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Aybar v. Aybar - New Law on NY Jurisdiction of Foreign Corporations

by Justice Valerie Braithwaite Nelson · Appellate Division, Second Department

2019 WL 288307
Supreme Court, Appellate Division, Second Department, New York.

Anna AYBAR, et al., Plaintiffs-Respondents, v. Jose A. AYBAR, Jr., et al., Defendants, Ford Motor Company, et al., Appellants; U.S. Tires and Wheels of Queens, LLC, Nonparty-Respondent. 2016–06194
|
2016–07397
|
(Index No. 706909/15)
|
Argued - March 26, 2018
|
January 23, 2019

APPEAL by the defendant Ford Motor Company, in an action to recover damages for personal injuries and wrongful death, from an order of the Supreme Court (Thomas D. Raffaele, J.), entered May 31, 2016, in Queens County, and SEPARATE APPEAL by the defendant Goodyear Tire & Rubber Co. from an order of the same court, also entered May 31, 2016. The first order denied the motion of the defendant Ford Motor Company pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it for lack of personal jurisdiction. The second order denied the motion of the defendant Goodyear Tire & Rubber Co., pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it for lack of personal jurisdiction.

Attorneys and Law Firms

Aaronson Rappaport Feinstein & Deutsch, LLP (Eliot J. Zucker, Peter J. Fazio, and Hogan Lovells U.S. LLP, New York, N.Y. [Sean Marotta], of counsel), for appellant Ford Motor Company, and DLA Piper LLP, New York, N.Y. (Kevin W. Rethore of counsel), for appellant Goodyear Tire & Rubber Co. (one brief filed).

Omrani & Taub, P.C. (Parker Waichman, LLP, Port Washington, N.Y. [Jay L.T. Breakstone and Jessica L. Richman], of counsel), for plaintiffs-respondents.

Marshall Dennehey Warner Coleman & Goggin, P.C., New York, N.Y. (Adam C. Calvert of counsel), for nonparty-respondent.

JOHN M. LEVENTHAL, J.P., SANDRA L. SGROI, HECTOR D. LASALLE, VALERIE BRATHWAITE NELSON, JJ.

OPINION & ORDER

BRATHWAITE NELSON, J.

*1 We consider on these appeals whether, following the United States Supreme Court decision in Daimler AG v. Bauman (571 U.S. 117), a foreign corporation may still be deemed to have consented to the general jurisdiction of New York courts by virtue of having registered to do business in New York and appointed a local agent for the service of process. We conclude that it may not.

I.

This action arises from a July 1, 2012, automobile accident that occurred on an interstate highway in Virginia. The defendant Jose A. Aybar, Jr., a New York resident, was operating a 2002 Ford Explorer that was registered in New York when one of its tires allegedly failed, causing the vehicle to become unstable and overturn and roll multiple times. Three of the six passengers died as a result of the accident and the other three were injured. The plaintiffs are the surviving passengers and the representatives of the deceased passengers' estates. They allege, among other things, that the defendant Ford Motor Company (hereinafter Ford) negligently manufactured and designed the Ford Explorer, and that the defendant Goodyear Tire & Rubber Co. (hereinafter Goodyear) negligently manufactured and designed the faulty tire.

Ford is incorporated in Delaware, with its principal place of business in Michigan, and Goodyear is incorporated in, and has its principal place of business in, Ohio. The complaint alleges that at all relevant times both corporations were registered to do business in New York, and that each, in fact,

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Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

April 2019

Wednesday, April 3	CLE: Criminal Court Update X
Monday, April 8	Stated Meeting: Memory Switch
Tuesday, April 9	CLE: Summary Jury Trials in Queens Supreme Court Rescheduled Date
Thursday, April 11	CLE: Let the Bench Tell You
Tuesday, April 16	CLE: Lawyers Assistance Committee Seminar
Wednesday, April 17	CLE: Equitable Distribution Update
Friday, April 19	Good Friday - Office Closed

May 2019

Thursday, May 2	Annual Dinner & Installation of Officers
Tuesday, May 7	DA Candidate's Forum at North Shore Towers
Thursday, May 9	CLE: LGBT & Military Law Comm Seminar
Monday, May 27	Memorial Day - Office Closed

Upcoming Seminars

CPLR & Evidence Update

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President's Message

Springtime is the season of rejuvenation, renewal, growth and expansion. A 2005 University of Michigan Study found that spending time outside in the sunny spring weather isn't just a mood booster...being outdoors opens minds to new information and creative thoughts. So, during the spring, we are actually being supported to plan new things, to work towards making them happen, and to think about how our lives are flowing and evolving. Planning and creating things that are meaningful to us puts us in the flow of life and is a way of taking care of ourselves. While accomplishing things can be stressful, it can also make us feel good, more capable, and more empowered. As human beings we are meant to keep growing, to keep evolving, and to keep learning. When we do not do this, we can feel like something is missing because we become just consumers rather than creators.

While planning and creating new projects and goals can be appealing, the logistics of getting from point A to point B can seem so daunting and insurmountable. Perhaps you have made some attempts to reach your goals before and have not been able to achieve them. Perhaps you just doubt that you can achieve them. Sometimes we make excuses as to why we cannot work towards and achieve what we want. And then we find ourselves finding reasons why it would be easier for everyone else other than ourselves to achieve things, based on the simple fact that their life circumstances are different than ours. However, the fact is that we all have the power to achieve things that we want to achieve. We are attorneys; this in itself is a milestone. What have you been wanting to do that you have been putting off or making excuses to not do? Is it career-related or something in your personal life? If you have started a project and are stuck, consider two things. First, figure out if you really want to continue your project. Assess whether the project is worth your time. If you want to continue your project, then find a way to reinvigorate it. Do you need to redefine your project, or restructure it? Can you enlist help from anyone: either the help of professionals or the help of volunteers or interns?

Whatever your goals are, I encourage you to consider the Bar Association as a valuable resource to help you. Your Bar Membership provides a vast array of member benefits and networking resources. This month the Association will hold two CLEs: "Real Estate Transactions and Litigation" and "Litigating with USCIS and Other Government Agencies on Immigration Cases," as well as have our "Annual Judiciary, Past Presidents and Golden Jubilarian Night." All three events will be excellent networking opportunities. As a member, you have access to our working law library which includes computer stations, Internet and Westlaw access. You may also schedule one of our private meeting rooms for conferences, examinations, depositions and other uses. We have CLE courses available for purchase on DVD or CD that are valid for CLE credit. A variety of group insurance plans, sponsor programs and savings opportunities are available to our members. We at the Bar Association are committed to helping our members advance their goals.

