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## **“AT HOME” IN GEORGIA: THE HIDDEN DANGER OF REGISTERING TO DO BUSINESS IN GEORGIA**

**Brian P. Watt, Esq.\* & W. Alex Smith, Esq.\*\***

### INTRODUCTION

Georgia law prohibits any foreign corporation—a corporation with an originating registration initiated in a state other than Georgia—from transacting business in the state until it obtains a certificate of authority from the Georgia Secretary of State.<sup>1</sup> Attorneys advise foreign corporations to register to transact business in Georgia as a matter of course, and business owners readily comply. On the surface, registration appears innocuous—submit paperwork and pay a fee to the state. In return, the corporation reaps the benefits of transacting business throughout Georgia.

But what often evades business owners—and some practitioners—is that registering to do business in Georgia operates as a veiled forfeiture of a fundamental right—the corporation’s right to due process, which imposes a limit on the state’s exercise of jurisdiction over the corporation.<sup>2</sup> By virtue of its registration, a foreign corporation is subject to general personal jurisdiction in Georgia.<sup>3</sup> That means it must respond to any lawsuit filed against it in a Georgia court.<sup>4</sup> The foreign corporation must do so no matter how remote the lawsuit’s connection is to Georgia.<sup>5</sup>

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1. O.C.G.A. § 14-2-1501(a) (2017).
2. *See infra* Part II.
3. *See infra* Part II.
4. *See infra* Part II.
5. *See infra* Part II.

Georgia is not unique in its registration requirement. Every state in the Union has a similar statute.<sup>6</sup> But very few states require a foreign corporation to forfeit the guarantees of due process as a condition for transacting business in the state. Georgia is one of them.

The current state of Georgia law is bad practice. It encourages forum shopping, and it cools interstate commerce by potentially deterring foreign corporations from registering to do business in Georgia. Usually, a Georgia resident would rather file a lawsuit against a foreign corporation in Georgia to avail himself of an ostensibly friendly forum. As the Ninth Circuit Court of Appeals recognized, “[N]o doctorate in astrophysics is required to deduce that trying a case where one lives is almost always a plaintiff’s preference.”<sup>7</sup> More significantly, however, a plaintiff can avail himself of favorable Georgia procedural law—including, critically, Georgia’s statutes of limitations<sup>8</sup>—simply by filing his lawsuit in Georgia rather than in another forum. A recent case decided by the Georgia Court of Appeals exemplifies the forum shopping that Georgia law currently allows: a Georgia resident filed suit against a Delaware corporation with its principal place of business in Maryland based on alleged tortious conduct that occurred in Texas.<sup>9</sup> The court held that the corporation is subject to jurisdiction in Georgia based solely on its registration to do business in the state.<sup>10</sup>

The potential for exploitation aside, Georgia law likely violates federal law. Recently, the United States Supreme Court transformed the landscape for the exercise of general jurisdiction, greatly limiting the fora in which a foreign corporation can be subject to general

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6. Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 CARDOZO L. REV. 1343, 1363–64 n.109, 1364–65 nn.111–12 (2015).

7. Roth v. Garcia Marquez, 942 F.2d 617, 624 (9th Cir. 1991).

8. See Gray v. Armstrong, 474 S.E.2d 280, 281 (Ga. Ct. App. 1996) (noting statutes of limitations are procedural and thus the law of the forum applies notwithstanding where the tort was committed).

9. Ward v. Marriott Int’l, Inc., No. A19A0826, 2019 Ga. App. LEXIS 592, at \*1 (Ga. Ct. App. Oct. 24, 2019).

10. *Id.* at \*6–10.

jurisdiction.<sup>11</sup> Georgia law must be reformed in light of modern-day strictures of federal due process.

