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IN THE SUPREME COURT OF THE STATE OF DELAWARE

GENUINE PARTS COMPANY, Defendant Below, Appellant, v. RALPH ALLAN CEPEC and SANDRA FAYE CEPEC, Plaintiffs Below, Appellees.	)	**No. 528, 2015** Court Below—Superior Court of the State of Delaware in and for New Castle County N15C-02-184 ASB

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT AND REVERSAL

OF COUNSEL:

Andrew J. Pincus
Archis A. Parasharami
Mayer Brown LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000

Kathryn Comerford Todd
Warren Postman
U.S. Chamber Litigation Center, Inc.
1615 H Street NW
Washington, DC 20062
(202) 463-5337

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Kathaleen St. J. McCormick (No. 4579)
Nicholas J. Rohrer (No. 5381)
Julia B. Ripple (No. 6070)
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6738

Attorneys for Amicus Curiae, The Chamber of Commerce of the United States of America

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STATEMENT OF IDENTITY OF *AMICUS CURIAE*, ITS INTEREST IN THE CASE, AND THE SOURCE OF ITS AUTHORITY TO FILE

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation, representing 300,000 direct members and indirectly representing an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country. One of the Chamber's most important responsibilities is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community.

Most Chamber members conduct business in states other than their states of incorporation and principal place of business. They therefore have a substantial interest in the rules governing whether, and to what extent, a nonresident corporation may be subjected to general personal jurisdiction.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Superior Court's holding—that a foreign corporation consents to general personal jurisdiction in Delaware simply by complying with the state's basic requirements that foreign corporations register to do business and designate an in-state agent for service of process—violates due process, misinterprets the relevant statutes, and creates a precedent that would harm Delaware corporations if

its reasoning were followed by the courts of other states. This Court should reverse and hold that registration and designation of an agent do not subject a non-Delaware corporation to general personal jurisdiction here.

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011). This limitation on a court's authority "protects [the defendant's] liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985).

Applying this due process principle, the U.S. Supreme Court has recognized "two categories of personal jurisdiction." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014). Specific jurisdiction empowers courts to adjudicate claims relating to the defendant's in-forum conduct and exists when "the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum.'" *Id*. (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)).

General jurisdiction, by contrast, permits courts to adjudicate claims against a defendant arising out of actions occurring anywhere in the world (subject, of course, to any limits specific to a particular cause of action). It exists "where a foreign corporation's 'continuous corporate operations within a state [are] so

substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Daimler*, 134 S. Ct. at 754 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)). "'[S]pecific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [plays] a reduced role.'" *Daimler*, 134 S. Ct. at 755.

Daimler held that—absent exceptional circumstances—general personal jurisdiction over a corporation is available only in the company's state of incorporation or principal place of business. The Superior Court's decision, however, does not rely on any "exceptional circumstances." Instead, the lower court held that Delaware requires a foreign corporation to consent to general jurisdiction as a condition of doing business in Delaware, which subjects the corporation to suit in Delaware on *any* claim.

That approach, however, would swallow *Daimler*'s rule. *Daimler* emphasized that corporations should be able to structure their primary conduct to avoid being subject to expansive, all-purpose jurisdiction in multiple forums. Allowing Delaware to impose general jurisdiction on all companies registered to do business in the state would undermine that principle: every other state could follow the same course, and companies would be subject to nationwide general personal jurisdiction—the precise result that *Daimler* rejected.

The Superior Court relied on this Court's decision in *Sternberg v. O'Neil*, 550 A.2d 1105 (Del. 1988). In light of the intervening ruling in *Daimler*, the Court should revisit that decision. The relevant statutory text says nothing about personal jurisdiction and therefore should not be interpreted to require corporations to consent to general jurisdiction.

And construing the registration law not to require such consent would save it from clear constitutional infirmity. The doctrine of "unconstitutional conditions" forbids states from conditioning the availability of government benefits (here, the ability to do business in Delaware) on the forfeiture of constitutional rights (here, the due process right to limit the forums in which one may be sued).