So, take a few minutes to consider, what are you going to do today to step into the flow of your life? And if you are already in the flow, what are you going to do to stay in the flow? Happy Spring!

Very truly yours,

Marie-Eleana First

Editor's Note

Queens Boulevard Humor and Lessons

By Paul E. Kerson

Although we are always engaged in the most serious of matters, the Law does have its humorous side. So, let's explore a bit of the satirical wisdom of our local practices:

1. Official Forms: The NYC Department of Health has announced that Birth Certificates will henceforth have three boxes to choose from: Male, Female and Other. Certainly, this thinking should be extended to Death Certificates as well: How about Dead and Almost Dead. The new Almost Death Certificates would certainly be most useful in the Medical Malpractice Part, just as the new Birth Certificates will be most useful to the Administration for Children's Services (ACS) in preparing child abuse cases in the Family Court.

Why not make a vulnerable minority population even more vulnerable to the misuse of State and City authority from the moment of birth?

2. Practice Development: The Late Jimmy Richman maintained a law office "opp Boro Hall" for more than 40 years, from the 1940s through the 1980s. He had a storefront literally directly across the street from the Queens Borough Hall. He often referred proudly to his "Notary Public Practice" for which he charged $2 to numerous pro se litigants who wandered in from the Landlord-Tenant Part of the Civil Court, then located in Borough Hall.

   As a result, Jimmy represented numerous tenants in the Landlord-Tenant Part and in the Criminal Court.

   Jimmy had been an Internal Revenue Agent before opening his first law office in downtown Brooklyn in the 1920s. This explained the green plastic and frosted glass partitions in his offices. He also prepared tax returns as an adjunct to his "Notary Public Practice".

   But Jimmy's most important maxim had to do with practice development and the setting of legal fees: Jimmy reported that when he first opened his law office in Brooklyn (now nearly 100 years ago), he was overjoyed to have "not one but two $25 cases and a small one."

3. Office Space: A recurrent problem all private practitioners face is this: how to get the best office space for the smallest rental payment. This problem was famously solved by Marvin Landau, who kept his files above the coat rack in the Part I Bar located in the Silver Tower Building directly across the street from the Criminal Court. When not trying cases, Marvin would see his clients at the tables of Part I while drinking beer and harder stuff during the day.

   This beautiful, inexpensive rental arrangement gave new meaning to the phrase "admitted to the Bar." With Marvin, everyone was admitted to the Bar, and the security of the information in his case files "could never be questioned." After all, even though his files were on public display for every patron in the Part I Bar, no one could ever find sensitive information from his files on the Internet, because the Internet was not yet invented at that time.

Of course, today, by using the Internet, every lawyer places his or her files in far more jeopardy than Marvin ever did. Marvin's files were only exposed to every thirsty patron on Queens Boulevard. Today, every lawyer exposes part of his or her files (and his or her emails) to every lunatic hacker in Lithuania, Estonia, Latvia and even New Jersey, not to mention two billion Facebook users if one is foolish enough to communicate with clients on Facebook.

But Marvin was not to be outdone by Sylvia Furst, who kept her files on a folding table in the back of a Hallmark card shop a few doors down the block from Jimmy Richman's office. Need a greeting card for a birthday, anniversary or condolences or get well soon? (The Almost Death Certificate had not yet been invented).

Well, after purchasing your card, you could see Sylvia in the open retail store and discuss your most confidential life problem. Of course, Sylvia was only broadcasting her clients' confidences to the half-dozen people in the card shop, not like today, when the Internet can broadcast every client's secrets to those hackers in BOTH New Jersey, Latvia, Lithuania, Estonia AND your local police department and FBI office.

Maybe Sylvia and Marvin had the right idea about client confidentiality, unlike us "modern" lawyers of today, who are

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SO MUCH MORE CAREFUL about it. Just ask the hacker and law enforcement communities to compare Marvin and Sylvia's efforts to protect their clients' secrets to ours in this "modern" age when we live such "improved lives."

4. The Situation in Israel: There was a time when most of the private practitioners on Queens Boulevard were of Jewish heritage. Our gathering place was Pastrami King, a restaurant specializing in the ethnic food of our ancestors from Eastern Europe – pastrami, corned beef, salami, knishes, pickles, hot dogs, and the like. This gastronomic inheritance always involved less expensive cuts of beef, as our immigrant ancestors were largely poor. Pastrami King, located in between the Part I Bar Law Offices of Marvin Landau and the Hallmark Card Shop Law Offices of Sylvia Furst, was down the block from the "Notary Public" practice of Jimmy Richman.

   Since its founding in 1948, the State of Israel has been physically attacked by its surrounding neighbors in numerous, continuing, ongoing wars as it is today. As of this writing, the latest attacker, the Iranian Government, is trying to build military bases in the lands surrounding Israel in a publicly stated effort to execute all the Jewish People now residing in the State of Israel and all their neighbors who might be in the way. Israel is regularly trying to tear these bases down.

   At Pastrami King all those years, we knew these attacks to be a continuation of the Holocaust of 1934-1945, the Inquisition of 1232-1908, the Expulsion from Spain in 1492 and the Expulsion from England in 1290.

   Just this past year, on October 27, 2018, a synagogue in Pittsburgh, PA, USA, was shot up and 11 people killed.

   At Pastrami King, one could become depressed about this history of hateful killings. After all, it is not as if we here in Queens County have any difficulty obtaining adjournments of our cases on Jewish holidays.

   So, we engaged in a kind of gallows humor. It was concluded that the State of Israel "was just a title closing that got fouled up." Our learned colleague, Jon Silver, came up with this analysis. It did not need the most sophisticated weapons in the Pentagon to solve. Rather, we at Pastrami King knew just what to do: Fouled up title closing? CALL LARRY LITWACK AT BIG APPLE ABSTRACT. Larry always knows what to do when the boundary line "is in the wrong place" and who should pay for it.

5. Smile for this Month - And so, here is your smile for this month: Israel will not need an Almost Death Certificate as long as Larry Litwack is on the case. And all our client files will be forever secure if we use the methods of Marvin Landau and Syliva Furst instead of email and the Internet. And our practices will always be profitable if we can have "not one, but two $25 cases and a small one" in the words of our colleague, Jimmy Richman.

