hold that compliance with state registration statutes continues to be viewed as consent to personal jurisdiction in Delaware, despite the emphatic limitations on the exercise of general personal jurisdiction that have since been set out by the Supreme Court. Plaintiffs rely upon archaic Supreme Court precedent made irrelevant after *International Shoe*[4] and its progeny, and fundamentally mischaracterize the nature of constitutionally permissible jurisdictional consent. As demonstrated below, these constitutional infirmities are in no way cured by Plaintiffs' contentions that notice, certainty and "reasonableness" are all that are required for the constitutional

[4] *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945).

exercise of general jurisdiction; neither should the particular circumstances of this case inform the exercise of general jurisdiction in all future cases.

The bottom line is that, after *Daimler*, GPC has an undisputed Due Process right to be subject to all-purpose jurisdiction in just one or two limited forums. This Court should therefore reject Plaintiffs' attempts to stymie the adoption of *Daimler's* constitutionally-mandated reasoning, re-evaluate its 1988 holding in *Sternberg*, and conform Delaware's jurisdictional jurisprudence to that in *Daimler*.

II. Mere Compliance with Mandatory Business Registration Requirements Cannot Support the Exercise of General Jurisdiction under *Daimler*.

Daimler made absolutely clear that a court can no longer claim general personal jurisdiction over every corporation that simply does business in the forum. *Daimler*, 134 S. Ct. at 761. Such an "exorbitant" and "unacceptably grasping" view of jurisdiction is irreconcilable with "due process constraints on the assertion of adjudicatory authority." *Id.* at 751, 761-62. Under *Daimler*, even a "substantial, continuous, and systematic course of business" in a forum is insufficient to subject a foreign defendant to personal jurisdiction on any and all claims that may arise anywhere in the world. *Id.* at 761. The intent and import of the Supreme Court's opinion is clear: general personal jurisdiction is different than specific personal jurisdiction and must be limited to "exceptional cases." Where a corporation is not incorporated or principally based, and specific jurisdiction does not exist, general jurisdiction may only be exercised where a corporation's forum contacts are so extensive as to serve as a surrogate place of incorporation or principal place of business. Mere business registration or the appointment of an agent for service of process simply does not meet this test.

In an effort to circumvent this obvious result, Plaintiffs contend that *Daimler* "has no bearing" here because GPC consented to personal jurisdiction when it complied with Delaware's business registration requirements, relying on the 1988 *Sternberg* decision. Answering Br. 17-23. But this contention is patently false.

Daimler not only "has bearing" on this case – it *controls* the outcome. Every assertion of jurisdiction over a nonresident "must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977). This is true whether the theory of jurisdiction is rooted in minimum contacts or consent: modern due process doctrine "places all suits against absent nonresidents on the same constitutional footing." *Burnham v. Superior Court,* 495 U.S. 604, 621 (1990) (opinion of Scalia, J.).

While *Daimler* did not explicitly address Plaintiffs' theory of consent by compliance, the result Plaintiffs seek works the same evisceration of due process at stake in *Daimler*, when plaintiffs employed the California long-arm statute in an attempt to subject a foreign defendant to general jurisdiction on the basis of the in-state activities of the defendant's subsidiary.[5] The *Daimler* Court unerringly rejected this kind of jurisdictional workaround by emphasizing the need to provide corporate defendants with the predictability of having only one or two places to confront assertions of all purpose jurisdiction.[6] In so doing, the *Daimler* Court

[5] Plaintiffs do not dispute that MBUSA – the Daimler subsidiary whose California contacts were at issue in the case – was and is registered to do business in California and appointed a California agent for service of process. [Opening brief, 12, n. 11]. MBUSA still did not have sufficient contacts to consider it "at home" in the state – the paramount standard for the Supreme Court. *Daimler*, 134 S. Ct. at 760-61.

[6] As Justice Ginsburg, the author of *Daimler*, explained in oral argument,

> "There would hardly be room for a decision next to *Goodyear* that says, oh, for general jurisdiction purposes it's enough that you have some subsidiary operating in the State. The whole idea of *Goodyear* was to say there is one place you can always sue a corporation, one or two, place of incorporation, a principal place of business."

underscored the lack of authority on the part of states after *International Shoe* to use state statutes to exert jurisdiction over any claims that are unrelated to a defendant's contacts with or conduct within the forum. *See, e.g.*, *Daimler*, at 762 n.20 ("Nothing in *International Shoe* and its progeny suggests that 'a particular quantum of local activity' should give a State authority over a 'far larger quantum of . . . activity' having no connection to any in-state activity." (internal citations omitted)).

