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Long-Abandoned SCOTUS Precedent Improperly Used to Justify Federal Court's Jurisdiction-by-Registration Ruling

by Joshua Logsdon

Since the U.S. Supreme Court's decision in *Daimler AG v. Bauman*, the plaintiffs' bar has been testing general-jurisdiction theories that allow courts to navigate around the justices' 8-1 ruling. Some lawyers have tried to invoke States' business-registration statutes—with mixed results. They have found the most success in Pennsylvania, thanks to a broadly worded business-registration statute and state-court precedents that equate business registration with consent to general jurisdiction.

One federal court outside of Pennsylvania recently embraced the consent-by-registration argument. In *Schmidt v. Navistar, Inc.*, the U.S. District Court for the District of New Mexico held that Navistar, an out-of-state corporation, could be sued in New Mexico. Though New Mexico's business registration statute is not as explicit as Pennsylvania's, the New Mexico Supreme Court in *Werner v. Wal-Mart Stores, Inc.* held in 1993 that by merely registering to do business in the state, out-of-state corporations consented to general jurisdiction under New Mexico Business Corporation Act, § 53-17-11. The district court reasoned that the New Mexico Supreme Court's decision in *Werner* was enough to find that first, Navistar consented to general jurisdiction in New Mexico and second, New Mexico's forced-consent requirement is constitutional under the U.S. Supreme Court's 1917 decision in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*

The Development of General Jurisdiction

Over the past 74 years the U.S. Supreme Court has drastically altered its jurisprudence on personal jurisdiction. Prior to *International Shoe* in 1945, a person could only be sued in a State if they were physically present under *Pennoyer v. Neff*. Of course this meant that corporations could only be sued in their state of incorporation.

In order to overcome this hurdle, States enacted statutes requiring corporations to register with the state and designate an agent who could receive service of process before the corporation could do business in that state. Originally intended to ensure corporations could be held responsible for causes of action arising from their business activities in that State, courts began to construe these statutes in a manner that would allow plaintiffs to sue corporations for alleged harm in other states unrelated to a particular corporations' business in that state. This led to the Supreme Court's 1917 decision in *Pennsylvania Fire Ins.* There, the Court held that by complying with a state business-registration statute, a corporation consents to general jurisdiction in that State.

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But, in 1945 the Supreme Court reversed course from the line of jurisprudence focused on one's physical presence in a State. *International Shoe Co. v. State of Washington Office of Unemployment Compensation and Placement* split personal jurisdiction into two categories: specific jurisdiction and general jurisdiction. Under specific jurisdiction, an out-of-state defendant can be sued in a State if in the specific facts of a case, the defendant's actions in that state gave rise to the alleged cause of action. For a State to have general jurisdiction over a corporate defendant, that defendant must have sufficient contacts with that state to be considered at home in that State.

More recently in *Goodyear Dunlop Tires Operations, S.A. v. Brown* and *Daimler*, the Supreme Court explained what it meant by sufficient contacts. *Goodyear* held that courts within a State can exercise general jurisdiction over a corporate defendant only when its contacts with that State are "so continuous and systematic as to render them essentially at home in the forum State." *Daimler* clarified this concept even more when the Court said that except in extraordinary circumstances, a corporate defendant is only at home in the State where it is incorporated and the State where it maintains its principal place of business.

Has *Pennsylvania Fire* Been Overturned?

Though the District of New Mexico based its decision on *Pennsylvania Fire*, the court failed to thoroughly analyze whether the Supreme Court might have overturned its holding. Relying on *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, the court kicked the can down the road for the Tenth Circuit to decide whether the Supreme Court has overturned *Pennsylvania Fire*.[1]

Even though the Supreme Court has not explicitly overturned *Pennsylvania Fire*, one can reasonably conclude that at a minimum, the case is no longer "good law." One part of the *International Shoe* opinion applies directly:

> True, some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents.

The Supreme Court next addressed the issue of consent in 1977 in *Shaffer v. Heitner*. There, the Court again called the "practice of considering a foreign corporation doing business in a State to have consented to being sued in that State" a legal fiction. It concluded that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." The Court reasoned:

> It would not be fruitful for us to re-examine the facts of cases decided on the rationales of *Pennoyer* and *Harris* to determine whether jurisdiction might have been sustained under the standard we adopt today. To the extent that prior decisions are inconsistent with this standard, they are overruled.