6. Lesson for this Month (and every Month): And now for your lesson for this month (and every month): Marvin Landau, Sylvia Furst and Jimmy Richman provided a very valuable accessible service for the ordinary people of Queens County: They listened to their clients at their moments of very high stress. They held their clients' hands without a television screen with very tiny letters and numbers getting in the way.

   They certainly should have used file cabinets (and not bar shelves and card tables) and upstairs offices for better privacy. But what did the Part I Law Offices of Marvin Landau, the Hallmark Card Shop Law Offices of Sylvia Furst and the "Notary Public" practice of Jimmy Richman have in common? Answer – All three were very "user friendly" to people in desperate trouble in the Civil Court and Criminal Court located just across the street. If you wanted to see Marvin, Sylvia or Jimmy, no machine got in the way.

   But we here in the far distant future of 2019 must take a lesson from them – Do not let Silicon Valley hijack your law practice any further. Do not put numerous machines in between you and your clients. Do not watch email all day when clients need to see you in person.

   It is the one-on-one counseling and face-to-face representation before tribunals of all sorts that is built in to the hard-earned title: Attorney and Counsellor at Law.

   There is no job title "Techie-at-Law," one who hides behind one's personal computer, printer, scanner and cell phone to avoid the human contact that is at the core of our profession. (Incidentally, collection of legal fees works far better in person than over the Internet.)

7. Recommendation: All these machines are for secretaries, clerks and paralegals. Let them watch your office's email all day – NOT YOU. Your time should be filled with face-to-face meetings with clients, potential clients, judicial personnel and with each other settling cases, and in drafting motions, pleadings, briefs, wills and contracts. Drafting requires QUIET, not just acoustical, but electronic quiet – no text messages, voicemail, telephone calls or emails. This is for staff. Refusal to follow this recommendation is wrecking our work product – the creation of Justice Itself, which requires in-person, face-to-face time with warring parties, their counsel and judicial personnel.

As our late colleague Moe Tandler used to say; "You're a lawyer. That means something." It most assuredly does not mean machine operator.

CPLR 2101(B) and Foreign Language Affidavits

By Andrew D. Grossman

Queens County, long acknowledged as among the most diverse areas in the world, has no ethnic or language majority. According to data from the 2010 census, more than half of Queens residents speak a language other than English in their homes, and 48% are foreign-born.

As a result, the practice of law in Queens often requires attorneys to work with clients and witnesses who are not fluent in English, and this can create some potential traps for the unwary practitioner. Of course, a non-English speaking witness cannot simply provide an affidavit in English; some assurance is needed by the court that the affiant understands what he or she has sworn to be true.

The correct procedure for submitting an affidavit from a non-English speaker is contained within CPLR 2101(b). Under that provision, documents must either be filed in English or, if an exhibit or affidavit is not in English, it must be accompanied by an affidavit from a translator.

The pitfall I see most often in my own practice arises when an attorney submits an English affidavit from a non-English speaker that contains, usually at the end, a statement that the affidavit was translated or explained to the affiant in a language they understand. Sometimes, the attorney also includes a certification from a translator stating that they read and explained the affidavit to the affiant in their native language.

The problem with this approach is that the Court has no assurance that the affiant understood the affidavit, including the portion that states it was explained to them in their preferred language. For that reason, and consistent with CPLR 2101(b), most courts will reject such affidavits.

The appropriate procedure is as follows: the affidavit should be prepared in a language that the affiant understands, and should then be accompanied by a translation of the document in English, along with a brief affidavit from a translator stating their qualifications, and that the translation is accurate.

This issue arose recently in my practice, where an emergency order to show cause was rejected. Opposing counsel in that case filed an English-language affidavit for a non-English speaking client, along with an attorney affirmation that the attorney is bilingual and had explained the affidavit's contents to the affiant in their native language. Aside from the additional complication of involving attorney-client privilege, the Court found that the submission did not meet the requirements of CPLR 2101(b), and rejected the proposed order.

A good rule of thumb is that the affidavit should be prepared to match the testimony you would expect if the affiant were on the stand. If the affiant is expected to use an interpreter, prepare the affidavit in their preferred language, and have that affidavit submitted following the 2101(b) process above. Doing so can help avoid having your papers rejected or not considered.

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conducted business in New York and derived substantial revenue from such business.

Ford moved pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it on the ground that the Supreme Court lacked personal jurisdiction over it. In support of its motion, Ford submitted evidence that the subject vehicle was manufactured in Missouri and sold to a dealership in Ohio in March 2002, from where it was sold to an individual not involved in this lawsuit, and that the vehicle was not designed in New York. Ford also submitted evidence that it did not have any Ford Explorer manufacturing plants in New York, and it did not directly engage in the servicing of Ford vehicles in New York, which is done exclusively by independent dealers. Aybar purchased the subject vehicle and tire in 2011 from a third party in New York.

*2 In opposition to the motion, the plaintiffs argued that Ford was subject to general jurisdiction in New York because Ford maintained a substantial and continuous presence in New York. To support this proposition, the plaintiffs pointed to "hundreds" of Ford dealerships employing numerous New York residents, and they submitted evidence that Ford operated a stamping (manufacturing) plant in Hamburg, New York, which employed approximately 600 people and for which Ford had received incentive packages and tax credits from New York State. In reply, Ford submitted evidence that it had 62 plants and franchise agreements with 11,980 dealerships worldwide, and argued that its economic contacts with New York were not so substantial as compared to its contacts elsewhere so as to render Ford "at home" in New York.

Goodyear also moved pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against it on the ground of lack of personal jurisdiction. In support of its motion, Goodyear submitted evidence that the subject tire was designed in Ohio, manufactured in Tennessee in 2002, and tested and inspected outside of New York. Goodyear asserted that it had no way of tracking the sale or ownership of a given tire over its service life, but could identify that the subject class of tire was sold as original equipment for certain Isuzu and Ford vehicles, and as a replacement tire. Goodyear additionally submitted evidence that it operated a chemical plant in New York and that it was a member of a limited liability company which owned and operated a tire manufacturing plant in New York, but that neither plant manufactured the subject tire, and that Goodyear did not specifically direct advertising of the subject tire at New York residents.

