To be Argued by:
JAY L. T. BREAKSTONE
(Time Requested: 30 Minutes)

APL-2019-00239
Queens County Clerk's Index No. 706909/15
Appellate Division–Second Department Docket Nos. 2016-06194 and 2016-07397

Court of Appeals

of the

State of New York

ANNA AYBAR, ORLANDO GONZALEZ, JESENIA AYBAR, as legal guardian on behalf of K.C., an infant over the age of fourteen (14) years, JESENIA AYBAR, as Administratrix of the ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR, as Administratrix of the ESTATE OF T.C., a deceased infant under the age of fourteen (14) years and ANNA AYBAR, as Administratrix of the ESTATE OF CRYSTAL CRUZ-AYBAR,

Plaintiffs-Appellants,

– against –

JOSE A. AYBAR, JR. and "JOHN DOES 1 THRU 30,"

Defendants,

– and –

FORD MOTOR COMPANY and THE GOODYEAR TIRE & RUBBER CO.,

Defendants-Respondents.

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Non-Party.

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

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Preliminary Statement

Defendants believe they set the tone of this case in the first line of their answering brief. They claim that it is only about "interpreting a plain and unambiguous statute to mean exactly what it says." Def Brf 1. In order to so, however, the Court must first abandon 104 years of New York common law. Defendants emphatically agree, answering that the Appellate Division was "exactly right" in doing so (usurping this Court's authority in the process), empowered by the constitutional imperative of the *Goodyear*[1]*, Daimler*[2]*, and BNSF*[3] cases. Resp Brf 18.

In actuality, there is far more dangerous a game afoot than merely abandoning New York's common law. Defendants ask this Court to decide what the Supreme Court would not: that a foreign corporation which enjoys the rights and privileges of New York by dint of its voluntary registration to do business in the state must be treated differently than a domestic corporation; that it cannot be sued in this state in the same manner as a domestic corporation; that it may enjoy greater protection from the claims of grasping plaintiffs; and that it is the United States Constitution which says so. "Consent by registration violates the Due Process Clause," they maintain,

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[1] *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 US 915 [2011]

[2] *Daimler, AG v. Bauman*, 571 US 117 [2014]

[3] *BNSF Ry. Co. v. Tyrrell*, ___ US ___, 137 SCt 1773 [2017]

even if the Supreme Court declines to so hold. Def Brf 18.

The facts show otherwise. Despite being so aggrieved and being unfairly subjected to the same general jurisdiction as every other New York corporation, defendants have profited greatly from their business activities in New York. Since the 1920's [R 9 and 21] neither defendant has ever seen fit to withdraw its consent to jurisdiction in this state, despite knowing full well that such registration brings with it the requirement that the defendant consent to general jurisdiction in New York commensurate with that of any domestic New York corporation, a fact which defendants do not deny. The Supreme Court has never interfered with that agreement and this Court has held that such an agreement is a "true contract" representing a "real consent" for jurisdictional purposes in *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 NY 432 [1916]. In New York, a registered foreign corporation is treated the same as a domestic corporation, no better and no worse. Neither the common law nor the Constitution requires more.

A R G U M E N T

POINT I

THERE IS NO REQUIREMENT THAT THE BUSINESS CORPORATION LAW CONTAIN AN EXPLICIT CONSENT TO GENERAL JURISDICTION WHEN THE COMMON LAW OF NEW YORK MAKES SUCH CONSENT IMPLICIT IN THE ACT OF REGISTRATION

Not surprisingly, defendants' answering brief leads with what they believe to be their best argument: Consent by registration is nothing more than a 100 year old "gambit" which "fails on both statutory and constitutional grounds." Def Brf 2. Since the Business Corporation Law "says nothing about 'consent' or 'general jurisdiction'," it doesn't exist, and to do otherwise would be adding words to the statute and changing its meaning. *Id.* "The Court need go no further to affirm the judgment below." *Id.*

Yes, it does. That is not the way statutes interact with the common law. It is not an "all or nothing at all" proposition, but just the opposite. Statutes are litigated against a background of well established common law adjudicatory principles. *Senator Linie Gmbh & Co. Kg v. Sunway Line, Inc.*, 291 F3d 145, 158 [2d Cir 2002]. When a legislative body takes action and passes a statute, it does so with the expectation that

the principles of the common law of the jurisdiction will apply, "except when a statutory purpose to the contrary is evident." *Attorney General of Canada v. R.J. Reynolds Tobacco Holdings*, 268 F3d 103, 127[2d Cir 2002] (internal quotation marks omitted). Such is the rule in this state. If a statute and the common law rule can stand together, the statute should not be construed as to abolish the common law rule. *In re Wilson Sullivan Co.*, 289 NY 110, 115 [1942]; *see also Stephano v. News Group Publications, Inc.*, 64 NY2d 174, 183 [1984] (common law right of publicity extinguished only where statutory right of privacy encompasses same right).