### *I. A Brief Overview of Personal Jurisdiction*

A state's courts can exercise jurisdiction over a defendant only if that power satisfies two prerequisites: (1) state law—typically the state's long-arm statute; and (2) the Due Process Clause of the Fourteenth Amendment of the United States Constitution.<sup>12</sup> As discussed below, the Supreme Court of Georgia concluded that the exercise of general jurisdiction over a foreign corporation registered to do business in Georgia is authorized by state law.<sup>13</sup> We do not question the court's interpretation of Georgia law for the purposes of this article. Rather, our focus is whether the court's holding comports with the second step: the protections of due process.

“The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’”<sup>14</sup> Unless the defendant has sufficient “minimum contacts,” due process prevents a state from exercising jurisdiction over the rights or interests of a nonresident defendant.<sup>15</sup> Due process can be satisfied under either one of two categories of jurisdiction: specific or general.<sup>16</sup>

The exercise of specific jurisdiction requires that the litigation arise out of or relate to the defendant's contacts with the forum state.<sup>17</sup> Typically, that means the conduct underlying the claims of the lawsuit takes place in the forum state. It is the controversy itself that establishes jurisdiction. If the lawsuit is not sufficiently

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11. *See generally* Daimler AG v. Bauman, 571 U.S. 117 (2014); Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011).

12. Diamond Crystal Brands, Inc. v. Food Movers Int'l, 593 F.3d 1249, 1257 (11th Cir. 2010).

13. *See infra* Part II.

14. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471–72 (1985) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945)).

15. *Int'l Shoe*, 326 U.S. at 316.

16. *See Burger King*, 471 U.S. at 472–73 n.15.

17. *Walden v. Fiore*, 571 U.S. 277, 283–84 (2014).

connected to the defendant's contacts with the state, specific jurisdiction is not satisfied, and the court cannot preside over the lawsuit.

General jurisdiction, by contrast, focuses solely on the sufficiency of the defendant's contacts with the state. A state that exercises general jurisdiction can "hear any and all claims" against the defendant.<sup>18</sup> As the United States Supreme Court recognized, "Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, due process is not offended by a State's subjecting the corporation to its *in personam* jurisdiction when there are sufficient contacts between the State and the foreign corporation."<sup>19</sup>

After the Supreme Court issued its watershed opinion in *International Shoe Co. v. Washington* in 1945,<sup>20</sup> the exercise of specific jurisdiction over a foreign corporation was subject to a relatively defined analysis. A court examined whether there existed "an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.' When no such connection exists, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State."<sup>21</sup>

The exercise of general jurisdiction over a foreign corporation, however, remained unresolved. Most courts relied upon the nebulous standard espoused in *International Shoe*, which posited that there may exist "instances in which the continuous corporate operations within a state were thought so substantial and of such a nature" as to justify the exercise of general jurisdiction.<sup>22</sup> Yet over the next sixty-five years, the Court issued only two opinions discussing general jurisdiction over foreign corporations.<sup>23</sup> Courts were left without

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18. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

19. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

20. *Int'l Shoe*, 326 U.S. at 310.

21. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1776 (2017) (quoting *Goodyear*, 564 U.S. at 919) (citation omitted).

22. *Int'l Shoe*, 326 U.S. at 318.

23. See generally *Helicopteros*, 466 U.S. 408; *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437

much guidance to define the contacts necessary to subject a corporation to general jurisdiction.

It was in this context that the Supreme Court of Georgia concluded that a foreign corporation's registration to do business rendered it subject to general jurisdiction in Georgia.

*II. The Supreme Court of Georgia Holds that All Foreign Corporations Registered to Do Business in Georgia Are Subject to General Jurisdiction in the State*

In 1992, the Supreme Court of Georgia's decision in *Allstate Insurance Co. v. Klein*<sup>24</sup> analyzed whether Georgia could exercise jurisdiction over a foreign corporation registered to do business in the state. The plaintiff was a passenger involved in a car wreck in Georgia.<sup>25</sup> Allstate insured the car under a New Jersey policy.<sup>26</sup> The plaintiff sued Allstate in Georgia for injuries sustained in the collision.<sup>27</sup> Allstate moved to dismiss the suit for lack of personal jurisdiction, arguing that any nexus between the claims and Allstate's activities in Georgia was too tenuous to satisfy the first step of the jurisdictional analysis—the Georgia Long-Arm Statute.<sup>28</sup>