In opposition to Goodyear's motion, the plaintiffs argued that Goodyear was subject to general jurisdiction in New York because its business affiliations within New York were so pervasive or continuous and systematic as to render it essentially "at home" in New York State. The plaintiffs submitted evidence that Goodyear had numerous tire and auto service center storefront locations in New York, from which the plaintiffs argued it could be inferred that Goodyear employed hundreds, possibly thousands, of New York residents. In reply, Goodyear submitted evidence that it had plants, service centers, and other properties worldwide. It argued that it employed "a tremendous number of people" worldwide, and that its economic contacts with New York were not so substantial as compared with its contacts elsewhere so as to render Goodyear "at home" in New York.

Nonparty U.S. Tires and Wheels of Queens, LLC (hereinafter U.S. Tires), was a defendant in a separate action brought by the plaintiffs arising from the same accident. At the time of the motions to dismiss of Ford and Goodyear, there was a pending motion to consolidate the two actions. U.S. Tires submitted opposition papers to the subject motions, and argued that both Ford and Goodyear had consented to general jurisdiction in New York by registering to do business with the New York Secretary of State and designating an agent for service of process in New York. U.S. Tires noted that it was a New York corporation with its principal place of business in New York, and, thus, if Ford and Goodyear were to succeed on their motions, the result would be three separate lawsuits, all involving the same accident, which, U.S. Tires contended, would likely result in inconsistent verdicts, duplication of discovery, and waste of judicial resources.

In response to U.S. Tires's opposition, Ford argued that the opposition was untimely, U.S. Tires lacked standing to oppose the motion, and, on the merits, Ford's compulsory registration to do business in New York and appointment of the Secretary of State as its agent for service of process did not constitute consent to general jurisdiction in New York. Goodyear advanced similar arguments in response to U.S. Tires's opposition.

*3 In separate orders, each entered May 31, 2016, the Supreme Court, Queens County (hereinafter the motion court), denied the motions, concluding that Ford and Goodyear were each subject to general jurisdiction in New York. The motion court found that the activities of both Ford and Goodyear in New York were so continuous and

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systematic that both Ford and Goodyear are essentially at home here. The motion court also found that both Ford and Goodyear had otherwise consented to general jurisdiction in New York by each registering to do business in New York as a foreign corporation and designating a local agent for service of process. With regard to Ford's activities in New York, the motion court pointed to the facts that Aybar purchased the vehicle in New York and primarily used it in New York, Ford has an organization of facilities in New York engaged in day-to-day activities, and Ford has many franchises across New York. With regard to Goodyear, the motion court relied upon the facts that Goodyear had operated numerous stores in New York since approximately 1924 and had employed thousands of workers in those stores, and it has an organization of facilities in New York engaged in day-to-day activities. Ford and Goodyear appeal.[1]

II.

It is fundamental that a court must acquire personal jurisdiction over a defendant before it can render a judgment against that defendant (*see Burnham v. Superior Court of Cal., County of Marin*, 495 U.S. 604, 608; *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702). A defendant may consent to a court's exercise of personal jurisdiction (*see National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316), or waive the right to object to it (*see* CPLR 3211[e]; *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. at 703; *Iacovangelo v. Shepherd*, 5 NY3d 184, 186), but when a defendant has objected to the court's exercise of personal jurisdiction, the plaintiff bears the burden of coming forward with sufficient evidence to prove jurisdiction (*see Fischbarg v. Doucet*, 9 NY3d 375, 381 n 5; *Mejia–Haffner v. Killington, Ltd.*, 119 AD3d 912, 914).

Under modern jurisprudence, a court may assert general all-purpose jurisdiction or specific conduct-linked jurisdiction over a particular defendant (*see Daimler AG v. Bauman*, 571 U.S. at 122; *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915). "A court with general jurisdiction may hear *any* claim against that defendant, even if all the incidents underlying the claim occurred in a different State" (*Bristol–Myers Squibb Co. v. Superior Court of Cal., San Francisco County*, ___ U.S. ___, 137 S Ct 1773, 1780; *see Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. at 919). "Specific jurisdiction, on the other hand, depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation" (*Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. at 919 [internal quotation marks and brackets omitted]; *see Bristol–Myers Squibb Co. v. Superior Court of Cal., San Francisco County*, ___ U.S. ___, 137 S Ct at 1780; *Daimler AG v. Bauman*, 571 U.S. at 127).

Here, in opposing the motions of Ford and Goodyear, the plaintiffs asserted that New York courts have general jurisdiction over each defendant. The plaintiffs did not assert that the court could exercise specific jurisdiction over these defendants in this action, and, thus, we do not consider whether jurisdiction might be exercised over them pursuant to New York's long-arm jurisdiction statute[2] (*see* CPLR 302).

General jurisdiction in New York is provided for in CPLR 301, which allows a court to exercise "such jurisdiction over persons, property, or status as might have been exercised heretofore." Prior to the United State Supreme Court's decision in *Daimler AG v. Bauman* (571 U.S. 117), a foreign corporation was amenable to suit in New York under CPLR 301 if it had engaged in "such a continuous and systematic course of 'doing business' here that a finding of its 'presence' in this jurisdiction [was] warranted" (*Landoil Resources. Corp. v. Alexander & Alexander Servs.*, 77 N.Y.2d 28, 33, quoting *Laufer v. Ostrow*, 55 N.Y.2d 305, 309–310). The parties do not dispute that there is statutory authority for the exercise of general jurisdiction over Ford or Goodyear, or that the exercise of such jurisdiction would be consistent with New York law. The disagreement lies in whether the exercise of such jurisdiction would comport with the limits imposed by federal due process since *Daimler*.

*4 In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, the Supreme Court addressed the distinction between general and specific jurisdiction, and stated that a court is authorized to exercise general jurisdiction over a foreign corporation when the corporation's affiliations with the state "are so 'continuous and systematic' as to render them essentially at home in the forum State" (564 U.S. at 919, quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 317). In *Daimler*, the Court limited the scope of general jurisdiction to that definition, and rejected a standard that would allow the exercise of general jurisdiction in every state in which a corporation is engaged in a substantial, continuous, and systematic course of business (571 U.S. at 137). The Court instructed that, with respect to corporations, the paradigm bases for general jurisdiction are the place of incorporation and principal place of business (*see id.*). Although the Court did not limit the exercise of general jurisdiction to those two forums, it left open only the possibility of an "exceptional case" where a corporate

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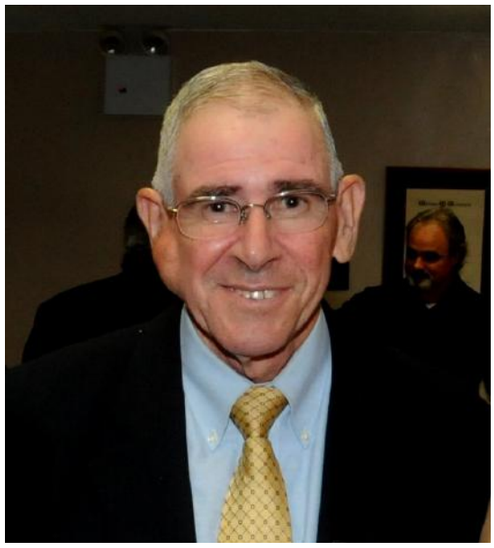
Can the Obama Affordable Care Act Survive a Renewed Constitutional Challenge?