The outcome dictated by *Daimler* does not change simply because the statutory basis for asserting general jurisdiction is a mandatory registration statute rather than a long-arm statute. If such a sleight of hand were possible, the very purpose of *Daimler* – rejecting the exercise of general jurisdiction over a non-forum corporate defendant beyond one or two predictable forums – would be completely thwarted. Every national corporation would be subject to general jurisdiction everywhere it has a registered agent, regardless of whether the corporation conducts any business in that forum. This is ultimately the result Plaintiffs seek and it is exactly the result *Daimler* forbids.

Despite Plaintiffs' suggestions to the contrary, Answering Br. 19-21 (citing to select post-*Daimler* cases in Nebraska, New Jersey and New York), numerous courts have either implicitly or explicitly rejected Plaintiffs' compliance argument

---

Oral Argument at 51:21-52:2, *Daimler AG v. Barbara Bauman*, 134 S. Ct. 746 (Oct. 15, 2013) (No. 11-965) (emphasis added) (excerpt attached hereto as Exhibit B).

and the entire concept that registration and/or the appointment of an agent for service of process constitutes general jurisdiction after *Daimler*.[7] As explained by one court:

> Prior to [*Bauman*], some courts concluded that registering to do business in the state of New York automatically confers general jurisdiction on that person or entity. However . . . . After [*Bauman*], with the Second Circuit cautioning against adopting 'an overly expansive view of general jurisdiction,' the mere fact of [defendant's]

[7] In addition to the cases cited in GPC's opening brief, numerous courts across the United Stated have found, post-*Daimler,* no general jurisdiction based upon compliance with business registration requirements: *Chatwal Hotels & Resorts LLC v. Dollywood Co.,* 90 F. Supp. 3d 97, 105 (S.D.N.Y. 2015) (finding that, "[a]fter *Daimler* . . . the mere fact of [defendant's] being registered to do business is insufficient to confer general jurisdiction in a state that is neither its state of incorporation [n]or its principal place of business"); *United States Bank Nat'l Ass'n v. Bank of Am., N.A.*, 2015 U.S. Dist. LEXIS 139597, at *15 (S.D. Ind. Oct. 14, 2015) (rejecting argument that defendant waived objection to personal jurisdiction by registering to do business in Indiana and designating an agent for purposes of service of process); *Hazim v. Schiel & Denver Publ'g Ltd.,* 2015 U.S. Dist. LEXIS 119340, at *10-11 (S.D. Tex. Sept. 8, 2015) (finding that even if defendant had a registered corporate agent in Texas, "effecting service in the forum State on a registered corporate agent is not enough to show personal jurisdiction over the nonresident corporation"); *Family Wireless #1, LLC v. Auto. Techs., Inc.*, 2015 U.S. Dist. LEXIS 115810, at *12 (E.D. Mich. Sept. 1, 2015) (finding defendant's contacts – including in-state business registration, franchise agreements with Michigan retailers, agents in Michigan, and product sales to Michigan retailers – far from sufficient to establish general jurisdiction); *Pitts v. Ford Motor Co.,* 2015 U.S. Dist. LEXIS 121673, at *12 (S.D. Miss. Aug. 26, 2015) (declining to extend general jurisdiction where defendant's contacts, including in-state business registration, showed defendant to be, at most "doing business" in forum, and were not "so 'continuous and systematic' as to render [defendant] 'at home'" there); *Mullen v. Bell Helicopter Textron, Inc.,* 2015 U.S. Dist. LEXIS 138770, at *10 (S.D. Miss. Aug. 17, 2015) (finding foreign defendant's contacts, including, inter alia, in-state registration and facilities, insufficient to support the exercise of general jurisdiction); *Osadchuk v. CitiMortgage*, 2015 U.S. Dist. LEXIS 105719, at *5 (E.D. Pa. Aug. 12, 2015) (finding non-forum defendant's contacts, including in-state business registration, insufficient to support the exercise of general jurisdiction). *See also*, footnote 6, *supra,* and Opening Br. 16-18. In addition to *Chatwal*, *see, e.g.*, *D & R Global Selections, S.L. v. Pineiro*, 9 N.Y.S.3d 234, 235 (N.Y.A.D. 2015); *Magdalena v. Lins*, 999 N.Y.S.2d 44, 45 (N.Y.A.D. 2014); *Imax Corp. v. The Essel Group*, 2015 WL 6087606, at *4 (N.Y. Sup. Oct. 9, 2015); *Chambers v. Weinstein*, 2014 N.Y. Misc. LEXIS 3883, at *41, 997 N.Y.S.2d 668 (table) (N.Y. Sup. Aug. 22, 2014); *Gliklad v Bank Hapoalim B.M.*, 2014 N.Y. Misc. LEXIS 3600, at *6-7 (N.Y. Sup. Ct. Aug. 4, 2014); *contra Corporate Jet Support, Inc. v. Lobosco Insurance Group, L.L.C.*, 2015 WL 5883026, at *2 (N.Y. Sup. Oct. 7, 2015); *Bailen v Air & Liquid Sys. Corp.*, 2014 N.Y. Misc. LEXIS 3554, at *6-8 (N.Y. Sup. Ct. Aug. 5, 2014).