The trial court granted the motion, but the court of appeals reversed, holding that the court could exercise specific jurisdiction because the suit was sufficiently connected to Allstate's contacts with Georgia.<sup>29</sup> The Georgia Supreme Court affirmed the exercise of jurisdiction over Allstate, but for a different reason.<sup>30</sup> The court focused on the language of the Georgia Long-Arm Statute, which applies exclusively to jurisdiction over Georgia nonresidents.<sup>31</sup> The court reasoned that because the statute defines nonresident as

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(1952).

24. *See generally* Allstate Ins. Co. v. Klein, 422 S.E.2d 863 (Ga. 1992).

25. *Id.* at 864.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Klein*, 422 S.E.2d at 864–65.

31. *Id.* at 865.

including only foreign corporations *not* authorized to transact business in the state, a foreign corporation registered to do business in Georgia must be considered a resident for the purposes of jurisdiction.<sup>32</sup> The court concluded:

As a resident, such a foreign corporation may sue or be sued to the same extent as a domestic corporation. Therefore, a plaintiff wishing to sue in Georgia a corporation authorized to do business in Georgia is not restricted by the personal jurisdiction parameters of [the Long-Arm Statute], including the requirement that a cause of action arise out of a defendant's activities within the state.<sup>33</sup>

In other words, a foreign corporation registered to do business is subject to general jurisdiction.

The court, however, made short shrift of the second step of the jurisdictional analysis—the due process inquiry. In a footnote, the court noted that whether the exercise of general jurisdiction over a registered foreign corporation comported with due process had “not been challenged in this case.”<sup>34</sup> The court surmised simply that “it appears” that such jurisdiction “does not run afoul of the ‘minimum contacts’ requirement of procedural due process.”<sup>35</sup>

### *III. United States Supreme Court's Recent General Jurisdiction Jurisprudence*

In 2011, the United States Supreme Court finally revisited the exercise of general jurisdiction. The Court's decision in *Goodyear Dunlop Tires Operations, S.A. v. Brown*<sup>36</sup> restricted the exercise of general jurisdiction over a foreign corporation tremendously.

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32. *Id.*

33. *Id.*

34. *Id.* at 865 n.3.

35. *Id.*

36. *See generally* *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

*A. Goodyear Dunlop Tires Operations, S.A. v. Brown*

In *Goodyear*, plaintiffs filed suit in North Carolina against foreign corporations, alleging that a tire produced by the companies caused the death of two children in France.<sup>37</sup> The foreign corporations manufactured tires primarily for sale in foreign markets.<sup>38</sup> A small number of their tires, however, were distributed in North Carolina by affiliates, although the type of tire involved in the accident was never distributed in the state.<sup>39</sup>

The corporations moved to dismiss the suit for lack of personal jurisdiction.<sup>40</sup> The trial court denied the motion, and the North Carolina Court of Appeals affirmed.<sup>41</sup> The court held that the corporations were subject to general jurisdiction, stating that the defendants had "continuous and systematic contacts" with the state because they placed their tires in the stream of commerce without any limitation on the extent to which those tires could be sold in North Carolina.<sup>42</sup>

The United States Supreme Court granted certiorari and reversed.<sup>43</sup> The Court reasoned that the manufacturers' contacts with the forum were too attenuated to empower North Carolina to adjudicate claims unrelated to those contacts.<sup>44</sup> The Court established the proper standard for analyzing whether a state's exercise of general jurisdiction over a foreign corporation comports with due process: the corporation's affiliations with the state must be "so 'continuous and systematic' as to render [it] essentially at home in the forum State."<sup>45</sup> The Court identified a corporation's place of incorporation and principal place of business as the "paradigm" forum(s) in which

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37. *Id.* at 920–21.

38. *Id.* at 921.

39. *Id.*

40. *Id.* at 921–22.

41. *Id.* at 922.