The Court repeated this message again in the 1990 decision *Burnham v. Superior Court of California, County of Marin*:

> We initially upheld these laws under the Due Process Clause on grounds that they complied with *Pennoyer*'s rigid requirement of either "consent," or "presence." As many

[1] *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, held "If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower court] should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions."

> observed, however, the consent and presence were purely fictional. Our opinion in *International Shoe* cast those fictions aside…

The Second Circuit believes that *Daimler* put an end to *Pennsylvania Fire*. In *Brown v. Lockheed Martin*, the court examined language from *Daimler* explaining that decisions from the *Pennoyer* era should not be relied on today and concluded that "*Pennsylvania Fire* cannot be divorced from the outdated jurisprudential assumptions of its era."

One month later in March 2016, a judge on the Federal Circuit disagreed with the Second Circuit's *Brown* decision. A three-judge panel held in *Acorda Therapeutics Inc. v. Mylan Pharm. Inc.* that a Delaware federal court had specific jurisdiction over a patent dispute. Judge O'Malley concurred, reasoning that the state's business-registration law provided the court with general jurisdiction over the lawsuit. She expressed that *Pennsylvania Fire* was still good law. She explained, "The Supreme Court's subsequent decisions in *International Shoe* and *Daimler* did not overrule this historic and oft-affirmed line of binding precedent." She added, "*Daimler* confirms that consent to jurisdiction is an alternative to the minimum contacts analysis." Most would agree with her that "*Daimler* did not impliedly eradicate the distinction between cases involving an express consent to general jurisdiction and those analyzing general jurisdiction in the absence of consent." But Judge O'Malley did not recognize the distinction between forced consent allowed by *Pennsylvania Fire* and a corporation's knowing and voluntary consent to general jurisdiction.[2]

In *Daimler* the Supreme Court, quoting Twitchell, *The Myth of General Jurisdiction*, 101 Harv. L. Rev. 610, 628 (1988), said "[W]e do not need to justify broad exercises of dispute-blind jurisdiction unless our interpretation of the scope of specific jurisdiction unreasonably limits state authority over nonresident defendants." Allowing state courts under *Pennsylvania Fire* to compel submission to general jurisdiction is just that: a justification for "broad exercises of dispute-blind jurisdiction."

Conclusion

It's uncertain whether the Tenth Circuit will uphold *Navistar*. The circuit's opinions have only cited to *Pennsylvania Fire* three times since the Court's 1917 ruling. Only one of those opinions came after *International Shoe* and none of them addressed States requiring corporations' forced consent to general jurisdiction. The New Mexico District Court relied on *Budde v. Kentron Hawaii* to find that Tenth Circuit precedent allows States to force corporations to consent to general jurisdiction. There, the appeals court allowed a Louisiana plaintiff to sue corporate defendants located in Hawaii and Pennsylvania. But the court did not mention *Pennsylvania Fire* or its progeny. Further, the court decided that case prior to both *Goodyear* and *Daimler*, and it has not referenced *Budde* since it made the decision. The lack of guidance makes it hard to tell what the Tenth Circuit is likely to do. It is also just as likely that the court could use *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.* to once again pass on making a final decision.

Despite the uncertainty of how the Tenth Circuit might rule, *International Shoe* and its progeny make the right choice an easy one. The Supreme Court's decisions since *International Shoe* have completely changed the way lawyers approach questions of jurisdiction, and the reasoning behind *Pennsylvania Fire* conflicts with the modern approach. For these reasons, the Tenth Circuit should follow the Second Circuit's decision in *Lockheed Martin* and conclude that the Supreme Court has overruled *Pennsylvania Fire* many times since 1917 and most recently in 2014 in *Daimler AG v. Bauman*.

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[2] For more on the issues surrounding forced consent see Richard Samp's blog post on *Sullivan v. A. W. Chesterton, Inc.*, at https://www.wlf.org/2019/06/27/wlf-legal-pulse/personal-jurisdiction-by-consent-may-be-on-the-way-out-even-in-pennsylvania/.