

Delaware Strengthens Jurisdictional Defenses for Foreign Corporations Registered to Do Business in Delaware

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Product Liability Alert

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The days of companies being sued in Delaware based solely upon their compliance with Delaware's registration statutes appear over. Recently, the Delaware Supreme Court, in *Genuine Parts Co. v. Cepec*^[1], held that Delaware Courts cannot exercise jurisdiction over a foreign corporation registered to do business in Delaware for claims unrelated to its conduct in Delaware.

In Delaware, foreign corporations must register to do business and designate a registered agent in Delaware to accept service of process to sell its products or services.^[2] Since 1988, Delaware has construed these registration laws as foreign corporations' express consent to general jurisdiction.^[3]

Two recent United States Supreme Court cases, however, called into question this well-established law. In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the U.S. Supreme Court reiterated the principle that a foreign corporation's affiliations with a state must be "continuous and systematic" for a forum to exercise general jurisdiction over the foreign corporation.^[4] The Court in *Goodyear* held that a foreign corporation was not subject to general jurisdiction in the forum simply because some of its products were distributed and sold there.^[5] More recently, in *Daimler AG v. Bauman*, the Court held "the proper inquiry for general jurisdiction under *Goodyear*'s not whether a foreign corporation's in-forum contacts can be said to be in some sense continuous and systematic, it is whether that corporation's affiliations with the State are so continuous and systematic as to render it essentially at home in the forum."^[6] It further opined that corporations with operations "in many places can scarcely be deemed at home in all of them."^[7] In short, in *Goodyear* and *Daimler*, the U.S. Supreme Court acknowledged that it is inconsistent with the principles of due process to subject a corporation to general jurisdiction in every state it conducts business.^[8]

In accordance with the due process principles applied in *Goodyear* and *Daimler*, the Delaware Supreme Court held in *Cepec* that Delaware's registration laws no longer create the presumption that a foreign corporation consents to jurisdiction by complying with Delaware's registration statutes.^[9] *Cepec* arose out of claims for wrongful exposure to asbestos-containing products manufactured by several defendants, including Genuine Parts Company, a Georgia corporation with its principal place of business in Georgia.^[10] Plaintiff alleged he was exposed to asbestos in Florida while an employee at Genuine Parts.^[11] Although Plaintiff's allegations against Genuine Parts are unrelated to Delaware and Genuine Parts is merely registered to do business in Delaware, the Delaware Superior Court held that it had general jurisdiction over Genuine Parts because it consented to jurisdiction by appointing a registered agent in Delaware to receive service of process.^[12]

Adhering to *Goodyear* and *Daimler*, the Delaware Supreme Court reversed the Superior Court's decision by construing the statute requiring the designation of a registered agent in Delaware more narrowly than it had in *Sternberg*.^[13] The Court found such a broad reading of the registered agent statute to be inconsistent with due process principals confirmed in *Daimler*.^[14] The "sensible" reading is that this statute merely requires foreign corporations to "allow service of process to be made upon it in a convenient way in proper cases, but not as consent to jurisdiction."^[15] In other words, a foreign corporation cannot be subjected to a lawsuit in Delaware until a plaintiff shows that the long-arm statute applies or jurisdiction does not violate its due process.^[16] In support of its holding, the Court opined that such a broad reading may cause foreign corporations to halt offering their goods and services to the citizens of Delaware to avoid being hauled into court for claims unrelated to Delaware.^[17] The Court further noted if Delaware were to overreach to assert general jurisdiction over foreign corporations, then other states may do the same which would cause inefficiency and legal uncertainty

for businesses.[18]

With these policy concerns in mind, the Delaware Supreme Court altered its general jurisdiction jurisprudence to insulate foreign corporations registered to do business in Delaware from claims unrelated to its activities in Delaware. As a result, no longer can a foreign corporation be sued in Delaware in a matter unrelated to Delaware only because the corporation is licensed to do business in Delaware.

For more information regarding this decision, or for a copy of the Court's Order, please contact Chris Singewald (302.467.4510 | singewaldc@whiteandwilliams.com) or Tim Martin (302.467.4509 | martint@whiteandwilliams.com).

[1] *–* A.3d[–], No. 528, 2015 (Del. Apr. 18, 2016).

[2] 8 *Del. C.* §§ 371, 376; *see also* 8 *Del. C.* § 382 (“Any foreign corporation which shall transact business in this State without having qualified to do business . . . shall be deemed to have thereby appointed and constituted the Secretary of State . . . its agent for the acceptance of legal process.”); 8 *Del. C.* § 383 (requiring unqualified foreign corporations to pay fees and penalties prior to maintaining an action or special proceeding).

[3] *Sternberg v. O’Neil*, 550 A.2d 1105, 1122 (Del. 1988) (holding that Delaware’s statute mandating a foreign corporation to accept service of process through a registered agent empowered Delaware courts to exercise general jurisdiction over foreign corporations for “any transitory cause of action.”).

[4] 131 S.Ct. 2846, 2850 (2011).

[5] *Id.* at 2856.

[6] 134 S. Ct. 746, 761 (2014).

[7] *Id.* 762 n. 20.

[8] *See id.* at 761-62 & 762 n. 20.

[9] No. 528, at 3.

[10] *Id.* at 6.

[11] *Id.*

[12] *Id.* at 7-8.

[13] 550 A.2d 1105.

[14] *Cepec*, at 25.

[15] *Id.* at 34.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 35.

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