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Delaware Supreme Court Clarifies Grounds for Jurisdiction

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In *Genuine Parts Company v. Cepec*,¹ the Delaware Supreme Court held that the provisions of Delaware's General Corporation Law (DGCL) requiring foreign corporations to register to qualify to do business in the State of Delaware and to appoint an agent for service of process² do not, of themselves, operate to subject the foreign corporation to general jurisdiction in Delaware. The Court in *Genuine Parts* thus overturned its decades-old opinion in *Sternberg v. O'Neil*³ to the extent it held that the registration statutes would result in a foreign corporation, merely by qualifying to do business in Delaware, consenting to general jurisdiction in Delaware.⁴ Noting that reliance on *Sternberg* for that proposition was not "tenable" after the U.S. Supreme Court's opinion in *Daimler AG v. Bauman*,⁵ the Delaware Supreme

Court in *Genuine Parts* set out to adopt a rule that recognizes the nature of modern commerce and avoids unduly burdening corporations with national and international operations.

Background

The issue before the Delaware Supreme Court in *Genuine Parts* arose out of claims brought by two residents of Georgia, Ralph and Sandra Cepec, for wrongful exposure to asbestos against Genuine Parts, a Georgia corporation whose principal place of business is in Atlanta, Georgia, and six other defendants associated with the manufacture, distribution or installation of products containing asbestos.⁶ Between 1988 and 1991, Mr. Cepec worked in a Genuine Parts warehouse in Jacksonville, Florida.⁷ In 2015, the plaintiffs brought suit in Delaware against the seven defendants. The plaintiffs alleged that Genuine Parts acted negligently, willfully, wantonly, and with reckless indifference to Mr. Cepec's health and safety by exposing him to asbestos during the three-year period he worked in the Jacksonville warehouse and that such exposure, combined with other incidences of exposure, caused him to develop mesothelioma and other asbestos-related ailments.⁸

Genuine Parts moved to dismiss the claims against it for lack of general and specific personal jurisdiction.⁹ Although Genuine Parts conducted business in Delaware through its NAPA auto-parts stores (and had accordingly registered to do business in Delaware

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under Section 371 of the DGCL and appointed a registered agent in Delaware for service of process), it was not a Delaware corporation, only a small fraction of its employees were located in Delaware, and its Delaware operations accounted for a small percentage of its annual revenues.¹⁰ In response to Genuine Parts' motion to dismiss, the plaintiffs did not rely on any theory that the Delaware Superior Court had specific jurisdiction under Delaware's long-arm statute;¹¹ instead, relying on *Sternberg*, they argued that Genuine Parts had consented to general jurisdiction in Delaware by registering to do business in Delaware and appointing a registered agent in Delaware for service of process.¹²

Following *Sternberg* as well as three other Delaware District Court opinions issued after *Daimler* holding that a foreign corporation's registration to do business in Delaware constitutes express consent to, and a valid basis for, personal jurisdiction in the state,¹³ the Delaware Superior Court denied Genuine Parts' motion to dismiss. As the Superior Court's holding was based on a theory of general jurisdiction, it did not engage in an analysis of whether the plaintiffs' had asserted specific jurisdiction over Genuine Parts. The Delaware Supreme Court accepted Genuine Parts' motion for interlocutory appeal, reviewing its motion *de novo*.¹⁴

A Brief History of Personal Jurisdiction

In reviewing Genuine Parts' motion to dismiss, the Delaware Supreme Court first reviewed the basic principles of personal jurisdiction. The Court noted that there are two bases on which a court may exercise jurisdiction over non-resident defendants. The first is general jurisdiction, which allows for the assertion of jurisdiction based on wholly unrelated contacts with the forum, in cases where the corporation's operations 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."¹⁵ The Court noted that, before the U.S. Supreme Court's decisions in *Goodyear Dunlop Tires Operations, S.A. v. Brown*¹⁶ and *Daimler*, merely doing business in a state would constitute