By Spiros Tsimbinos



On June 28, 2012, in the landmark case of National Federation of Independent Business v. Sebelius, 132 S.Ct., 2566 (2012), the United States Supreme Court, in a narrow 5-4 decision, upheld the constitutionality of the Obama Health Care Law. Chief Justice Roberts joined the four liberal members of the Court in upholding the new legislation. In issuing the majority opinion, Chief Justice Roberts upheld the Health Care Law solely on the ground that it was a "tax" within the taxing power of Congress. In the decision, Justice Roberts specifically stated that the individual mandate imposing minimum essential coverage under which certain individuals must purchase and maintain health insurance coverage exceeded Congress' power under the Commerce Clause. He then specifically upheld the constitutionality of the statute solely on the ground that the individual mandate was a "tax" that was within the taxing powers of Congress.

During the 2016 presidential campaign, President Trump and the Republican Party ran on a platform of repealing and replacing the Health Care Law that had been passed by Democrats. Although they vigorously attempted in 2017 to fulfill this promise, their efforts failed when Senator John McCain refused to cast the deciding vote in the Senate. Several months later, however, when the Republicans were able to pass the Tax Cut and Reform Act at the end of December 2017, the new tax law contained a provision specifically repealing the mandatory tax penalty contained in the Affordable Care Act.

When this occurred, it appeared to me that the question would arise as to whether the entire Obama Health Care Law was now unconstitutional and invalid. I was surprised that no one seemed to consider this possibility when the tax was repealed and it appears that no one had even considered the consequences of such an action. I expressed my concern and raised the issue in an article I wrote for the New York State Bar Association Criminal Law Newsletter (Spring 2018 issue, Volume 16, No. 2 at page 22).

A few months later, I learned that the Attorney General of Texas had apparently come to the same conclusion and he organized a group of some 20 Republican Attorney Generals in order to bring a lawsuit in the Federal District Court in Texas. After lengthy legal arguments and several months of considerations, Judge Reed O'Connor in December of 2018, found the Affordable Care Act to be unconstitutional in its entirety. In a lengthy opinion he concluded that the entire law had to be scrapped because the tax penalty was essentially eliminated by Congress and that, therefore, the constitutional underpinning of the statute had been removed and the entire law was now fatally flawed. Although some legal analysts have criticized Judge O'Connor's determination and have argued that the other sections of the Health Care Law can be separated from the tax penalty provision, I feel that the Judge's ruling raises some serious concerns regarding the constitutionality of the Health Care Act and could lead to serious consequences impacting some 20 million Americans who are now covered under the various provisions of the statute.

Judge O'Connor evidently being aware of the possible serious impact of his decision stayed the applicability of his determination to allow a final determination to be made on appeal. The case will now be heard in the Fifth Circuit Court of Appeals. The Fifth Circuit unlike the Ninth covers the States of Mississippi, Louisiana and Texas and does contain several Judges who have a more conservative outlook. It is thus possible that the Fifth Circuit, when it issues its ruling sometime within the next several months will support Judge O'Connor's determination.

Whatever decision is reached by the Fifth Circuit, it is almost certain that the case may once again wind up in the United States Supreme Court. If and when this happens, what might we expect from the Supreme Court? It is almost certain that the four liberal Justices who voted to support the Health Care Law will clearly endeavor to find some means to continue to uphold its constitutionality. On the other hand, the Justices Thomas and Alito who voted against the Law in 2012 will continue to challenge its constitutionality. The deciding group thus may involve the two new Justices who did not participate in the original ruling, to wit, Justices Gorsuch and Kavanaugh. Although these two new Justices, being viewed as Conservative and having been appointed by President Trump would be expected to cast votes against the statute, it is not totally clear whether one or both of them would surprise Conservatives by voting as Justice Roberts had done in 2012.

The Kingmaker could once again be Chief Justice Roberts himself. Although he is in a logically difficult position, having already found that the only constitutional basis to uphold the law was because of the taxing power, legal commentators surmised that the Chief Justice was extremely reluctant to strike down a statute which would affect so many people and would be politically unpopular so as to create additional public criticism of the Court. The Chief Justice thus finds himself in a very problematic position and it is hard to guess which way he will go.

The ultimate outcome in the United States Supreme Court may also be determined by some unexpected event. If and when the case reaches the United States Supreme Court, no decision from that Court can be expected until at least the end of 2020. By that time, three Justices on the Court will be at least 80 with Justice Ginsburg reaching 87 years of age. The possibility of additional retirements or the need for replacements is ever present and who knows whether President Trump may have the opportunity for a third nomination.

The Affordable Care Act is once again under a constitutional cloud and the entire issue of providing affordable health care for Americans is once again becoming a major political issue. Many liberal Democrats are now supporting the concept of Universal Health Care based upon the Medicare pattern. Conservatives strongly oppose such a position arguing it is unaffordable and a major step towards Socialism in the Country. They support a system of block grants to the various states which can be used to support their own individual programs. Given the partisan gridlock, it does not appear that any resolution of this problem will come from legislative action and the Courts may once again become the center of the controversy.

Editor's Note: Spiros A. Tsimbinos is a Past President ('95-'96) of the Queens County Bar Association and former Editor of the New York State Bar Association Criminal Newsletter.

EB-4 Visa: Religious Workers

By Dev B. Viswanath, Esq. & Michael Phulwani, Esq.