42. *Goodyear*, 564 U.S. at 922 (quoting *Brown v. Meter*, 681 S.E.2d 382, 368 (N.C. Ct. App. 2009), *rev'd sub nom.* *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011)).

43. *Id.* at 931.

44. *Id.* at 929.

45. *Id.* at 919 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)).

“the corporation is fairly regarded as at home” for the purposes of general jurisdiction.<sup>46</sup>

Moreover, the Court identified its decision in *Perkins v. Benguet Consolidated Mining Co.* as the “textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum.”<sup>47</sup> In *Perkins*, the Court concluded that Ohio courts could exercise general jurisdiction over a foreign corporation when the president of the company temporarily relocated the entity’s headquarters to Ohio during World War II, reasoning that the corporation’s “sole wartime business activity was conducted in Ohio . . . .”<sup>48</sup>

#### *B. Daimler AG v. Bauman*

Three years later, the Supreme Court again examined the contacts necessary to render a foreign corporation subject to general jurisdiction. In *Daimler AG v. Bauman*,<sup>49</sup> residents of Argentina sued a German-based vehicle manufacturer in California federal court, alleging that an Argentinian subsidiary of the manufacturer collaborated to kidnap, detain, and kill Argentinian workers.<sup>50</sup> Jurisdiction was predicated on the California contacts of a Delaware subsidiary of the defendant that distributed the defendant’s cars in California.<sup>51</sup> The defendant moved to dismiss the suit for lack of personal jurisdiction, and the trial court granted the motion.<sup>52</sup> The Ninth Circuit reversed, reasoning that the defendant was subject to general jurisdiction because its subsidiary’s contacts with California were substantial and could be imputed to the defendant.<sup>53</sup>

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46. *Id.* at 924.

47. *Id.* at 928 (quoting *Donahue v. Far E. Air. Transp. Corp.*, 652 F.2d 1032, 1037 (D.C. Cir. 1981)).

48. *Goodyear*, 564 U.S. at 929.

49. *See generally* *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

50. *Id.* at 122.

51. *Id.* at 123.

52. *Id.* at 124.

53. *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 930–31 (9th Cir. 2011), *rev’d sub nom.* *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

The Supreme Court reversed, opining that approving jurisdiction “in every State in which a corporation ‘engages in a substantial, continuous, and systematic course of business’ . . . is unacceptably grasping.”<sup>54</sup> The Court reiterated that the “essentially at home” standard governs the exercise of general jurisdiction and requires contacts so continuous and systematic as to render the corporation “comparable to a domestic enterprise in that State.”<sup>55</sup> Even assuming the subsidiary’s contacts were imputable to the defendant, the Court held that the exercise of general jurisdiction ran afoul of the “essentially at home” standard and noted that “the same global reach would presumably be available in every other State in which [the subsidiary]’s sales are sizable.”<sup>56</sup> Such “[e]xercises of personal jurisdiction so exorbitant . . . are barred by due process constraints on the assertion of adjudicatory authority,” and only an “exceptional case” such as *Perkins* would permit general jurisdiction over a foreign corporation.<sup>57</sup> The Court stressed that due process required courts to assess not only the corporation’s footprint in the forum state, but also “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.”<sup>58</sup>

#### *IV. Klein Likely No Longer Comports with Due Process*

Georgia courts have yet to meaningfully revisit the exercise of general jurisdiction after *Goodyear* and *Daimler*. No court has overturned or questioned *Klein*. Indeed, the Georgia Court of Appeals recently held in *Ward v. Marriott International, Inc.* that it was bound to apply *Klein* in determining that a Delaware corporation with its principal place of business in Maryland was subject to general jurisdiction in Georgia based solely on its registration to do

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54. *Daimler*, 571 U.S. at 138.

55. *Id.* at 127, 132 & n.11.

56. *Id.* at 139.

57. *Id.* at 121–22, 139 n.19.