"continuous and systematic" contacts with the state sufficient to establish general jurisdiction.¹⁷ The second basis for asserting jurisdiction over a non-resident defendant, the Court noted, is specific jurisdiction, where the suit arises out of or relates to the defendant's specific contacts with the forum.¹⁸

The plaintiffs' assertion of personal jurisdiction in *Genuine Parts* was based on the Delaware Supreme Court's holding in *Sternberg* construing the provisions of the DGCL relating to a foreign corporation's registration to do business in Delaware and its appointment of a registered agent for service of process as conferring general jurisdiction over that non-resident corporation. Although acknowledging that *Sternberg* relied upon those statutes to reach its conclusion, the Court stated that "it is important to view that holding in the context of the rest of the decision."¹⁹ The Court noted that *Sternberg* involved a double-derivative suit brought by a stockholder of an Ohio corporation alleging that the corporation was mismanaging its wholly-owned Delaware subsidiary.²⁰ Thus, the Court noted, the issues in *Sternberg* involved matters relating to the internal affairs of a Delaware corporation.²¹ Moreover, the *Sternberg* Court's opinion did not rely exclusively upon the registration statutes for its finding of personal jurisdiction over the Ohio corporation. The *Sternberg* Court found, in the alternative, that the Ohio corporation had "intentionally established and maintained minimum contacts with Delaware by its decision to continue to operate its wholly owned subsidiary ... as a Delaware corporation."²²

Developments Informing the Personal Jurisdiction Analysis

The *Genuine Parts* Court next reviewed the opinions of the U.S. Supreme Court calling into question the fundamental premise of *Sternberg*. The Court first reviewed the U.S. Supreme Court's holding in *Goodyear*. In that case, two teenage boys were killed in a bus accident in France.²³ The plaintiffs alleged that the accident was caused by a defective tire manufactured at a Goodyear plant in Turkey.²⁴ The

boys' parents, who were residents of North Carolina, brought suit in that state against Goodyear and three of its foreign subsidiaries.²⁵ The foreign subsidiaries argued that they were not subject to general jurisdiction in North Carolina.²⁶ The North Carolina court held that the foreign subsidiaries were subject to general jurisdiction, as some of the tires they manufactured reached North Carolina through the stream of commerce.²⁷

The U.S. Supreme Court rejected the lower court's stream of commerce analysis, holding that, while the flow of products into a forum may bolster the analysis relative to the assertion of specific jurisdiction, it did not of itself give rise to a claim of general jurisdiction.²⁸ The *Goodyear* Court accordingly concluded that the foreign subsidiaries' ties to North Carolina were not sufficiently continuous and systematic so as to render them subject to general jurisdiction in that forum.²⁹

The U.S. Supreme Court expanded on this holding in its opinion in *Daimler*. In *Daimler*, twenty-two Argentine residents alleged that a German car manufacturer collaborated with Argentine security forces to kidnap, torture and kill Argentine residents who worked for the manufacturer's Argentine subsidiary.³⁰ The plaintiffs brought suit in California; their theory for asserting general jurisdiction was that the manufacturer had a subsidiary incorporated in Delaware with its principal place of business in New Jersey, but distributed cars throughout the United States, including California.³¹ Stating that the plaintiffs' basis for asserting general jurisdiction was "grasping," the *Daimler* Court noted that the key inquiry for establishing general jurisdiction is whether the contacts with the forum "are so continuous and systematic" to render the corporation "essentially at home in the forum."³² The paradigmatic fora, under this analysis, are the corporation's jurisdiction of incorporation and its principal place of business,³³ although general jurisdiction could be found outside those one or two places in exceptional circumstances where the corporation's contacts with a different jurisdiction are sufficiently substantial and of such a nature to render the corporation "at home" in the other jurisdiction.³⁴