Defendants are wrong because the Business Corporation Law, requiring registration of foreign corporations, has lived together with the common law rule of consent to jurisdiction expressed in *Bagdon* since its inception; a common law rule that preceded the Business Corporation Law by over 50 years (NY Laws 1961, ch. 855) and a rule that was well in place when defendants registered to do business in New York in the 1920's. Defendants have offered no proof whatsoever that the sections of the statute at issue here were viewed by the legislature (or defendants) as being in derogation of that common law rule.[4]

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[4]Defendants' suggestion that the reason the New York legislature has considered amended Business Corporation Law § 1301 to expressly mention consent "indicates that the statute as presently drafted does not constitute consent," is incorrect. Def Br 11, n. 2. The memo submitted in supported of the Senate bill to amend the law, S7078, made it clear that

(continued...)

Defendants are now unhappy with their bargain, but not so unhappy as to withdraw that registration as foreign corporations doing business in New York. They want *more* than a domestic corporation, seeking to take advantage of what they perceive to be a wholesale reworking of general jurisdiction by the Supreme Court at this state's expense. Yet in none of those trilogy of cases can they find any revocation of the New York common law rule, or even a discussion of its' vitality. They also recognize that the Appellate Division, in discarding the common rule, identified clearly the "'longstanding judicial construction . . . by New York court 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'" (Def Br 15, citing Record at R 263), but did so anyway.

The Court stands "at the apex of a hierarchy of appellate courts in this State"; as such, it mirrors the jurisdiction and purpose of the United States Supreme Court. (Karger, The Powers of the New York Court of Appeals § 1.1 and note 3 [3d ed rev

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[4](...continued)
Daimler did not address consent-based general jurisdiction, being based on due process considerations only. https://www.nysenate.gov/legislation/bills/2013/s7078 (last accessed 1/9/2020). Since from 1916 to the present "New York courts - State and Federal - have held that a foreign corporation's registration to do business in New York constitutes consent by the corporation to general personal jurisdiction in the New York courts," it seemed best to codify the current case law and provide "a forceful legislative declaration of the effect of a foreign corporation's registration to do business in New York." *Id.* Instead of being in derogation of the common law, the proposed bill was in celebration of the decision and history of *Bagdon*.

2005, July 2019 Update]). The decision to do away with over 100 years of jurisprudence affecting a common law rule stated by and embodied in its own decision in *Bagdon*, and affirmed by the Supreme Court in *Neirbo*[5] and *Pennsylvania Fire*[6], is uniquely its own and not that of an intermediate appellate court.[7] In the final analysis, the decisions of its federal analog offer no reason to abandon the common law rule now.

POINT II

THE SUPREME COURT HAS NOT DECIDED THAT CONSENT BY REGISTRATION IS NOW UNCONSTITUTIONAL

There is nothing in defendants' answering brief which answers the question of where the Supreme Court says that consent by registration is unconstitutional. As previously discussed, in the hierarchy of courts, this Court and the Supreme Court stand as equals, except where the interpretation of federal statutes or the United States Constitution is involved. The Supreme Court limited the ambit of its trilogy of general

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[5] *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 US 165 [1939]

[6] *Pennsylvania Fire Ins. Co. v. Gold Issuing Mining Co.*, 243 US 93 [1917]

[7] That court did not grant leave to review its decision; leave was granted by this Court instead. [R 254]

jurisdiction cases solely to the question of whether the 14th Amendment was violated. *See, e.g., Daimler*, 571 US at 121 ("[w]hether Due Process Clause of the Fourteenth Amendment" precludes exercise of general jurisdiction). In contrast, the question raised before this Court is whether consent by registration, which it has correctly identified as a contract principle, offends the 14th Amendment as well. Since *Bagdon*, it has said that it does not, and since *Neirbo* and *Pennsylvania Fire*, the Supreme Court has agreed.