58. *Id.* at 139 n.20.

business in Georgia.<sup>59</sup> The court tersely rejected the corporation's argument that recent United States Supreme Court precedent foreclosed the exercise of general jurisdiction over a foreign corporation in Georgia merely by virtue of its registration to do business, reasoning that *Klein* itself recognized its holding "comports with the requirements of federal procedural due process."<sup>60</sup> As discussed above in Part II, however, the Georgia Supreme Court in *Klein* expressly acknowledged that the constitutionality of exercising general jurisdiction over a registered foreign corporation "has not been challenged in this case, addressed by the parties, or ruled on by the lower courts."<sup>61</sup> The *Klein* court simply noted "it appears" its holding "does not run afoul" of procedural due process requirements.<sup>62</sup> *Klein*'s reconsideration is overdue. The foreign corporation in *Ward* has filed a petition for writ of certiorari with the Georgia Supreme Court;<sup>63</sup> *Ward* may present the court with an excellent opportunity to revisit *Klein* and to ensure Georgia law comports with the guarantees of federal due process.

*A. The Exercise of General Jurisdiction Over a Foreign Corporation by Virtue of Its Registration to Transact Business in Georgia Violates Due Process*

After *Goodyear* and *Daimler*, it is clear that a foreign corporation's registration to do business cannot itself rise to the level of "continuous and systematic" affiliations to "essentially render it at home" within the forum state.<sup>64</sup> As the United States Supreme Court recognized, the "paradigm all-purpose forums" are the corporation's place of incorporation and its principal place of business.<sup>65</sup> Outside

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59. *Ward v. Marriott Int'l, Inc.*, No. A19A0826, 2019 Ga. App. LEXIS 592, at \*6–10 (Ga. Ct. App. Oct. 24, 2019).

60. *Id.* at \*8–10.

61. *Allstate Ins. Co. v. Klein*, 422 S.E.2d 863, 865 n.3 (Ga. 1992).

62. *Id.*

63. *Ward*, 2019 Ga. App. LEXIS 592, *petition for cert. filed*, (Ga. Nov. 13, 2019) (No. S20C0485).

64. *See generally* *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

65. *Daimler*, 571 U.S. at 118.

of those forums, a corporation is subject to general jurisdiction in only an "exceptional case" in which the corporation's operations are "so substantial and of such a nature as to render the corporation at home in that State."<sup>66</sup> The commonplace business registration cannot, by itself, render a foreign corporation subject to any kind of claim in the state. Such a pervasive exercise of power would subject a corporation to general jurisdiction in every state it transacts business and would fly in the face of modern strictures of due process. *Klein* cannot survive on this basis.

Courts that have taken up the issue resoundingly have held that registration to do business cannot render a foreign corporation subject to general jurisdiction. For example, the Eleventh Circuit Court of Appeals rejected the argument that a foreign corporation's registration subjected the corporation to general jurisdiction in Florida, reasoning that "[a]fter *Daimler*, there is 'little room' to argue that compliance with a state's 'bureaucratic measures' render a corporation at home in a state."<sup>67</sup> Several state supreme courts have concluded that subjecting a foreign corporation to general jurisdiction by virtue of registration would expose "properly registered foreign corporations to an 'unacceptably grasping' and 'exorbitant' exercise of jurisdiction" contrary to *Goodyear* and *Daimler*.<sup>68</sup> Numerous federal courts have relied upon similar reasoning in spurning prior precedent.<sup>69</sup>

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66. *Id.* at 139 n.19.

67. *Waite v. AII Acquisition Corp.*, 901 F.3d 1307, 1318 (11th Cir. 2018) (quoting *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 639 (2d Cir. 2016)).

68. *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 141 (Del. 2016) (quoting *Daimler*, 571 U.S. at 138); *see also* *Facebook, Inc. v. K.G.S.*, Nos. 1170244, 1170294, 1170336, 2019 Ala. LEXIS 63, at \*16–20 (Ala. June 28, 2019); *DeLeon v. BNSF Ry. Co.*, 426 P.3d 1, 10 (Mont. 2018); *Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 898 N.W.2d 70, 83 (Wis. 2017).