Revisiting the *Sternberg* Opinion in the Modern Economy

To provide context to its holding, the *Genuine Parts* Court noted that "we have long ago become a truly national—even international—economy, and the ability of foreign corporations to operate effectively throughout our nation is critical to our nation's economic vitality and ability to create jobs."³⁵ Viewed from this lens, the Court indicated, it would be inconsistent with basic principles of due process to subject modern corporations to general jurisdiction in every place in which they conduct business.³⁶

The *Genuine Parts* Court noted that, when *Sternberg* was adopted, there was still a debate as to whether a court could assert general jurisdiction over a foreign corporation that complied with the foreign-qualification statutes without conducting a separate analysis under the Due Process Clause as to whether the corporation had sufficient contacts with the state.³⁷ The Court noted, in any event, that absent from the *Sternberg* Court's analysis was a discussion of the nature of Delaware's foreign-qualification statutes—that is, the Court did not address the fact that such statutes, unlike Delaware's long-arm statute, do not specifically address personal jurisdiction, but speak instead in terms of the manner in which process may be served.³⁸

The Court noted that a narrower reading of such statutes is more appropriate—one that recognizes that a foreign corporation must qualify to do business in Delaware and must appoint an agent for service of process in those situations where the conduct requiring registration gives rise to a lawsuit against the foreign corporation.³⁹ The Court further noted that its reading was consistent with the language of Delaware's long-arm statute.

If § 376 [of the DGCL] alone could serve as a basis for general jurisdiction, the specific jurisdiction provisions in the long-arm statute would apply only to foreign corporations that have not registered in the state; instead, [the long-arm statute] applies to "any natural person, association, partnership or corporation."⁴⁰

The Court noted that its interpretation also avoided a perverse result in that a corporation that conducts business in Delaware *without* properly qualifying to do business would be on more favorable footing vis-à-vis its peers that have so qualified in that it would have additional arguments to avoid jurisdiction.⁴¹ With the Court's reading, "foreign corporations that properly registered or that wish to withdraw registration in Delaware are given equitable treatment with scofflaws, not harsher treatment."⁴²

Most important, the Court stated that its ruling, consistent with the principles articulated in *Goodyear* and *Daimler*, would avoid the "unacceptably grasping" exercise of general jurisdiction.⁴³ That is, it would eliminate the circumstances in which a Delaware court could exercise general jurisdiction over a foreign corporation in situations where the corporation's conduct at issue has no bearing on its activities in or directed at Delaware. The Court noted, among other things, that its holding would avoid unreasonable interference with commerce.⁴⁴ The residents of the State of Delaware, the Court noted, benefit from the goods and services that foreign corporations provide in the state.⁴⁵ Those corporations could decline to provide such goods and services if they were required, as a cost of doing so, to consent to general jurisdiction.

The Court also noted the benefits from a much broader perspective. The Delaware courts, it stated, have an interest in not overreaching in this "sensitive area."⁴⁶ Given that many modern businesses tend to operate in all fifty states, grasping behavior by one could result in grasping behavior by all, "to the collective detriment of the common good."⁴⁷ As the jurisdiction of incorporation of a significant number of business entities, Delaware would be disadvantaged particularly by such an outcome, given that Delaware public corporations theoretically could face suits on internal affairs in any state merely because those corporations have operations in all fifty states. In summarizing its holding, the Court noted that "under a sensible goose-and-gander approach, Delaware should be prudent and proportionate in exercising jurisdiction over foreign corporations, and a narrower

reading" of Delaware's foreign-qualification statutes "accomplishes that."⁴⁸

Impact on Other Submissions to Jurisdiction

Despite ruling that Delaware's registration statutes do not operate as a valid consent to general jurisdiction, the Delaware Supreme Court clarified that its holding is not intended to limit the effect of other consents to jurisdiction. Indeed, the Court viewed the "coerced or conditioned" consent to jurisdiction posited by *Sternberg* under Delaware's registration statutes as distinct from such submissions in negotiated agreements.⁴⁹ Accordingly, the Court noted that forum-selection clauses and corresponding submissions to jurisdiction in freely negotiated contracts remain "prima facie valid."⁵⁰ Thus, the impact of the *Genuine Parts* decision can be limited appropriately to personal jurisdiction arising under Delaware's registration statutes.