Defendants' need to excise the contractual basis of consent by registration from this case is powerful, for outside of any 14th Amendment concerns, the Court's decision in *Bagdon* stands unassailed. Through constitutional legerdemain, defendants' hope to divert the Court's analysis into what they see as the protective veil of *Daimler*. The equation they offer is that since a corporation is only "at home" in its state of incorporation and the state in which it houses its principal place of business, if consent by registration is afoot, it would then "render[ ] a foreign corporation 'at home' everywhere it does business," thus "eras[ing] *Daimler*'s holding that 'at home' is not 'synonymous with 'doing business.''." Def Br 19, citing *Daimler*, 571 US at 139 n.20. The insoluble problem for defendants, however, is that such would only be so *unless a corporation agreed to general jurisdiction elsewhere*;

whether, as Justice Frankfurter said for the Court in *Neirbo*, consent to jurisdiction in New York was "part of the bargain" that the registered foreign corporation made in order to "enjoy[ ] the business freedom of the State of New York[.]" 308 US at 175 (affirming control of *Bagdon*). "A statute calling for such a designation is constitutional, and the designation of the agent 'a voluntary act.'" *Id.*, citing *Pennsylvania Fire*.

Defendants' citations to the decisions of trial and intermediate courts outside the jurisdiction have little or no persuasive effect on the issue, for they share neither the common law history nor the responsibility of the Court and blithely ignore the contractual nature of consent by registration jurisdiction. Many of the conclusions drawn by these largely irrelevant cases are either plainly mistaken, rely only on the constitutional "fait d'accompli" that defendants propose, or actually support plaintiffs' position. For example, in *Wenche Siemer v. Learjet Acquisition Corp.*, 966 F2d 179 [5th Cir 1992] (Def Br 23-24), while rejecting an argument that mere registration of an agent by the defendant corporation subjected it to Texas general jurisdiction under the Texas Business Corporation Act, the circuit court was careful to add that "[n]o Texas state court decision has held that this provision acts as a consent to jurisdiction," a comment recognizing the power of the common law of a

state to hold to the contrary. 966 F2d at 183.

In the Second Circuit's decision in *Brown v. Lockheed Martin Corp.*, 814 F3d 619 [2d Cir 2016] (Def Br 19), defendants claim that the circuit court commented that "if consent-by-registration were constitutionally permissible, '*Daimler's* ruling would be robbed of meaning by a back-door thief.'" *Id.* The whole quote is: "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." *Brown*, 814 F3d at 640. The statute the circuit court was faced with in *Brown* was Connecticut's, not New York's. In Connecticut, there was no long-standing common law rule on consent by registration. As the court pointed out, the Connecticut Supreme Court had "yet to give a definitive interpretation of the jurisdictional import of Connecticut's registration and agent-appointment statutes." *Id.* at 634. If the great fear of a thief coming in the back-door of general jurisdiction was the circuit's concern, the "back-door" wasn't New York's. Indeed, four years' later, in *Chufen Chen v. Dunkin' Brands, Inc.*, 954 F3d 492, 498 [2d Cir 2020], the circuit court conceded it had *never* "considered the impact of *Daimler*

on New York courts' longstanding interpretation of BCL § 1391(a)." The Second Circuit recognized that consent by registration had already been "definitively construed" by this Court, but was now, as a result of the Second Department's decision here, "no longer settled." *Brown* at 498. The circuit court's solution to this "unsettled"[8] judicial landscape was to guess what this Court would do, as if *Bagdon* had never been decided. "[A]bsent specific direction from the highest New York court, we remain 'obligated to carefully . . . predict how the state's highest court would resolve the uncertainty or ambiguity.'" *Chufen Che*, 954 F3d at 499 (citation omitted). Ignoring the contractual underpinning of *Bagdon* and "guessing", the circuit court had "little trouble concluding that were the New York Court of Appeals to decide the issue, it would agree that this conclusion [that *Bagdon* is no longer valid] is consistent with the U.S. Constitution and the evolving law surrounding general jurisdiction." *Id.*

Consent by registration is an agreement between the people of the state and the foreign corporation seeking to reside within it. The agreement is simple: The foreign

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[8]The Fourth Department's decision in *Best v. Guthrie Medical Group, P.C.*, 175 AD3d 1048 [4th Dept 2019], only cited to the decision below here, without any further discussion, while the First Department's decision in *Fekah v. Baker Hughes Incorporated*, 176 AD3d 527 [1st Dept 2019] cited the decision below, together with *Best* and lower New York County decisions, again, without discussion. Interestingly, the First Department incorrectly believed, as evidenced by its manner of citation of the decision below, that leave to appeal to this Court had been *denied*, citing to the application of nonparty appellant U.S. Tires and Wheels of Queens, LLC., at 33 NY3d 1044, rather than the grant of leave to plaintiffs, at 33 NY3d 905.