69. *See, e.g.*, *Humphries v. Allstate Ins. Co.*, No. CV-17-01606-PHX-JJT, 2018 U.S. Dist. LEXIS 50632 (D. Ariz. Mar. 27, 2018); *Minholz v. Lockheed Martin Corp.*, 227 F. Supp. 3d 249 (N.D.N.Y. 2016); *Dimitrov v. Nissan N. Am., Inc.*, No. 15 C 06332, 2015 U.S. Dist. LEXIS 170990 (N.D. Ill. Dec. 22, 2015); *Pitts v. Ford Motor Co.*, 127 F. Supp. 3d 676 (S.D. Miss. 2015); *U.S. Bank Nat'l Ass'n v. Bank of Am., N.A.*, No. 1:14-cv-01492-TWP-DKL, 2015 U.S. Dist. LEXIS 139597 (S.D. Ind. Oct. 14, 2015).

*B. A Foreign Corporation Should Not Be Deemed to Have Consented to General Jurisdiction when It Registers to Transact Business in Georgia*

Although *Klein* can no longer comport with modern-day strictures of due process, it is possible that *Klein*'s ghost survives via the doctrine of consent.

It is well-established that a foreign corporation can consent to a state's jurisdiction by agreement or by defending a lawsuit without challenging jurisdiction. When a defendant consents to jurisdiction, his due process rights are deemed to be satisfied "because it is just and fair to require the defendant to defend a suit in a forum to which it previously agreed."<sup>70</sup>

Conceivably, a corporation's registration could be read as consent to jurisdiction.<sup>71</sup> Some courts have held that the due process strictures recognized in *Goodyear* and *Daimler* are bypassed by a corporation's consent to jurisdiction via registration.<sup>72</sup> Those courts rely chiefly on the United States Supreme Court's 1917 opinion in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, in which the Court affirmed the Missouri Supreme Court's holding that a foreign corporation consented to general jurisdiction by virtue of its appointment of an agent in Missouri in compliance with the state's registration statute.<sup>73</sup> The courts reason that because *Goodyear* and *Daimler* do not address consent, *Pennsylvania Fire* remains good law, and a state is free to conclude that registration acts as consent to jurisdiction.<sup>74</sup>

To be sure, the Supreme Court has not expressly overruled *Pennsylvania Fire*. Nor does *Goodyear* or *Daimler* discuss consent.<sup>75</sup>

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70. *DeLeon*, 426 P.3d at 5–6.

71. *See id.* at 5 ("Consent jurisdiction is an independent basis for jurisdiction.")

72. *Mitchell v. Eli Lilly & Co.*, 159 F. Supp. 3d 967, 977 (E.D. Mo. 2016).

73. *Pa. Fire Ins. Co. of Phila. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 96–97 (1917).

74. *See, e.g.*, *Rodriguez v. Ford Motor Co.*, No. A-1-CA-26402, 2018 N.M. App. LEXIS 78 (N.M. Ct. App. Dec. 20, 2018); *McDonald AG Inc. v. Syngenta AG* (*In re Syngenta AG MIR 162 Corn Litig.*), No. 14-md-2591-JWL, 2016 U.S. Dist. LEXIS 65312 (D. Kan. May 17, 2016).

75. *See generally* *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

Although the continuing viability of *Pennsylvania Fire* raises difficult questions, a majority of courts that have addressed the issue have concluded that *Pennsylvania Fire* and the consent-by-registration doctrine no longer comport with modern-day notions of due process. Courts have reasoned that “*Pennsylvania Fire* is now simply too much at odds with the approach to general jurisdiction adopted in *Daimler*”<sup>76</sup> and “reflect[s] the reasoning of an era when states could not exercise jurisdiction over a foreign corporation absent the appointment of an agent for service of process.”<sup>77</sup> Indeed, the Supreme Court has “caution[ed] against reliance on cases ‘decided in the era dominated by’ the ‘territorial thinking’” before the “transformative decision on personal jurisdiction” in *International Shoe*.<sup>78</sup>

*Klein* was not decided on the basis of consent.<sup>79</sup> The court never mentioned consent (or *Pennsylvania Fire*), and its cursory analysis of the constitutionality of the definition for nonresident was predicated on sufficient minimum contacts.<sup>80</sup> If consent were the basis for *Klein*, there would be no reason to assess whether the party had minimum contacts with Georgia.