> being registered to do business is insufficient to confer general jurisdiction in a state that is neither its state of incorporation [n]or its principal place of business.[8]

"The role of general jurisdiction is a limited one: afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims."[9]

In short, whether or not decisions like *Sternberg* were correctly decided at their time of issue, they have little or no precedential value in the wake of the due process analysis in *Daimler*. Despite Plaintiffs' argument, *Daimler's* due process analysis must "inform[s] the Court's analysis here." *Id.* Corporations cannot be subject to general jurisdiction outside of certain paradigm forums for general jurisdiction or their equivalent. Plaintiffs' arguments to the contrary must therefore be rejected.

---

[8] *Imax Corp., supra* note 25, at *5-6 (citations omitted). *See also Chatwal Hotels & Resorts LLC v. Dollywood Co.*, 90 F. Supp. 3d 97, 104-05 (S.D.N.Y. 2015). *SPV OSUS Ltd. v. UBS AG*, 2015 U.S. Dist. LEXIS 94386 (S.D.N.Y. July 20, 2015). *Beach v. Citigroup Alternative Invs. LLC*, 2014 U.S. Dist. LEXIS 30032, at *18-19 (S.D.N.Y. Mar. 7, 2014) (dictum suggesting that registration created general jurisdiction in case where defendant was "not registered to do business in New York").

[9] *Astrazeneca AB v. Mylan Pharms., Inc.*, 72 F. Supp. 3d 549, 554 (D. Del. 2014) citing, *Daimler*, 134 S. Ct. at 760.

III. Plaintiffs' Proposed Version Of Consent Cannot Be Squared With, And Has No Basis In, Modern Due Process Protections.

GPC is not arguing that there are *no* circumstances in which a non-forum corporate defendant may consent to personal jurisdiction. A non-forum defendant may, in certain narrowly defined instances, waive its objections to jurisdiction with respect to a particular party or particular case. *See, e.g., Insurance Corp. of Ireland v. Compaigne des Bauxites de Guinee*, 456 U.S. 694 (1982). But that type of limited jurisdictional consent is not the type of consent advanced here by the Plaintiffs. Instead, Plaintiffs seek to make consent to jurisdiction the *default* status for all corporations registered to do business in any jurisdiction. This would, in effect, vitiate the holding in *Daimler* and ignore basic jurisdictional due process.[10] Plaintiffs' consent "exception" would, in short, overwhelm the rule.

To support this unconstitutionally broad expansion of consent jurisdiction and counter the dispositive impact that *Daimler* has on this case,[11] the Plaintiffs

---

[10] Despite Plaintiffs' suggestion to the contrary, "[e]xtorted actual consent and equally unwilling implied consent are not the stuff of due process." *Leonard v. USA Petroleum Corp.*, 829 F. Supp. 882, 889 (S.D. Tex. 1993). Further, under Plaintiffs' proposed interpretation, foreign corporations who voluntarily comply with Delaware law are penalized by this alleged waiver over those who do not comply with Delaware statutes.

[11] Even the Federal District Court of Delaware – in considering the question of jurisdiction in the highly specialized patent context – split on this issue, with judges on both sides acknowledging that reading "consent" so broadly as to subject corporations "with a national presence" to general jurisdiction "all over the country, [is] . . . at odds with" *Daimler*. *See AstraZeneca AB v. Mylan Pharms, Inc.*, 72 F. Supp. 3d 549 (D. Del. 2014), *certified for interlocutory appeal on other issue*, 2014 U.S. Dist. LEXIS 180548 (D. Del. Dec. 17, 2014); *Acorda Therapeutics, Inc. v. Mylan Pharms., Inc.*, 78 F. Supp. 3d 572, 591 (D. Del. 2015) (interlocutory appeal accepted March 17, 2015) ("It seems an odd result that while there is not general jurisdiction over a corporation in every state in which the corporation does business, there may be general

cobble together a collection of Supreme Court case law that is either inapposite or has long been abrogated under *International Shoe*.