corporation becomes, artificially, a citizen of the accepting state, entitled to all the benefits of that citizenship and all the responsibilities as well. It stands no better or worse than a domestic corporation. It can sue, or be sued; take judgment or bear judgment. Should the Court now change the common law and say that a foreign corporation registered to do business in New York is *not* subject to the general jurisdiction of its courts, but a domestic corporation *is*, then a registered foreign corporation would have a distinct economic advantage over a domestic one.[9] It would also heighten the "crippled predictability" which the Supreme Court has cast over general jurisdiction jurisprudence. Rhodes and Robertson, "A New State Registration Act: Legislating A Longer Arm For Personal Jurisdiction", 57 Harvard Journal on Legislation 378, 379 (Summer 2020).

Without the Court's support for *Bagdon*, New York plaintiffs will be put at their peril. "The lesson to be drawn from [the Appellate Division's decision] in *Aybar* is that the larger the multistate or multinational defendant corporation, the more difficult it will be to establish general jurisdiction in New York." Siegel, N.Y. Prac. § 82 (6th

[9]For example, though defendant Ford could sue a man for allegedly infringing on the Ford name (*Ford Motor Co. v. C.N. Cady Co.*, 124 Misc 678, aff'd 216 AD 786 [2d Dept 1926] or defendant Goodyear bring suit to recover on a personal guarantee for tires sold to a tire dealer (*Goodyear Tire & Rubber Company v. Azzaretto*, 103 AD3d 880 [2d Dept 2013] in New York as registered foreign corporations, these same defendants would now be immune from suits against them in those same courts.

ed.) Cumulative Supplement. The practical lesson is even more defined in the case at bar. Without *Bagdon*, the New York plaintiffs here will be forced to bring suit in defendants' states of incorporation, which are each different. If plaintiffs were to default to defendants' "home" states, they would also be different. To add to the dance, the third-party plaintiff, who installed the tire which caused plaintiffs' death and injuries, is located in New York, while the accident itself occurred in Virginia. Multiplicity of lawsuits in foreign jurisdictions might be no problem for big corporations, but may sound the death knell for small plaintiffs.

Defendants emphatically state that this case is not a "consent-to-suit" case. Def Br 25. Such is a "legal fiction", they maintain, because defendants did not consent to general jurisdiction in New York when they asked to register in this state 80 years' ago as foreign corporations. *Id.* That registration was humbug; a dodge created solely to satisfy *Pennoyer v. Neff*, 95 US 714 [1877], "in which personal jurisdiction was tied to the defendant's presence in the forum State." Def Br 25, citing *Pennoyer*, 95 US at 722-724. However, the purpose of registration was no different then than it is now: to obtain the privileges and benefits of operating a business for profit in New York in the same manner as domestic corporations.[10]

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[10]Together, no doubt, with securing the benefits of their corporate goodwill in New York. (continued...)

When defendants made their decision to submit to New York general jurisdiction in return for that benefit, an agreement was made between the sovereign and the corporation. It was not an agreement contingent on the vitality of *Pennoyer*, the arrival of *International Shoe*, or the recasting of personal jurisdiction jurisprudence in the *Goodyear-Daimler-BNSF* trilogy. These were all cases which tested the effect of the 14th Amendment on objections to the involuntary presence of defendants in one state court or another.

In *Shaffer v. Heitner*, 433 US 186 [1977], which defendants claim overruled *Bagdon*, the Supreme Court prescribed that the core of personal jurisdiction was the relationship among the parties, the forum, and the litigation, subject to the standards of *International Shoe* and the cases which would follow it. Def Br 27, citing *Shaffer*, 433 US at 204, 212. Utilizing those touchpoints, *Bagdon*'s vitality is assured. There is no 14th Amendment issue in this case.