Finally, the Superior Court's decision—if permitted to stand—will impose considerable burdens on Delaware companies. Delaware corporations are more likely to operate nationwide, and therefore more likely to be subject to nationwide general personal jurisdiction if other states adopt the compelled consent rationale. That would impose disproportionate burdens on Delaware companies and their shareholders while providing no benefit to Delaware or its citizens.

ARGUMENT

I. Delaware May Not Subject Foreign Corporations To General Jurisdiction Based Solely On Their Registration To Do Business.

It is undisputed that plaintiffs' claims against defendant Genuine Parts Company (GPC) do not relate in any way to GPC's activities in Delaware.

Delaware therefore may exercise jurisdiction over GPC in this case only if GPC is subject to general personal jurisdiction in Delaware. The test for general jurisdiction is demanding: because of its extraordinary reach, general jurisdiction ordinarily may be exercised over a defendant only by those states in which the defendant is considered "at home"—its state of incorporation and its principal place of business. *Daimler*, 134 S. Ct. at 760.

GPC is incorporated in and has its principal place of business in Georgia; therefore, it is not "at home" in Delaware. But the Superior Court held that GPC is nonetheless subject to general personal jurisdiction in Delaware, on the theory that GPC consented to general jurisdiction by registering to do business in Delaware. *See* Order on Def. Genuine Parts Co.'s Mot. to Dismiss, *Cepec v. Advance Auto Parts, Inc.*, C.A. No. N15C-02-184 ASB (Del. Super. Ct. Aug. 31, 2015).

The court below relied in large part on this Court's decision in *Sternberg v. O'Neil*. There, this Court held that Delaware's corporate registration laws require foreign corporations to consent to general jurisdiction in Delaware and that this consent was a valid basis for general jurisdiction under the Due Process Clause. 550 A.2d at 1113, 1116.

That holding should be overruled, for several reasons: *First*, the contacts between a foreign corporation and Delaware that trigger the registration requirement are plainly insufficient under *Daimler* to permit the assertion of

general jurisdiction. *Second*, *Sternberg*'s holding is inconsistent with the text of the relevant statutory provisions. And *third*, upholding *Sternberg*'s construction would render the Delaware law unconstitutional.

A. *Daimler* bars the assertion of general jurisdiction over a corporation that merely "does business" within a state.

The plaintiffs in *Daimler* argued that general jurisdiction was available "in every state in which a corporation 'engages in a substantial, continuous, and systematic course of business.'" 134 S. Ct. at 761. But the Supreme Court rejected "[t]hat formulation" of the standard as "unacceptably grasping." *Id.*

The Court explained that "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 762 n.20. A corporation therefore may not be subject to general jurisdiction outside its state of incorporation and its principal place of business, except in an "exceptional case."[1]

By restricting general jurisdiction to places in which a corporation is truly "at home," *Daimler* precludes general jurisdiction based merely on corporate activity sufficient to trigger business registration. If the rule were otherwise, virtually every state and federal court would become an all-purpose forum with respect to every corporation registered to do business, because "[e]ach of the fifty

[1] *Daimler*, 134 S. Ct. at 762 n.19. The only example that *Daimler* gave was one in which a State had become a "surrogate" for the company's place of incorporation or headquarters. *Id.* at 756 & n.8 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 755-57 (1952), as an example of an "exceptional case" because the corporation had temporarily moved its headquarters from the Philippines to Ohio during World War II).

states has a registration statute." Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1345 (2015). That would deprive a nonresident business of its due process right to be able to "'structure [its] primary conduct with some minimum assurance as to whether that conduct will and will not render [it] liable to suit.'" *Daimler*, 134 S. Ct. at 762 & n.20 (quoting *Burger King Corp.*, 471 U.S. at 472).[2]

B. Delaware law does not require foreign corporations to consent to general jurisdiction as a condition of registering to do business.