Conclusion

As a result of the Court's decision in *Genuine Parts*, foreign corporations are no longer subject to general jurisdiction in Delaware solely as a result of their registering to do business in the state. Nevertheless, foreign corporations remain subject to specific jurisdiction in Delaware under the state's long-arm statute in connection with suits arising out of their contacts with the state and retain the ability to validly submit to the jurisdiction of the Delaware courts through bargained-for contracts.

Notes

1. 2016 WL 1569077, -A.3d-, (Del. Apr. 18, 2016).
2. See 8 *Del. C.* § 371 (requiring a "foreign corporation" (defined to mean a corporation organized under the laws of any jurisdiction other than Delaware) to file a statement of qualification to do business with the Delaware Secretary of State setting forth, among other things, the name and address of its registered agent in Delaware); *id.* § 376 (providing, among other things, that process issued out of any Delaware court may be

- served on the registered agent of a foreign corporation designated in accordance with Section 371 of the DGCL or, if no such agent has been so designated, on any director, officer, or other agent of the corporation then in the State of Delaware and further providing that, if the officer whose duty it is to serve legal process cannot by due diligence serve the process in any such manner, then it shall be lawful to serve the process against the corporation upon the Delaware Secretary of State).
3. 550 A.2d 1105 (Del. 1988).
 4. Notably, while the Court in *Sternberg* did construe the registration statutes as providing for such consent to general jurisdiction, it also found an alternative basis for asserting specific jurisdiction over the defendant in the case. *Id.* at 1125-26.
 5. —U.S.—, 134 S. Ct. 746, 187 L.Ed.2d 624 (2014).
 6. *Genuine Parts*, 2016 WL 1569077, at *3.
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. *Id.*
 11. 10 *Del. C.* § 3104.
 12. *Genuine Parts*, 2016 WL 1569077, at *3-4.
 13. The Court noted that the Superior Court had relied upon the following three opinions of the Delaware District Court: *Novartis Pharm. Corp. v. Mylan Inc.*, 2015 WL 1246285 (D.Del. Mar. 16, 2015); *Forest Labs, Inc. v. Amneal Pharm. LLC*, 2015 WL 880599 (D.Del. Feb. 26, 2015); and *Acorda Therapeutics, Inc. v. Mylan Pharm. Inc.*, 78 F.Supp.3d 572 (D.Del.2015), *aff'd on other grounds*, 817 F.3d 775 (Fed. Cir. Mar. 18, 2016).
 14. *Genuine Parts*, 2016 WL 1569077, at *4.
 15. *Id.* (quoting *Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed. 95 (1945)).
 16. 564 U.S. 915, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011).
 17. *Genuine Parts*, 2016 WL 1569077, at *4.
 18. *Id.*
 19. *Id.* at *6.
 20. *Id.*
 21. *Id.*
 22. *Id.* at *7 (quoting *Sternberg*, 550 A.2d at 1122).
 23. *Goodyear*, 564 U.S. at 918.
 24. *Id.*
 25. *Id.*
 26. *Id.* at 919.
 27. *Id.* at 919-20.
 28. *Id.* at 927.
 29. *Id.* at 929.
 30. 134 S.Ct. at 751.
 31. *Id.*
 32. *Id.* at 761.
 33. *Id.*
 34. *Id.* at n.19.
 35. 2016 WL 1569077, at *10.
 36. *Id.*
 37. *Id.*
 38. *Id.* at *11.
 39. *Id.* at *11-12.
 40. *Id.* at *12.
 41. *Id.*
 42. *Id.*
 43. *Id.* at *13.
 44. *Id.* at *14.
 45. *Id.*
 46. *Id.*
 47. *Id.*
 48. *Id.*
 49. *Id.* at *17.
 50. *Id.*

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