The EB-4 visa is an employment-based immigrant visa for special religious employees. Ministers/Priests and non-ministers in religious vocations and occupations may enter to or adjust status in the U.S. to perform religious work as a full-time compensated employee. There is a cap of 5,000 employees who may be issued a visa under the EB-4 category if they will be employed as a non-minister. There is no cap for employees who will be employed as a minister. Non-minister special immigrant religious employees include those within a religious vocation or occupation engaging in either a professional or non-professional role.

In order to qualify as a special immigrant religious employee, the foreign individual must:

- Have been a member of a religious denomination for at least two years immediately before the filing of a petition. The religious denomination must be a bona-fide non-profit religious organization in the United States.
- Come to the U.S. to work in a full time, compensated position as either
  - A minister of that religious denomination;
  - A religious vocation either in a professional or nonprofessional position; or
  - A religious occupation either in a professional or nonprofessional position
- Employed for either a
  - Bon fide non-profit religious organization in the U.S.; or
  - Bon fide organization that is associated with the religious denomination in the U.S.
- Have been employed in one of the above position after the age of 14, either abroad or in the U.S., for two continuous years immediately before the filing of a petition.

Both the employing non-profit religious organization and the religious employee must provide supporting documents along with the proper forms. The religious organization must provide proof of tax-exempt status and proof of salaried or non-salaried compensation. The religious employee must provide proof membership, documentation showing that religious worker is qualified to perform the duties of the proposed position, and proof of previous religious work.

There is a similar non-immigrant category of visa for religious workers called the R-1 Visa. Please note that while the two categories are related and similar, they are parallel and anyone or organization considering bringing religious workers to their religious institution or entities should review them carefully with an experience immigration professional who understands the process ofr foreign national religious workers.

Any dependents of EB-4 nonimmigrants, spouse and unmarried children under the age of 21, will need to apply for derivative family visas once the principal applicant is approved.

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defendant's operations in another state were "so substantial and of such a nature as to render the corporation at home in that State" (*id.* at 139 n 19; *see BNSF Ry Co. v. Tyrrell*, —— U.S. ——, 137 S Ct 1549, 1558).

Neither Ford nor Goodyear is incorporated in New York or has its principal place of business here. Thus, New York courts can exercise general jurisdiction over each defendant only if the plaintiffs have established that its affiliations with New York are so continuous and systematic as to render it essentially "at home" here.

Since *Daimler*, the Supreme Court has reiterated that, standing alone, mere "in-state business ... does not suffice to permit the assertion of general jurisdiction over claims ... that are unrelated to any activity occurring in [the forum State]" (*BNSF Ry Co. v. Tyrrell*, —— U.S. at ——, 137 S Ct at 1559). To determine whether a foreign corporate defendant's affiliations with the state are so continuous and systematic as to render it essentially at home, *Daimler* advised that "the general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts," but "instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them" (*Daimler AG v. Bauman*, 571 U.S. at 139 n 20; *see BNSF Ry Co. v. Tyrrell*, —— U.S. at ——, 137 S Ct at 1559).

The *Daimler* Court suggested that *Perkins v. Benguet Consol. Mining Co.* (342 U.S. 437) exemplified the "exceptional case" in which a corporate defendant's operations in the forum state were so substantial and of such a nature as to render the corporation "at home" in that state (*see Daimler AG v. Bauman*, 571 U.S. at 129). In *Perkins*, the defendant was incorporated in the Philippine Islands, where it owned and operated certain mines (342 U.S. at 439). Its operations were completely halted during the Japanese occupation of the Islands in World War II. During that interim, the president of the company, who was also the general manager and principal stockholder, returned to his home in Ohio, where he maintained an office and conducted the corporation's affairs (*see id.* at 447–448). The Supreme Court held that Ohio courts could exercise general jurisdiction over the corporation without offending due process (*see id.* at 448). The Supreme Court later noted that "Ohio was the corporation's principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State" (*Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n 11, *see Daimler AG v. Bauman*, 571 U.S. at 130).

A.

The plaintiffs argue that New York courts have general jurisdiction over Ford because Ford has "become woven into the fabric of New York state domestic activity." They point to the facts that Ford has been authorized to do business in New York since 1920, it operates numerous facilities in New York, it owns property in New York and spends at least $150 million to maintain the property, it employs significant numbers of New York residents, it contracts with hundreds of dealerships in New York to sell its products under the Ford brand name, and it has frequently been a litigant in New York courts.

*5 Under the strictures of *Daimler*, Ford's contacts with New York are insufficient to permit the assertion of general jurisdiction over claims that are unrelated to any activity occurring in New York. Ford concedes that it has extensive commercial activities in New York, but it notes that it has extensive commercial activities throughout the country and worldwide. Indeed, while the plaintiffs point to Ford's one factory in New York, employing approximately 600 people, and Ford's contracts with "hundreds" of dealerships in the state, Ford presented evidence that it has 62 plants, employing about 187,000 people, and 11,980 franchise agreements with dealerships worldwide. Appraising the magnitude of Ford's activities in New York in the context of the entirety of Ford's activities worldwide, it cannot be said that Ford is at home in New York.

B.

The plaintiffs contend that Goodyear's presence in New York is special, as it has conducted business in New York for nearly a century, it has owned and operated a chemical plant here since the 1940's, as well as a tire manufacturing plant, it has availed itself of New York's courts, and it has leased and subleased real estate in New York, maintained a network of dealers and service centers, and employed thousands of people in New York since 1924. Like Ford, Goodyear concedes that it has extensive commercial activity in New York, but it points to the evidence that it has 50 manufacturing plants worldwide and it operates approximately 1,200 retail outlets for the sale of its tires worldwide. Appraising Goodyear's activities in their entirety, Goodyear also is not at home in New York such that New York courts might exercise general jurisdiction over any claim brought against it.

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III.

The plaintiffs also argue that Ford and Goodyear each consented to the jurisdiction of New York courts for all purposes, including this suit, by registering to do business in New York and appointing an agent for service of process. The plaintiffs do not rely on any particular business registration statute in making this argument. Before the motion court, U.S. Tires, which raised this argument, relied only on CPLR 301. Nevertheless, as relevant to these defendants, we note that Business Corporation Law § 1301(a) provides that "[a] foreign corporation shall not do business in this state until it has been authorized to do so." Business Corporation Law § 304(b) provides, inter alia, that no foreign corporation may be authorized to do business in New York unless in its application for authority, it designates the secretary of state as the agent upon whom process against the corporation may be served. Similarly, Business Corporation Law § 1304(a)(6) requires a foreign corporation, in its application for authority to do business in New York, to designate the secretary of state as its agent upon whom process against it may be served and an address to which process received by the Secretary of State is to be mailed.