At the time *Sternberg* was decided, the Supreme Court had not yet fully clarified the due process limits on general personal jurisdiction, and many courts had held that a state could assert general jurisdiction over non-resident corporations doing business within the state. *See Sternberg*, 550 A.2d at 1110 & n.8 (collecting cases). The now-outdated view of due process accepted by those courts may have influenced the outcome in *Sternberg*. But construing Delaware's corporate registration laws to compel consent to general jurisdiction in Delaware is contrary to their plain text.

[2] Indeed, a number of courts have acknowledged that subjecting out-of-state corporations to general jurisdiction based on registration to do business would raise due process concerns under *Daimler*. *See, e.g.*, *Keeley v. Pfizer Inc.*, 2015 WL 3999488, at *4 (E.D. Mo. July 1, 2015) ("If following [corporate registration] statutes creates jurisdiction, national companies would be subject to suit all over the country. This result is contrary to the holding in *Daimler* that merely doing business in a state is not enough to establish general jurisdiction."); *Neeley v. Wyeth LLC*, 2015 WL 1456984, at *3 (E.D. Mo. Mar. 30, 2015); *Chatwal Hotels & Resorts LLC v. Dollywood Co.*, 90 F. Supp. 3d 97, 105 (S.D.N.Y. 2015); *AstraZeneca AB v. Mylan Pharm., Inc.*, 72 F. Supp. 3d 549, 557 (D. Del. 2014).

Neither of the two relevant provisions, Sections 371(b) and Section 376 of the General Corporation Law, mentions general personal jurisdiction. Section 371(b) simply requires that a foreign corporation designate a registered agent in the state in order to qualify to do business. 8 Del. Code Ann. § 371(b)(2). And Section 376 provides only that "[a]ll process issued out of any court of [Delaware] . . . may be served on the registered agent." *Id.* § 376(a).

Requiring foreign corporations to designate an agent for service of process, however, is wholly distinct from requiring consent to general jurisdiction. The U.S. Supreme Court's decisions repeatedly distinguish between service of process and personal jurisdiction: there must be "a constitutionally sufficient relationship between the defendant and the forum" and "[t]here *also* must be a basis for the defendant's amenability to service." *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) (emphasis added)); *see also, e.g.*, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (same). The statutes' mention of the former therefore implies nothing about the latter.

Moreover, the statutes' silence regarding personal jurisdiction is telling—if foreign corporations were obliged to surrender due process rights, Delaware surely would impose that requirement expressly. *See, e.g.*, *Viko v. World Vision, Inc.*, 2009 WL 2230919, at *5 (D. Vt. July 24, 2009) (holding that similar registration provisions in Vermont did not require consent to jurisdiction because "[t]hese

provisions say nothing at all about jurisdiction, let alone that by complying one expressly consents to personal jurisdiction for all matters, even those wholly unrelated to Vermont").

Sternberg reached its contrary conclusion by comparing Section 376 to Section 382, the state's long-arm statute, which provides that with respect to a foreign corporation that has *not* registered but nonetheless does business in the state, the Secretary of State may receive process on that corporation's behalf in suits "arising or growing out of any business transacted by it within this State." 8 Del. Code. Ann. § 382(a). The *Sternberg* Court inferred that because Section 376 does not contain the same sort of language limiting service to Delaware-related litigation, a foreign corporation that registers under Section 376 must thereby consent to jurisdiction in *all* cases—even those that have nothing to do with Delaware. *Sternberg*, 550 A.2d at 1116.

But that conclusion does not follow. Like Section 376(a), Section 382(a) describes the permissible scope of *service of process*; it does not attempt to describe the scope of *jurisdiction* over a foreign corporation. *See Viko*, 2009 WL 2230919, at *5 ("[T]here remains an important distinction between mere service of process on the one hand, and actual amenability to judgment—that is, personal jurisdiction—on the other." (citing *World-Wide Volkswagen*, 444 U.S. at 291, and *Omni*, 484 U.S. at 104)).