Moreover, under Georgia law, a person or entity consents or voluntarily waives a known right only where its “acts or omissions to act, relied on, should be so manifestly consistent with and indicative of an intention to voluntarily relinquish a then known particular right or benefit, that no other reasonable explanation of his conduct is possible.”<sup>81</sup> It seems a bridge too far to suggest that Georgia’s

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76. *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 638 (2d Cir. 2016).

77. *Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 898 N.W.2d 70, 82 (Wis. 2017).

78. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1557–58 (2017) (quoting *Daimler*, 571 U.S. at 138 n.18).

79. See generally *Allstate Ins. Co. v. Klein*, 422 S.E.2d 863 (Ga. 1992). Although a few authorities have stated that *Klein* was decided on the basis of consent, those authorities have not addressed the case in detail and are not persuasive. See, e.g., *Rodriguez*, 2018 N.M. App. LEXIS 78, at \*32–33.

80. See generally *Klein*, 422 S.E.2d 863.

81. *Ga. Power Co. v. O’Bryant*, 313 S.E.2d 709, 711 (Ga. Ct. App. 1983) (quoting *Jones v. Roberts Marble Co.*, 84 S.E.2d 469, 471 (Ga. Ct. App. 1954)); see also *Hardy v. Lucio*, 578 S.E.2d 224, 226 (Ga. Ct. App. 2003) (affirming dismissal for insufficient process where movant had not manifested intent to waive service); *Millard v. Millard*, 419 S.E.2d 718, 722 (Ga. Ct. App. 1992) (affirming

registration statute implies consent to general jurisdiction when the text of the statute does not mention consent or any explicit reference to general jurisdiction.<sup>82</sup>

*Goodyear* and *Daimler* establish that the exercise of general jurisdiction simply because a corporation does business in the state violates due process, and the end run around that principle via consent is difficult to jibe with modern notions of due process.<sup>83</sup> This is particularly true where courts conclude that foreign corporations waive the right to due process because registration acts as an implied consent to jurisdiction. As the Second Circuit opined:

If mere registration and the accompanying appointment of an in-state agent—without an express consent to general jurisdiction—nonetheless sufficed to confer general jurisdiction by implicit consent, every corporation would be subject to general jurisdiction in every state in which it registered, and *Daimler*'s ruling would be robbed of meaning by a back-door thief.<sup>84</sup>

Because Georgia's registration statute does not expressly provide that a foreign corporation consents to general jurisdiction by virtue of its registration, due process seemingly requires *Klein* to be reversed.

#### CONCLUSION

Georgia's exercise of general jurisdiction over foreign corporations stands out as a sore thumb, wrenching due process rights from corporations that endeavor to provide business to the state. Georgia labels itself "one of the top pro-business environments in the nation."<sup>85</sup> Yet, as the Supreme Court of Delaware recognized,

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dismissal for lack of jurisdiction where movant had not waived defense).

82. O.C.G.A. § 14-2-1501(a) (2017). Compare O.C.G.A. § 14-2-1501(a) with 42 PA. CONS. STAT. § 5301(a) (1981).

83. *Daimler*, 571 U.S. at 122; *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 917 (2011).

84. *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 640 (2d Cir. 2016).

85. *Pro-Business*, GEORGIA®, <http://www.georgia.org.dev1.milesmediagroup.com/competitive->

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“If the cost of doing [business] is that those foreign corporations will be subject to general jurisdiction in [Georgia], they rightly may choose not to do so.”<sup>86</sup> *Klein* must be revisited. It makes business sense, and it likely is required by federal law.

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advantages/pro-business/ [https://perma.cc/R735-WT46] (last visited Oct. 19, 2019).

86. *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 142 (Del. 2016).