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

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.

BRIEF FOR *AMICUS CURIAE* NEW YORK STATE TRIAL LAWYERS' ASSOCIATION IN SUPPORT OF PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

Proposed *amicus curiae*, New York State Trial Lawyers Association ("NYSTLA"), submits this brief in support of the appeal taken by Plaintiff from the decision and order of the Appellate Division, Second Department.

For the reasons set forth below, NYSTLA urges that this Court reverse the Appellate Division's dismissal and remand for further proceedings. NYSTLA believes that the issues presented in this appeal have statewide significance for personal injury, and indeed all, civil litigants. NYSTLA is interested in preserving the rights of injured persons under New York law.

This case arises from a one car automobile accident that occurred in Virginia. The plaintiffs seek to establish *in personam* general jurisdiction against Ford Motor Company ("Ford") and The Goodyear Tire & Rubber Co. ("Goodyear") in New York. The Defendants contest *in personam* jurisdiction, citing *Daimler A.G. v. Bauman*, 571 U.S. 117 (2014), arguing that consent to jurisdiction by registration to do business in New York is inadequate to give rise to general jurisdiction in New York.

As will be shown, jurisdiction exists in New York against Goodyear and Ford despite the state of incorporation and principal office of both defendants being elsewhere. This is because both defendants Ford and Goodyear voluntarily consented to jurisdiction in New York by registering to do business in New York. *See generally, Matter of B&M Kingstone, LLC v. Mega International Commercial*

Bank Co., 131 A.D.3d 259 (1st Dept. 2015), holding that a foreign banking corporation consented to regulatory oversight in New York in return for permission to operate in New York.

STATEMENT OF THE CASE

This negligence, products liability and strict products liability action arises from a July 1, 2012 motor vehicle accident on I-85 in Brunswick, Virginia involving a 2002 Ford Explorer that occurred when a rear tire's tread detached, and the vehicle left the roadway and rolled over, resulting in three fatalities, and personal injuries.

Defendants Ford Motor Company ("Ford") and The Goodyear Tire & Rubber Co. ("Goodyear") both moved to dismiss the instant action based upon a lack of *in personam* general jurisdiction in New York.

These motions were denied by the Supreme Court of the State of New York, County of Queens (Thomas D. Raffaele, J.S.C.), and Ford and Goodyear appealed to the Supreme Court of the State of New York, Appellate Division, Second Department.

The Second Department reversed, finding that the United States Supreme Court's holding in *Daimler AG v. Bauman*, 571 U.S. 117 (2014) provided that only the state of incorporation, and the state where the corporation's principal place of business was located, have *in personam* jurisdiction over a corporation. The possibility of a third state was left open in individual circumstances, but the Second Department found those circumstances were lacking here.

The Second Department stated:

> "We consider on these appeals whether, following the United States Supreme Court decision in *Daimler*, 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."

Later in the opinion, the court summarized its holding as follows:

> "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."

Finally, and significantly, the Appellate Division, Second Department (*Aybar v. Aybar*, 169 A.D.3d 137 (2d Dept. 2019)) ruled against the longstanding line of cases in New York that registration to do business with the Department of State conferred *in personam* general jurisdiction in New York. The Second Department held that this principle was contrary to *Daimler*, *supra*, and that since it had not been recently cited as law by the Court of Appeals of New York, that it must not be a vital precedent and was confined to its historical stage in the development of jurisdictional law, and could be disregarded.

As will be shown, *Daimler* does not discuss consent jurisdiction at all, and therefore does not require the abandonment of consent jurisdiction by registration. While consent registration was ruled to be invalid in *Best v Guthrie Med. Group,*

P.C., 175 A.D.3d 1048 (4th Dept. 2019), it is respectfully requested that this authority should not be followed, as it is not required by *Daimler,* and deprives New York state of its ability to hold foreign corporations that have consented to jurisdiction here to same laws and legal standards that in-state corporations are subject to.

POINT I

CONSENT GENERAL JURISDICTION BY REGISTRATION SURVIVES *DAIMLER*.

The agreement between the state and the foreign corporation registering to do business in the state is a quid pro quo in which the corporation gains valuable privileges and protections from the state, and in return, the state gains the ability to hold those operating within its borders accountable. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (reasoning that obtaining protections and benefits from the forum make it "presumptively not unreasonable" to submit to jurisdiction). This agreement is vital, and has not been altered by *Daimler*.

Consent based jurisdiction is based on a social duty to ensure fairness. In *Pennsylvania Fire Insurance Co of Philadelphia v. Gold Issue Mining and Milling Co.*, 243 U.S. 93 (1917), Justice Holmes articulated the legitimacy of a state's regulation of corporations operating within its borders, drawing on New York case law. *Id.* at at 95, 97). The court ruled that jurisdiction based upon consent was

justified because it placed the out-of-state corporation on the same footing as a local corporation operating within the state borders.