In short, particularly given the intervening decision in *Daimler*, this Court should overrule *Sternberg*, and avoid the constitutional conflict that would result from imposing general jurisdiction based on compelled consent.

C. The Due Process Clause forbids states from requiring foreign corporations to consent to general personal jurisdiction.

Sections 371(b) and 376 would be unconstitutional if they required foreign corporations to consent to general jurisdiction as a condition of doing business.

1. Requiring a foreign corporation to consent to general jurisdiction in order to do business violates the unconstitutional conditions doctrine.

The Superior Court sought to distinguish *Daimler* by reasoning that under Delaware law, foreign corporations *consent* to general jurisdiction in Delaware by registering to do business, and that *Daimler* acknowledges that consent is a permissible basis for jurisdiction. But even if Delaware law did require such consent, that "consent" is not the sort that provides a valid basis for jurisdiction.

True, parties may *voluntarily* consent to jurisdiction in a particular forum in a variety of ways—such as by entering into a contract with a forum selection clause, *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964), or by appearing voluntarily in court, *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). That is why *Daimler* and predecessor decisions state that their focus is on defendants who have "'not consented to suit in the forum.'" *Daimler*, 134 S. Ct. at 756 (quoting *Goodyear*, 131 S. Ct. at 2856). But

although voluntary consent is a permissible basis for personal jurisdiction, the doctrine of "unconstitutional conditions" prohibits jurisdiction based on involuntary, *compelled* consent.

The unconstitutional conditions doctrine holds that a state may not "requir[e] [a] corporation, as a condition precedent to obtaining a permit to do business within [a] State, to surrender a right and privilege secured to it by the Constitution." *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2596 (2013) (quoting *S. Pac. Co. v. Denton*, 146 U.S. 202, 207 (1892)). In *Denton*, for example, the Supreme Court invalidated a Texas law that, as a condition of doing business in Texas, barred a company from exercising its right to remove to federal court a suit filed in state court. 146 U.S. at 206-07 (citing 1887 Tex. Gen. Laws, pp. 116-17). Describing the statute's "attempt to prevent removals" as "vain," the Court concluded that the law "was unconstitutional and void." *Id*.

Finding general jurisdiction in Delaware solely on the basis of registration to do business would impose precisely the same kind of unconstitutional choice on foreign corporations that the Court held impermissible in *Denton*: an out-of-state company would have to surrender its federal due process right to avoid general personal jurisdiction in states other than its states of incorporation and principal place of business, or else completely avoid doing business in Delaware. The Constitution therefore bars Delaware from invoking the state's registration law as a

basis for compelling consent to general jurisdiction. *See, e.g., Siemer v. Learjet Acq. Corp.*, 966 F.2d 179, 183 (5th Cir. 1992) ("[A] foreign corporation that properly complies with the Texas registration statute only consents to personal jurisdiction where such jurisdiction is constitutionally permissible."); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1245 (7th Cir. 1990) (it would be "constitutionally suspect" to subject a corporation to general jurisdiction as a consequence of registering to do business in the state).

2. U.S. Supreme Court decisions permitting general jurisdiction based on registration and appointment of an agent are no longer good law.

Nearly a century ago, registering to do business in a forum and designating an agent for service of process there was considered sufficient to render a foreign corporation subject to general jurisdiction. *See, e.g., Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 94-95 (1917). But that rule was a product of the "strict territorial approach" to personal jurisdiction adopted in *Pennoyer v. Neff*, 95 U.S. 714 (1877). That approach was discarded seven decades ago by the "canonical" decision in *International Shoe Co. v. Washington*, and the Supreme Court has stated that decisions relying on *Pennoyer* have been overruled. *Daimler*, 134 S. Ct. at 754. The compelled consent theory of general jurisdiction cannot be upheld on the basis of that now-rejected doctrine.