New York's business registration statutes do not expressly require consent to general jurisdiction as a cost of doing business in New York, nor do they expressly notify a foreign corporation that registering to do business here has such an effect. There has been longstanding judicial construction, however, by New York courts and federal courts interpreting New York law, that registering to do business in New York and appointing an agent for service of process constitutes consent to general jurisdiction (*see e.g. Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432, 436–437; *Doubet LLC v. Trustees of Columbia Univ. in the City of N.Y.*, 99 AD3d 433, 434–435; *Augsbury Corp. v. Petrokey Corp.*, 97 A.D.2d 173, 175–176; *Le Vine v. Isoserve, Inc.*, 70 Misc.2d 747, 749 [Sup Ct, Albany County 1972]; *Robfogel Mill–Andrews Corp. v. Cupples Co., Mfrs.*, 67 Misc.2d 623, 624 [Sup Ct, Monroe County 1971]; *Carlton Props. v. 328 Props.*, 208 Misc. 776 [Sup Ct, Nassau County 1955]; *Devlin v. Webster*, 188 Misc. 891 [Sup Ct, N.Y. County 1946], *affd* 272 App.Div. 793; *Rockefeller Univ. v. Ligand Pharmaceuticals*, 581 F Supp 2d 461, 464–467 [SD NY][listing numerous federal cases finding consent by registration]; *cf. Muollo v. Crestwood Vil.*, 155 A.D.2d 420, 421). We hold that in view of the evolution of in personam jurisdiction jurisprudence, and, particularly the way in which *Daimler* has altered that jurisprudential landscape, it cannot be said that a corporation's compliance with the existing business registration statutes constitutes consent to the general jurisdiction of New York courts, to be sued upon causes of action that have no relation to New York.[*]

*6 In New York, the theory of consent by registration originates in the 1916 opinion of Judge Cardozo in *Bagdon v. Philadelphia & Reading Coal & Iron Co.* (217 N.Y. 432). There, the Court of Appeals held that a foreign corporation could be sued in New York upon a cause of action that had no relation to the corporation's New York activities because the corporation had consented to the jurisdiction of New York by obtaining authorization to do business here and appointing an agent for service of process in New York. *Bagdon* must be understood within the historical context in which it was decided.

At the time *Bagdon* was decided, in personam jurisdiction was still largely limited by the conceptual structure of *Pennoyer v. Neff* (95 U.S. 714). In *Pennoyer*, decided shortly after the enactment of the Fourteenth Amendment, the United States Supreme Court held that a court's jurisdiction was restricted by its territorial limits or geographic bounds (*see id.* at 720), and, thus, no state could exercise jurisdiction over persons or property outside of its territory (*see id.* at 722). "*Pennoyer* sharply limited the availability of in personam jurisdiction over defendants not resident in the forum State. If a nonresident defendant could not be found in a State, he could not be sued there" (*Shaffer v. Heitner*, 433 U.S. 186, 199). To complicate matters, under the 19th century view, a corporation could have "no legal existence" outside of its state of incorporation (*Bank of Augusta v. Earle*, 38 U.S. 519, 588), and, thus, could be sued only in the state of incorporation, no matter how extensive its business in another state (*see Brown v. Lockheed Martin Corp.*, 814 F3d 619, 631).

"In time, however, that strict territorial approach yielded to a less rigid understanding" (*Daimler AG v. Bauman*, 571 U.S. at 126). States enacted statutes requiring the appointment by foreign corporations of agents upon whom process could be served "primarily to subject them to the jurisdiction of [the] local courts in controversies growing out of transactions within the [S]tate" (*Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 409). The business registration statutes conditioned a corporation's authority to do business in a state on its designation of an appointed agent within the state to accept service. "Pointing to the acceptance of service by an in-state agent appointed by the corporation, a state could

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tenably argue that the corporation had voluntarily consented to jurisdiction there and that, notwithstanding *Earle*, it was 'present' in the state because it maintained an agent there" (*Brown v. Lockheed Martin Corp.*, 814 F3d at 632). In addition, federal jurisprudence evolved such that a foreign corporation could be subject to the jurisdiction of a state's courts if the corporation was doing business within the state and service was made in the state upon some duly authorized officer or agent who was representing the corporation in its business (*see St. Louis Southwestern R. Co. of Tex. v. Alexander*, 227 U.S. 218, 226; *Herndon–Carter Co. v. James N. Norris, Son & Co.*, 224 U.S. 496, 499; *Peterson v. Chicago, R.I. & P.R. Co.*, 205 U.S. 364, 390).

Turning back to the Court of Appeals' decision in *Bagdon*, there, a New York resident sued a Pennsylvania corporation for an alleged breach of contract that occurred in Pennsylvania. The defendant corporation was registered to do business in New York and had appointed an agent for the service of process in New York (*see Bagdon v. Philadelphia & Reading Coal & Iron* Co., 217 N.Y. at 433). The defendant conceded the presence of an agent in New York, but argued that the scope of the agency of the person appointed to accept service of process in its behalf must be limited to actions which arose out of the business transacted in New York (*see id.* at 433–434). The Court of Appeals rejected the defendant's argument and found that the defendant could properly be sued in New York on the cause of action, even though it did not arise from the defendant's activities in New York. The Court reasoned that by obtaining a certificate from New York to do business here, the defendant had entered into a binding contract with New York. In exchange for the right to do business in New York, the defendant had filed a stipulation in the office of the secretary of state designating a person upon whom process may be served within the state (*see id.* at 436). The Court found that this person was a "true agent" of the defendant, and the stipulation was a "true contract" with New York (*id.*). The Court held that the actions in which this agent was to represent the corporation were not limited, and, as long as New York had subject matter jurisdiction over the action, service on the agent would give jurisdiction of the person (*see id.* at 437). The Court further explained that the agent was in the service of the corporation engaged in business in New York, and that the agent's "presence" brought the corporation within the jurisdiction of New York (*id.* at 439).