The common law of contract in New York which binds defendant corporations binds domestic corporations as well, and that common law is scarcely a "dead letter" as defendants would hope. Def Br 28. Registration under the common law creates a

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[10](...continued)
Agreeing to general jurisdiction in New York is consistent with that corporate interest. As Judge Cardozo recognized, people "will pay for any privilege that gives a reasonable expectancy of preference in the race of competition." *Matter of Brown*, 242 NY 1, 6 [1926].

stipulation between the parties which is a "true contract"; a contract dealing with "jurisdiction of the person." *Neirbo*, 308 US at 175, citing *Bagdon*, 217 NY at 436-437. Such contracts are entitled to respect under the law. Constitution, Art. 1, § 10; *People v. Marcus*, 185 NY 257, 259 [1906] ("The free and untrammeled right to contract is a part of the liberty guarantied to every citizen by the federal and state Constitutions.")

Defendants assure the Court in absolute terms that this is not a contract matter, but a far more comfortable (for them) due process case. "The bottom line is this: The U.S. Supreme Court has soundly rejected Plaintiffs' fictional consent-by-registration theory of jurisdiction. There is no actual consent here." Def Br 31. But the insistence of defendants reveals the center of their concern: If there *were* actual consent (which plaintiffs maintain there was) the 14th Amendment would not be involved in the Court's analysis and the law of contracts would decide the case. To put it another way, actual consent would mean that this case would be "beyond the bounds of *Daimler*." *Id.* The Court already decided that question in *Bagdon* and defendants have not cited a single authority which says otherwise.

POINT III

THE HISTORY OF DEFENDANTS FORD AND GOODYEAR MAKES ANY ARGUMENT THAT CONSENT BY REGISTRATION BURDENS INTERSTATE COMMERCE LARGELY UNTENABLE

Though not raised below, defendants nonetheless raise an essentially factual argument here for the first time. They claim that consent by registration would burden interstate commerce, which would impact the unconstitutional-conditions doctrine. Def Br 34. The sole authority for raising a new argument now is *Matter of Working Families Party v. Fisher*, 23 NY3d 539 [2014]. Coyly, they parenthetically describe the holding of that case as being that "the Court may 'affirm the Appellate Division's judgment, though on ground different from those the Appellate Division relied on'." Def Br 34. The word "may" does not appear in that portion of the opinion and its presence here makes it appear as if that statement is one of a general rule. It is not, and the differences between the posture of *Working Families* before the Court and this case are significant.

Without delving deeply into the merits of the case, which are not pertinent to the procedural issue. *Working Families* matter dealt with a District Attorney seeking

to have a special district attorney appointed by the Administrative Judge in New York City to investigate investigate possible Election Law violations in his county. The facts supporting the application had been submitted under seal to the judge. When the appointed special district attorney's authority was challenged, the Appellate Division permitted the District Attorney's opposition papers to be submitted under seal as well, with a brief containing only "largely redacted" facts served on the other side. 23 NY3d at 543-544.

After the Court granted leave to appeal, the District Attorney sought to proceed in the same confidential manner, which the Court denied. The District Attorney then filed a brief with "substantially all" of the facts omitted. However, the omitted facts were still part of the original record from the court below, and were before the Court, though under seal. *Id.* at 544. The Court's decision, therefore, was made upon the facts in that sealed record, allowing the Court to decide that there was a good faith, reasonable basis for the District Attorney's view that a special assistant district attorney should be appointed in his stead. *Id.* at 547.

There is no evidence in this record that New York's common law of consent by registration burdens anyone, much less defendants Ford and Goodyear, who have flourished under it. Defendants surely could have developed such a factual record

below if they had chosen to do so. They did not and the Court has no record upon which to decide any question relating to a claim that consent by registration burdens interstate commerce.

Yet even more telling is why defendants did not develop such a record. Perhaps the answer is in the record now before the Court, which demonstrates just the opposite. Since 1924, Goodyear had owned and operated a chemical plant in Niagara, New York; been the exclusive supplier of tires for the New York City Transit Authority's bus fleet for some 30 years; maintained at least 180 authorized Goodyear dealers in New York; and operated service centers in 365 different cities throughout the state. [R 21] Similarly, since 1920, Ford has hundreds of auto dealerships in New York selling Ford products under its brand name. [R 9, 12]

The substance of defendants' new argument – that the unconstitutional condition doctrine bars consent by registration in New York – is primarily contained in two cases. The first is *Koontz v. St. Johns River Water Management Dist.*, 570 US 595 [2013] (Def Br at 34), where the claim was made that defendant had abused the power of land-use regulation by conditioning a permit application from plaintiff only upon plaintiff's signing over his interest in the land. Refusing to do so, plaintiff's permit application was denied. The Supreme Court held that "[a]s in other

unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury." 570 US at 607.