Under *Pennoyer*, a tribunal's personal jurisdiction "reache[d] no farther than the geographic bounds of the forum." *Id.* at 753. But *International Shoe* brought

about a sea change: "'the relationship among the defendant, the forum, and the litigators . . . became the central concern of the inquiry into personal jurisdiction.'" *Id.* at 754.

Under *Daimler* and other post-*International Shoe* rulings, a state's assertion of personal jurisdiction "*must* be evaluated according to the standards set forth in *International Shoe* and its progeny," and "[t]o the extent that prior decisions are inconsistent with this standard, they are overruled." *Shaffer v. Heitner*, 433 U.S. 186, 212 & n.39 (1977) (emphasis added); *see also Daimler*, 134 S. Ct. at 761 n.18 (cases "decided in the era dominated by *Pennoyer*'s territorial thinking . . . should not attract heavy reliance today"); Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 758 (1988) (noting that neither pre-*International Shoe* cases addressing general jurisdiction, such as *Gold Issue*, nor "their underlying theories seem[] viable under today's due process standard").

The outmoded notion that a corporation consents to general jurisdiction simply by registering to do business or designating an agent for service of process violates the Due Process Clause of the Fourteenth Amendment. *Sternberg*, which relied on cases applying that obsolete theory, should accordingly be abandoned.

II. Upholding The Superior Court's Decision Would Harm Delaware Companies.

This Court is highly influential in the development and explication of corporate law. Delaware corporate law "provides a *lingua franca* for lawyers,"

and the state's "common law of corporations . . . is widely accepted as American corporation law." Del. Div. of Corps., *Why Corporations Choose Delaware* 1-2 (2007). Out-of-state courts therefore frequently look to Delaware precedents when deciding questions of corporate law. *See, e.g.*, *Mullen v. Acad. Life Ins. Co.*, 705 F.2d 971, 974 (8th Cir. 1983) ("The courts of other states commonly look to Delaware law . . . for aid in fashioning rules of corporate law.").

If this Court holds that Delaware can compel foreign corporations to consent to general jurisdiction in Delaware, that decision likely would have considerable persuasive effect in other states. And because many states have registration laws like the one at issue here, *see* Monestier, 36 Cardozo L. Rev. at 1345, nearly every state in the country could point to that reasoning to justify its own compelled-consent theory. That legal regime would impose disproportionate costs on Delaware corporations—and therefore their shareholders—while producing no offsetting benefits. This Court should not invite that result.

Delaware is home to more than one million legal entities, including more than half of the publicly-traded companies in the United States and 65% of the Fortune 500. Del. Div. of Corps., *2013 Annual Report* 2 (2014), http://corp.delaware.gov/Corporations_2013%20Annual%20Report.pdf. A disproportionately larger share of Delaware companies do business nationwide—because Delaware is home to more large businesses than any other state. Many

Delaware companies therefore are likely to be required to register to do business in every state. If compelled consent to general jurisdiction were to become the norm nationwide, Delaware companies would be subject to general jurisdiction everywhere.

That regime of nationwide general jurisdiction would impose significant costs and legal uncertainty on Delaware companies. Due process limits on personal jurisdiction provide "'a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Burger King Corp.*, 471 U.S. at 472 (quoting *World-Wide Volkswagen*, 444 U.S. at 297). This "[p]redictability . . . is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

Permitting general jurisdiction based on compelled consent, however, would destroy that predictability and dramatically increase Delaware corporations' legal costs. Plaintiffs seeking to bring lawsuits against Delaware companies would be able to engage in forum shopping, choosing where to bring suit not on the basis of where the underlying events occurred or where the defendant was located but on which jurisdiction they perceived as friendliest to plaintiffs.