To start, a closer inspection of Plaintiffs' banner case for the principle that a corporation may voluntarily (or even involuntarily) consent to jurisdiction, *Insurance Corp. of Ireland*, reveals that GPC's compliance with Delaware's mandatory registration requirements bears no resemblance to the type of consent contemplated in that case. *Insurance Corp. of Ireland*, 456 U.S. 694. Instead, the Court there based personal jurisdiction on the defendant's failure to comply with jurisdiction-related discovery orders after it expressly informed the defendant that a failure to comply would result in a sanctions order finding jurisdiction. *Insurance Corp. of Ireland*, 456 U.S. at 698-99. Other scenarios considered by the Court included (1) two parties expressly agreeing "'in advance to submit to the jurisdiction of a given court,'" *id.* at 703-04 (quoting *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964)), (2) a voluntary stipulation waiving the right to object to jurisdiction, *id.* at 704 (citing *Petrowski v. Hawkeye-Sec. Co.*, 350 U.S. 495 (1956), and (3) an agreement to arbitrate in a particular forum, *id.* (citing

---

jurisdiction over a corporation in every state in which that corporation appoints an agent to accept service of process as part of meeting the requirements to register to do business [there].").

Victory Transp. Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354 (2d Cir. 1964)).[12]

In short, the consent contemplated in *Insurance Corp. of Ireland* involves clear consent by a defendant to jurisdiction in a particular dispute or against a particular party – circumstances in no way similar to those in this case. Here, GPC's only alleged voluntary action was to engage in sufficient business in Delaware to trigger the State's registration requirement[13] – a requirement which, after *Daimler*, cannot itself give rise to general personal jurisdiction.

Plaintiffs' further reliance on archaic Supreme Court decisions – including *Robert Mitchell Furniture Co. v. Selden Breck Constr. Co.*, 257 U.S. 213 (1921), *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), and *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165 (1939) [Answering Br. 11-12] – is also unavailing for a number of reasons.

Most significantly, each of the above cases was decided prior to *International Shoe*, and relied upon a due process analysis that has since been completely superseded. For example, *Pennsylvania Fire*'s focus in 1917 on

---

[12] Moreover, all of these situations involve consent to jurisdiction over a particular dispute or against a particular party. No party to a forum selection agreement voluntarily agrees to litigate any dispute involving any party arising anywhere in the world in a particular forum. Only a state law could even purport to compel such an extraordinary result, and that compulsion bears no resemblance to the truly voluntary undertakings addressed in *Insurance Corporation of Ireland.*

[13] As aptly observed by one court: "Consent requires more than legislatively mandated compliance with state laws." *Leonard v. USA Petroleum Corp.*, 829 F. Supp. at 891 (S.D. Tex. 1993).

whether an in-forum agent was properly authorized to accept service in the forum on a cause of action unrelated to that forum, *see* 243 U.S. at 95-96, was necessitated by the fact that, under *Pennoyer v. Neff*, 95 U.S. 714 (1878), a tribunal's personal jurisdiction "reache[d] no farther than the geographic bounds of the forum." *Daimler*, 134 S. Ct. at 753. That discarded fiction necessitated the inquiry there and was clearly a product of *Pennoyer's* "strict territorial approach" to jurisdictional questions.

The decisions in *Neirbo* and *Robert Mitchell* are equally suspect, and neither case is on all fours with Plaintiffs' contentions in this case. *Neirbo*, for instance, was a venue decision, which further involved the sale of in-forum dry docks and other property. It appears certain that any jurisdictional inquiry in *Neirbo* under today's rubric would more properly fall under a specific, rather than general, jurisdictional inquiry. Similarly, *Robert Mitchell* – a case which did *not* find the exercise of jurisdiction appropriate under the particular circumstances in that case – actually foreshadowed modern jurisdictional jurisprudence by emphasizing that courts should not needlessly construe registration requirements as creating all-purpose jurisdiction,[14] a point that might have served the Court well in *Sternberg*.