Defendants' quote from *Koontz* is actually from a string of parentheticals where the Court sought to demonstrate that its "unconstitutional conditions cases have long refused to attach significance to the distinction between conditions precedent and conditions subsequent," a matter of no significance on this appeal. *Id.*

The other case cited by defendants was *Southern Pac. Co. v. Denton*, 146 US 202 [1892]. Texas had a statute requiring a foreign corporation wishing to do business in the state, among other things, to designate which one of its agents or officers in the state would accept process on its behalf. Texas also barred removal to federal court of any lawsuit against the corporation in Texas by the corporation upon peril of the loss of its operating permit to do business in the state. *Id.* at 206-207. The Court made no holding regarding or extracting consent to jurisdiction by such registration and the "unconditional condition" it referred to was the constitutional right to remove to federal court. The Court made it clear that there was no requirement to alter jurisdiction of any court (other than by removal), only a stipulation as to where process could be served. *Id.* at 207-208. Once again, as in *Koontz*, this case has no application

here.

Without any facts to support its claim of burdening interstate commerce for multistate/multinational corporations such as Ford and Goodyear; without any authority to bar a common law rule that affects all corporations equally, both foreign and domestic, defendants forge on in their argument, raised for the first time now. The examples of such burdens are of no persuasive value either: *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.*, 486 US 888 [1988] (burden imposed by tolling statute on unregistered foreign corporation, with no agent for service or corporate office in state, exceeds any local interest that state might advance); *Dolan v. City of Tigard*, 512 US 374 [1994] (facts control whether sovereign's limitation has a reasonable relationship under the circumstances); and *Birchfield v. North Dakota*, ____ US ____, 136 SCt 2160 [2016] (driving on public roads does not create an implied consent to a blood test by one lawfully arrested for drunk driving). At best, these cases demonstrate the overriding principle that facts are needed to determine the reasonableness of the limitation complained of in order to assess the constitutional implications in an unconstitutional-conditions doctrine case.

Law review articles aside (Def Br at 36-37), there are no facts in this record upon which the Court can answer these questions, and surely not at the level needed to

discard *Bagdon* on constitutional grounds. Any negative impact on interstate commerce from New York's common law consent to jurisdiction by authorized foreign corporations is not evident from these defendants' activities in the state. If anything, the opposite is true. However, the effect of denying the New York plaintiffs in this case the opportunity to litigate in New York liability for the injuries and deaths alleged to have been caused by defendants' conduct is manifest. The effect of such a ruling will be to toss these plaintiffs into the maelstrom of the jurisdictions of multiple states and courts in multiple proceedings. New York has every reason to protect its citizens from those burdens. To do otherwise would be unfair, unreasonable, and unnecessary.

POINT IV

FOR THE COURT TO ALLOW THE DESIGNATION OF THE SECRETARY OF STATE FOR SERVICE OF PROCESS, BUT EVISCERATE THE COMMON LAW IN THE BARGAIN IS SCANT RELIEF FOR PLAINTIFFS

In the end, defendants' suggestion that the Court grant that the Business Corporation Law can be found valid as a means for designating the Secretary of State as an agent to for service of process, but that the common law consent to jurisdiction of *Bagdon* be sacrificed in return, is illogical. *Bagdon* not only predates the Business Corporation Law, but that law has lived alongside *Bagdon* since its passage. The synergy between the statutes of this state and its common law is an essential principle of statutory construction; both define the law of New York. The Court would be wrong to destroy this relationship when the Supreme Court has specifically avoided any requirement to do so.

CONCLUSION

The decision below should be reversed, the order vacated, and this matter returned below for trial; together with such other and further and different relief as is just and proper within the circumstances.

Respectfully submitted,

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September 3, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using WordPerfect.

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Dated: September 3, 2020

STATE OF NEW YORK	)		**AFFIDAVIT OF SERVICE**
	)	ss.:	**BY OVERNIGHT FEDERAL**
COUNTY OF NEW YORK	)		**EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On September 3, 2020

deponent served the within: **REPLY BRIEF FOR PLAINTIFFS-APPELLANTS**

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the address(es) designated by said attorney(s) for that purpose by depositing **3** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on
the 3rd day of September, 2020.

MARIA MAISONET
Notary Public State of New York
No. 01MA6204360
Qualified in Queens County
Commission Expires Apr. 20, 2021

Job# 298210