

TUESDAY, MAY 24, 2016

PERSPECTIVE

TRANSACTIONS WITH BOIRON

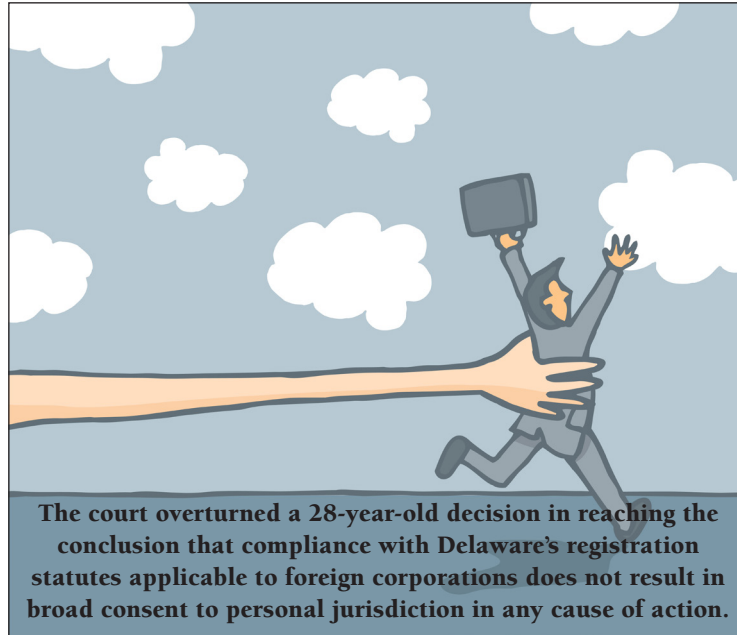
Delaware axes personal jurisdiction precedent

By Marc Boiron

In *Genuine Parts Company v. Cepec*, the Delaware Supreme Court considered whether a corporation that is registered to do business in the state of Delaware may be sued for activities that are unrelated to and outside of Delaware. The court overturned a 28-year-old decision in reaching the conclusion that compliance with Delaware's registration statutes applicable to foreign corporations does not result in broad consent to personal jurisdiction in any cause of action. Therefore, if a foreign corporation does not have its principal place of business in Delaware, then, except in extraordinary situations, Delaware will not have general jurisdiction over that corporation. In those situations, the court will evaluate whether the foreign corporation is subject to specific jurisdiction under Delaware's long-arm statute.

In 2015, the plaintiffs, residents of the state of Georgia, sued Genuine Parts Company, a Georgia corporation with its principal place of business in Georgia, and five of its Delaware subsidiaries, for wrongful exposure to asbestos. Genuine Parts was registered to do business in Delaware but (i) had never had a corporate office, conducted any board or stockholder meetings or had any officers in Delaware, (ii) fewer than one percent of its employees and auto-parts stores were located in Delaware and (iii) less than one percent of its revenues were generated in Delaware.

Genuine Parts moved to dismiss the claims for lack of general and specific personal jurisdiction in the Delaware Superior Court, which denied the motion,



holding, in reliance on the Delaware Supreme Court's decision in *Sternberg v. O'Neil*, that Genuine Parts had consented to general jurisdiction in Delaware.

On appeal, Genuine Parts argued that the U.S. Supreme Court's holding in *Daimler AG v. Bauman* required that a corporation be incorporated or have its principal place of business in a state for that state to have general jurisdiction over that corporation. The plaintiffs argued that, pursuant to *Sternberg*, Genuine Parts consented to general jurisdiction in Delaware when it registered to do business in Delaware.

Sternberg was decided in 1988, 26 years before the U.S. Supreme Court's decision in *Daimler*, based on precedent of the U.S. Supreme Court holding that the appointment of a registered agent for the service of process pursuant to a state's statute confers general jurisdiction in that state. The precedent

decisions reasoned that a state's statute requiring a foreign corporation's appointment of a registered agent for service of process was constitutional and that appointment was voluntary and constituted actual consent to general jurisdiction in that state.