Of course, a reciprocal burden would fall on companies incorporated in other states: plaintiffs would be able to sue such companies in Delaware on any

claim, if those corporations were registered to do business in Delaware. But because companies domiciled outside of Delaware are generally smaller than those domiciled in Delaware, foreign companies are less likely to be registered to do business everywhere. The compelled consent approach would therefore impose a disproportionate burden on Delaware companies and their shareholders.

Moreover, permitting the assertion of general jurisdiction over companies doing business in Delaware would burden the state's courts with cases that have nothing to do with Delaware. That would require Delaware courts to expend substantial resources adjudicating claims that have no connection to the state.

Finally, there are no countervailing benefits to Delaware from imposing these significant costs on corporations, consumers, and the state economy. If a nonresident corporation creates meaningful contacts with Delaware and its in-state conduct harms a Delaware resident, it may be sued in Delaware on a specific jurisdiction theory. *See, e.g.*, *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014).

And Delaware corporations, by virtue of being incorporated here, can already be sued in Delaware on any cause of action arising anywhere without resort to any compelled consent theory. *See Daimler*, 134 S. Ct. at 760. Compelling corporations to "consent" to general jurisdiction is therefore not necessary to ensure that the over one million corporate entities incorporated in Delaware may be held accountable for their in-state conduct. Rather, it serves only

to consume the resources of Delaware's judiciary in deciding disputes that—like this case—have nothing to do with Delaware.

CONCLUSION

For the foregoing reasons, the undersigned counsel respectfully urge this Court to reverse the decision of the Superior Court.

Respectfully submitted,

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Nicholas J. Rohrer
Kathaleen St. J. McCormick (No. 4579)
Nicholas J. Rohrer (No. 5381)
Julia B. Ripple (No. 6070)
Rodney Square
1000 North King Street
Wilmington, DE 19801
(302) 571-6738

Attorneys for Amicus Curiae, The Chamber of Commerce of the United States of America

OF COUNSEL:

Andrew J. Pincus
Archis A. Parasharami
Mayer Brown LLP
1999 K Street NW
Washington, DC 20006
(202) 263-3000

Kathryn Comerford Todd
Warren Postman
U.S. Chamber Litigation Center, Inc.
1615 H Street NW
Washington, DC 20062
(202) 463-5337

Dated: December 2, 2015

CERTIFICATE OF SERVICE

I, Nicholas J. Rohrer, hereby certify that on December 2, 2015, I caused to be served a true and correct copy of the foregoing document upon the following counsel of record in the manner indicated below:

By File & ServeXpress

Peter J. Faben, Esq.
Wilbraham Lawler & Buba
901 North Market Street, Suite 810
Wilmington, Delaware 19801

John C. Phillips, Jr., Esq.
Phillips, Goldman & Spence, P.A.
1200 North Broom Street
Wilmington, Delaware 19806

Matthew P. Donelson, Esq.
Eckert Seamans Cherin
& Mellott, LLC
222 Delaware Avenue, 7th Floor
Wilmington, Delaware 19801

Michael L. Sensor, Esq.
Lundy Law
1600 Pennsylvania Avenue, Suite C
Wilmington, Delaware 19806

Loreto P. Rufo, Esq.
Rufo Associates, P.A.
1252 Old Lancaster Pike
Hockessin, Delaware 19707

Paul A. Bradley, Esq.
Maron Marvel Bradley
& Anderson LLC
1201 North Market Street, Suite 900
Wilmington, Delaware 19801

Eileen M. Ford, Esq.
Michael F. Duggan, Esq.
Megan T. Mantzavinos, Esq.
300 Delaware Avenue, Suite 900
Wilmington, Delaware 19801

Joelle Wright Florax
Rawle & Henderson LLP
300 Delaware Avenue, Suite 1105
Wilmington, Delaware 19801

C. Scott Reese, Esq.
Cooch and Taylor, P.A.
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, Delaware 19801

Beth E. Valocchi
Swartz Campbell LLC
300 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801

/s/ Nicholas J. Rohrer
Nicholas J. Rohrer (No. 5381)