*7 One year after *Bagdon* was decided, the Court of Appeals extended this reasoning to a corporation that apparently was unlicensed in New York, but which was doing regular business here. In *Tauza v. Susquehanna Coal Co.*, the Court held that New York courts had jurisdiction over a foreign corporation that was doing business in New York and which had been served with process through a managing agent in its New York office, and that the court's jurisdiction "[did not] fail because the cause of action sued upon [had] no relation in its origin to the business here transacted" (220 N.Y. 259, 268). The Court stated that "[t]he essential thing is that the corporation shall have come into the state. When once it is here, it may be served; and the validity of the service is independent of the origin of the cause of action" (*id.* at 268–269).

Twenty-three years after *Bagdon*, the Supreme Court of the United States interpreted a successor New York registration statute in accordance with *Bagdon*, and found that the defendant had consented to be sued in the courts of New York by designating an agent in New York for the service of process (*see Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 174–175). The Court observed that the statute calling for such a designation was constitutional, and the designation of the agent was " 'a voluntary act' " (*id.* at 175, quoting *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 96).

New York courts continued to be guided by the requirement that a defendant must be found to be "present" in the state in order to exercise jurisdiction over the defendant in accordance with federal due process (*see Simonson v. International Bank*, 14 N.Y.2d 281, 285). By registering to do business in New York and appointing an agent for the service of process, a foreign corporation was, in effect, consenting to be found within New York (*see Pohlers v. Exeter Mfg. Co.*, 293 N.Y. 274, 280 ["A designation of a public officer upon whom service may be made has the same effect as a voluntary consent"]).

In 1945, the United States Supreme Court decided *International Shoe Co. v. State of Washington* (326 U.S. 310), which altered our in personam jurisdiction jurisprudence. *International Shoe* extended the analysis beyond physical presence and authorized a state court to exercise personal jurisdiction over an out-of-state defendant if the defendant has "certain minimum contacts with [the State] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice' " (*id.* at 316, quoting *Milliken v. Meyer*, 311 U.S. 457, 463; *see Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923). "Following *International Shoe*, 'the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the

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rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction' " (*Daimler AG v. Bauman*, 571 U.S. at 126, quoting *Shaffer v. Heitner*, 433 U.S. at 204).

After *International Shoe*, courts began to differentiate between general all-purpose jurisdiction and specific case-linked jurisdiction (*see Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. at 919). In New York, in 1962, the Legislature enacted CPLR 302 to effect specific jurisdiction, and CPLR 301 to ensure that the general jurisdiction historically exercised in New York was not thought to be limited by the enactment of CPLR 302 (*see* Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 301 at 7 [2010 ed]). In the interim between *International Shoe* and *Daimler*, where jurisdiction has been predicated on CPLR 301, the prevailing logic has continued to be that there is no need to establish a connection between the cause of action at issue and the foreign defendant's business activities within the State, "because the authority of the New York courts is based solely upon the fact that the defendant is 'engaged in such a continuous and systematic course of "doing business" here as to warrant a finding of its "presence" in this jurisdiction' " (*McGowan v. Smith*, 52 N.Y.2d 268, 272, quoting *Simonson v. International Bank*, 14 N.Y.2d at 285; *accord Landoil Resources Corp. v. Alexander & Alexander Servs.*, 77 N.Y.2d 28, 33). Some courts have continued to find that by registering to do business in New York and designating an agent for service of process, a foreign corporation has constructively consented to general in personam jurisdiction in New York in exchange for the privilege of doing business here (*see Doubet LLC v. Trustees of Columbia Univ. in the City of N.Y.*, 99 AD3d at 434–435; *Augsbury Corp. v. Petrokey Corp.*, 97 A.D.2d at 175–176; *Le Vine v. Isoserve, Inc.*, 70 Misc.2d at 749; *Robfogel Mill–Andrews Corp. v. Cupples Co. Mfrs.*, 67 Misc.2d at 624; *Rockefeller Univ. v. Ligand Pharmaceuticals*, 581 F Supp 2d at 464–467).

*8 As discussed above, following the United States Supreme Court's decision in *Daimler*, personal jurisdiction cannot be asserted against a foreign corporation based solely on the corporation's continuous and systematic business activity in New York. The consent-by-registration line of cases is predicated on the reasoning that by registering to do business in New York and appointing a local agent for service of process, a foreign corporation has consented to be found in New York. *Daimler* made clear, however, that general jurisdiction cannot be exercised solely on such presence (*see Daimler AG v. Bauman*, 571 U.S. at 137–138). The Supreme Court expressly cautioned that cases such as *Tauza v. Susquehanna Coal Co.* (220 N.Y. 259) which uphold the exercise of general jurisdiction based on the presence of a local office, "should not attract heavy reliance today" (*Daimler AG v. Bauman*, 571 U.S. at 138 n 18). As other courts have observed, it appears that every state in the Union has enacted a registration statute that requires foreign corporations to register to do business and appoint an in-state agent for service of process (*see Genuine Parts Co. v. Cepec*, 137 A3d 123, 143; *Brown v. Lockheed Martin Corp.*, 814 F3d at 640; *see also* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L Rev 1343, 1363 n 109 [listing statutes]). We agree with those courts that asserting jurisdiction over a foreign corporation based on the mere registration and the accompanying appointment of an in-state agent by the foreign corporation, without the express consent of the foreign corporation to general jurisdiction, would be "unacceptably grasping" under *Daimler* (*Daimler AG v. Bauman*, 571 U.S. at 138).

The Court of Appeals does not appear to have cited to *Bagdon* or relied upon its consent-by-registration theory since *International Shoe* was decided. We think that this is a strong indicator that its rationale is confined to that era, which was dominated by *Pennoyer*'s territorial thinking, and that it no longer holds in the post-*Daimler* landscape. We conclude that a corporate defendant's registration to do business in New York and designation of the secretary of state to accept service of process in New York does not constitute consent by the corporation to submit to the general jurisdiction of New York for causes of action that are unrelated to the corporation's affiliations with New York.

IV.

The plaintiffs contend in the alternative that the motions should be denied on the ground that additional discovery is needed because facts essential to justify opposition may exist but cannot now be stated (*cf.* CPLR 3211[d]). The plaintiffs have not alleged any facts that would support personal jurisdiction and thus have failed to indicate how further discovery might lead to evidence showing that personal jurisdiction exists here (*see Leuthner v. Homewood Suites by Hilton*, 151 AD3d 1042, 1045; *Mejia–Haffner v. Killington Ltd.*, 119 AD3d 912, 915).

Accordingly, the Supreme Court should have granted the separate motions of Ford and Goodyear to dismiss the complaint insofar as asserted against each of them for lack of personal jurisdiction.