However, in 2014, *Daimler*, and its predecessor *Goodyear Dunlop Tires Operations, S.A. v. Brown*, narrowed the test for determining a state's general jurisdiction over a foreign corporation by requiring that the foreign corporation's "affiliations with the [s]tate be so continuous and systematic as to render [it] essentially at home in the forum [s]tate." The narrow test requires that, except "in an exceptional case," general jurisdiction over a corporation be limited to its place of incorporation and its principal place of business. Notably, neither *Goodyear* nor *Daimler* explicitly overturned the prior decisions on which the

Delaware Supreme Court relied in *Sternberg*.

In addition to applying the explicit direction in *Daimler* that requires a foreign corporation's affiliation to be so continuous and systematic as to render it essentially at home to be subject to a state's general jurisdiction, the Delaware Supreme Court found that the purposes of Delaware's registration statutes were limited to permitting foreign corporations to do business in Delaware and to appoint a registered agent for service of process. Those statutes do not explicitly state that a corporation registering to do business in Delaware consents to personal jurisdiction in Delaware. Any other interpretation of the statutes would create a perverse result where a corporation registered to do business in Delaware is subject to Delaware's general jurisdiction but a corporation not registered to do business in Delaware in violation of those statutes is not subject to Delaware's personal jurisdiction.

The Delaware Supreme Court noted that requiring any foreign corporation that registers to do business in Delaware to consent to personal jurisdiction in Delaware would be detrimental to Delaware. If all or a significant number of other states were to equally require that a foreign corporation consent to personal jurisdiction to do business in those states, then all of those states would have general jurisdiction over that corporation, which would be inefficient and lead to uncertainty, and corporations would be subject to personal jurisdiction in all states in which they do business.

For the foregoing reasons, the Delaware Supreme Court reversed the Delaware Superior Court's judgment, denying Genuine Parts' motion to dismiss for lack of personal jurisdiction.

The *Genuine Parts* decision is significant for California and other foreign corporations for several reasons. First, the decision reverses Delaware's position for almost 30 years on the issue of general jurisdiction over foreign corporations. Since the U.S. Supreme Court's decision in *Daimler*, the Delaware Supreme Court had not reexamined its decision in *Sternberg*. Now that the Delaware Supreme Court has overturned *Sternberg*, California and other foreign corporations sued in Delaware based on an exercise of general jurisdiction likely will succeed on a motion to dismiss for lack of personal jurisdiction. Therefore, personal jurisdiction in Delaware over a California or other foreign cor-

poration generally will be based on Delaware's long-arm statute, which permits jurisdiction of Delaware courts where a foreign corporation, among other things, "transacts any business or performs any character of work or service."

Second, the Delaware Supreme Court focused on several factors to determine whether a California or other foreign corporation is "essentially at home" in Delaware, including the existence in Delaware of a corporate office, any officers, or any board or stockholders meetings and the extent of employment, operations and revenue in Delaware relative to elsewhere. The Delaware Supreme Court did not provide details regarding the application or exclusivity of those factors when determining Delaware's general jurisdiction over a foreign corporation.

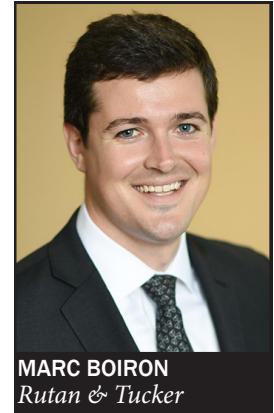
In addition, the U.S. Supreme Court's only example of a suf-

ficiently exceptional case for a state to have general jurisdiction over a foreign corporation involved circumstances that caused that corporation's president to temporarily manage the corporation's affairs in the state, including maintaining an office, keeping files, communicating with employees and managing funds. Therefore, the factors provided by the Delaware Supreme Court and the additional factors considered by the U.S. Supreme Court should be evaluated when determining whether Delaware may have general jurisdiction over a California or other foreign corporation.

Lastly, given the preeminence of Delaware's corporate laws and judiciary, *Genuine Parts* may lead other states that have historically treated a California or other foreign corporation's registration to do business in that state as consent to general jurisdiction therein to reconsider

that conclusion in light of *Daimler*. Notably, although the Delaware Supreme Court supported its conclusion with its statutory interpretation of the General Corporation Law of the State of Delaware, it relied primarily on *Daimler*, a case which should be equally controlling in other states.

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