[14] Emphasizing a "limited interpretation of []compulsory assent," the Supreme Court in *Mitchell* explained that, "the purpose in requiring the appointment of []an agent is primarily to secure local jurisdiction in respect of business transacted within the State." *Robert Mitchell Furniture Co.*, 257 U.S. at 215-16.

To the extent these three cases overly deferred to a state's interpretation of its own ability to exercise general jurisdiction over non-forum defendants – and to which they relied upon various fictions, such as consent, to effectuate service of process over foreign defendants in their borders – they have since been definitively overruled by *International Shoe*, the seminal decision on jurisdiction which "cast aside" these fictions and exorbitant exercises of sovereign power in favor of a fairer, contacts-based approach more appropriate to the complex interactions between corporations, individuals and forums. *See, e.g., Shaffer*, 433 U.S. at 212 n.39 (it is well-settled that, "[t]o the extent that prior decisions are inconsistent with" *International Shoe*, they have been "overruled"); *see also McGee v. Int'l Life Ins. Co.,* 355 U.S. 220, 222 (1957). Any remaining doubt as to whether or not *International Shoe* abrogated these anachronistic jurisdictional runarounds, *see, e.g.*, Opening Br. 17-18 (noting the fractured opinions on the permissibility "of treating registration to do business in a state as consent to the jurisdiction of the courts in that state"); *Astrazeneca AB*, 72 F. Supp. 3d at 555 ("[T]here is a circuit split as to whether this type of 'statutory consent' is an adequate basis on which to ground a finding of personal jurisdiction.") was put to rest when the Supreme Court in *Daimler* rejected two similarly situated cases used by the plaintiffs in that case to support the exercise of general jurisdiction based upon some presence in the forum. *Daimler*, 134 S. Ct. at 761 n.18 (discussing *Barrow S.S. Co. v. Kane*,

170 U.S. 100 (1898) and *Tauza v. Susequehanna Coal Co.*, 115 N.E. 915 (1917)). These cases, confirmed the Court, were "decided in the era dominated by *Pennoyer's* territorial thinking" and "should not attract heavy reliance today." *Id.*; *see also* Opening Br. 25. Thus, so far as *Robert Mitchell*, *Pennsylvania Fire*, and *Neirbo* are inconsistent with *International Shoe*, they have since been overruled.

IV. Notice, Certainty, and Reasonableness Cannot Correct the Unconstitutional Nature of the Consent Proposed by Plaintiffs.

Without support from *Daimler* or any other controlling Supreme Court case law, Plaintiffs argue that their jurisdiction by consent theory is valid because it provides a corporation with reasonable certainty and knowledge as to the scope of jurisdiction it can expect. This argument, too, fails to withstand the jurisdictional rigors of due process.

Without doubt, notice and predictability are critical aspects of due process. Corporate defendants must, as explained in *Daimler,* have some sense in advance of where their conduct "will and will not render them liable to suit." *Daimler,* 134 S. Ct. at 762. *Daimler* clearly seeks to create (if not restore) a predictable regime in which a corporate defendant is subject to general jurisdiction where it is "at home" or where its suit-related conduct may have occurred.

But questions of notice and predictability do not end the inquiry. If this were the case, the result in *Daimler* would have looked completely different. If "notice" or "predictability" were the ***only*** portions of due process that mattered, then the Supreme Court could just as easily have said to Daimler and MBUSA that a corporation is subject to general jurisdiction wherever it has a subsidiary or a certain percentage of sales, or wherever it *does business* in a forum. The Supreme Court could also have, under Plaintiffs' theory, imputed MBUSA's "consent" to jurisdiction to *Daimler*, since MBUSA clearly had a registered California agent for

service of process. Any of these results could and would have provided for a *predictable* framework on which to base the future exercise of general jurisdiction.

Instead, however, the Supreme Court redoubled its emphasis on the limited number of places a corporation may be subject to all-purpose jurisdiction – finding that such jurisdiction could be exercised outside of one or two paradigm forums only in an "exceptional case." In so doing, the Supreme Court ensured that the fairness exhorted under *International Shoe*'s due process analysis was preserved.[15] Plaintiffs are provided with at least one or two (and in an exceptional case, three or more) forums in which to bring any claim, and defendants are provided with at least some control over the location of those forums. Plaintiffs should not be permitted to destroy the basic fairness[16] at the heart of the due process regime simply because an outcome is certain or predictable.[17]

---

[15] "Most commentators agree that exacted consent for unrelated claims is unconstitutional," because it violates "fair play and substantial justice" in the absence of the defendant being "at home." *See* Charles W. "Rocky" Rhodes, IV, *Nineteenth Century Personal Injury Jurisdiction Doctrine in a Twenty-First Century World*, 64 FLA. LAW REVIEW 387, 444, fnt. 343 (2012). ("Most commentators agree that exacted consent for unrelated claims is unconstitutional.")

[16] And destruction it would be, in every state which has a foreign corporation statute. *See,* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, & the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1345 (2015). A corporate defendant literally might *never* have the benefit of litigating in its home forum.

[17] Indeed, viewed in other contexts, it is easy to see why Plaintiffs' focus on certainty and predictability cannot substitute for actual constitutional inquiry. Under Plaintiffs' theory, for example, Delaware could enact a law that said that all persons who are arrested for jay-walking are automatically guilty and subject to the death penalty; or a law that provides that any foreign corporation who registers to do business in the state is not entitled to appeal any adverse decision in a lower court. Both rules provide "notice"; both are "predictable"; however, neither would be constitutional.

Likewise, Plaintiffs' argument that "a state-imposed condition is not 'unconstitutional' if it is reasonable", Answering Br. 24, obscures the real issue. *Daimler* explicitly provides that the Due Process Clause of the Fourteenth Amendment limits where a foreign corporate defendant may be sued on a matter unrelated to its activities in the forum. *Daimler,* 134 S. Ct. at 757-58. The inquiry at this stage is one of due process, not of reasonableness. A state's condition of doing business on the sacrifice of these Due Process protections is unconstitutional, and cannot be permitted. As such, Plaintiffs' argument that Delaware's theory of consent by registration has survived *Daimler* should be rejected.

V. The Impact of Accepting Plaintiffs' Proposed Basis for Consent Would Extend Far Beyond the Confines of this Particular Case.

Plaintiffs attempt to argue, *inter alia,* that because (1) an asbestos-related disease is an indivisible injury, and (2) five of seven defendants are incorporated/based in Delaware, the court should permit the exercise of general jurisdiction over GPC in this case. However, "the due process rights of defendants cannot vary with the type of injury alleged by plaintiffs." *BNSF Railway Co. v. Superior Court*, 185 Cal. Rptr. 3d 391, 401 (Cal. App. 2d Dist. 2015), *rev. granted and opinion superseded sub nom. BNSF Railway Co. v. Superior Court (Kravoletz)*, 352 P.3d 417 (Cal. 2015).

The issue at hand is not about asbestos, or the particular makeup of defendants, or any other individual aspect of this case: whatever precedent the Court sets in this action will apply to all parties and actions going forward. The decision to find consent to jurisdiction on the basis of registration will not only burden non-Delaware corporate defendants registered to do business in Delaware, it will invite additional non-forum plaintiffs – closed off by the limiting effect of *Daimler* from bringing suit in other forums of their choice – into Delaware courts. Delaware will, in short, commit itself to the burdens of entertaining countless non-forum litigants seeking redress for non-forum injuries with no corresponding benefit to Delaware citizens or courts.

The question is not then, as Plaintiffs would frame it, whether Delaware courts *can* handle the extra burden of litigation: the question is whether Delaware citizens and tax payers *should* handle this extra burden when other forums are clearly available.[18] Given that any constitutional grounds to condition business registration on consent to jurisdiction has been definitively eviscerated under *Daimler*, and given the lack of any Delaware interest in the litigation, this answer must surely be no.

[18] GPC did not raise any issue relating to Delaware as a proper forum for this case in its opening brief, but to the extent that Plaintiffs discussed it, GPC submits that the Supreme Court has repeatedly emphasized that there must be "a constitutionally sufficient relationship between the defendant and the forum" and "there also must be a basis for the defendant's amenability to service of summons." *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); *see also, e.g., World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 291 (1980).

CONCLUSION

For the reasons set forth above and in GPC's opening brief, this Court should reverse the decision below and order the case dismissed for lack of personal jurisdiction.

Respectfully submitted,

MARON MARVEL BRADLEY & ANDERSON LLC

Paul A. Bradley

Paul A. Bradley (DE Bar ID No. 2156)
Stephanie A. Fox (DE Bar ID No. 3165)
1201 N. Market Street, Suite 900
P.O. Box 288
Wilmington, DE 19899-0288
Telephone: (302) 425-5177
Facsimile: (302) 425-0180
pab@maronmarvel.com
saf@maronmarvel.com
Attorneys for Appellant, Genuine Parts Company

Dated: January 4, 2016