The power of a state to mandate that a foreign corporation register in order to do business in the state reaches back to *Paul v. Virginia*, 75 U.S. (8 Wall.) 168 (1868). From 1916 to the present, New York courts 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. *See, Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432 (1916), holding that such consent flows from the foreign corporation's statutorily required designation of a New York agent for service of process.

In *Bagdon v. Philadelphia & Reading Coal & Iron, supra,* Chief Judge Cardozo reasoned that the registration required by New York State for foreign corporations to obtain a certificate in order to conduct business in the state creates a contract between the state and the company: the privilege of doing business is received in exchange for submitting to jurisdiction. *Id.* at 437. Therefore, New York had jurisdiction over the Pennsylvania company, even though the cause of action had no relation to transactions within the state. *Id. at* 438.

The Court of Appeals reaffirmed this principle in *Tauza v. Susquehanna Coal*, 220 N.Y. 259 (1917). To Chief Judge Cardozo, this was simple fairness. If the corporation "is here"—that is, if it is taking advantage of the privileges and

protections of the state—then the state has jurisdiction over the corporation, regardless of where the cause of action arose. 220 N.Y. at 268.

New York courts continued to rely on *Tauza and Bagdon*. *See, e.g., Elish v. St. Louis S.W. Ry. Co.*, 305 N.Y. 267 (1953); *Simonson v. Int'l Bank*, 14 N.Y.2d 281 (1964).) Later, in *Bryant v. Finnish National Airlines*, 15 N.Y.2d 426 (1965), a New York resident sued a Finnish airline for an accident that occurred in Paris. Relying on *Tauza*, the Court of Appeals held that the Finnish corporation could be sued in New York based on its registration to do business in the state and its active business contacts within the state. 15 N.Y.2d 428.

Reflecting the strong policy that entry into the New York business market requires that foreign corporations be subject to New York law to the same degree as New York corporations are, several courts have held that the doctrine of consent by registration survives Daimler. *Daimler* simply does not affect Bagdon, and this has been recently recognized by the Appellate Division, First Department in a post-*Daimler* decision. *Matter of B&M Kingstone, LLC v. Mega International Commercial Bank Co.*, 131 A.D.3d 259 (1st Dept. 2015). This is because the *Daimler* test did not involve consent jurisdiction by registration, but business contacts of a subsidiary of Daimler in California. The Court determined that Daimler could not be characterized as "at home" in California for purposes of general jurisdiction since Mercedes Benz USA's sales in California were insufficient to

establish Daimler's "at home" presence in California. Contractual consent to general jurisdiction by registering to do business in the state was not involved in *Daimler*.

Consent jurisdiction is necessary to place foreign corporations on the same playing field as domestic corporations. As held by *William L. Bonnell Co. v Katz*, 23 Misc.2d 1028 (Sup. Ct. N.Y. Cty. 1960):

> "The purpose of section 218 of the General Corporation Law, and the rationale of the decisions construing it, is simply to protect our own corporations from unfair competition and to place them on an equal footing with foreign corporations. Fairness and justice require that when a foreign corporation comes into our State to conduct business under similar methods and to the same degree it does in its own State, or as do our domestic corporations, that such a corporation should be subject to our laws and regulations as a recompense for the advantages enjoyed by it."

The need for this policy has not been attenuated with time, and the power of the state to subject foreign corporations doing business in the state to its jurisdiction so as to enforce its laws and regulations against them is not abrogated by *Daimler, supra*, which does not change the law with respect to personal jurisdiction based on consent.

The Appellate Division, Second Department in *Aybar v. Aybar*, 169 A.D.3d 137 (2d Dept. 2019), the decision appealed from, held 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*." This holding went further than the holding in *Daimler,*

supra. The *Daimler* opinion did not address consent jurisdiction by registration to do business within the state.

In *Daimler*, Argentinean citizens sued Daimler, a German corporation, in the Northern District of California, upon acts that took place in Argentina allegedly done by Daimler's subsidiary, Mercedes-Benz Argentina. Plaintiff asserted that another Daimler subsidiary, non-party Mercedes-Benz USA, which was incorporated in Delaware and had its principal place of business in New Jersey, subjected the German Daimler to general jurisdiction in California because Mercedes-Benz USA sold cars in California. Daimler's U.S. subsidiary had contacts with California, the attempted forum state: three facilities, a regional office, and its status as the largest supplier of luxury vehicles to the California market (2.4% of Daimler's worldwide sales). Id. at 752. But even if those contacts were imputable to *Daimler*, the German corporation was found by the Supreme Court of the United States not to be "at home" in California merely based upon its contacts with California. Id. at 760. *Accord*, *Waldman v. Palestine Liberation Organization*, 835 F.3d 317 (2d Cir. 2016).

It is worth noting that *Daimler* itself treats "sister-state or foreign-country" corporations as equally "foreign." 134 S.Ct. at 754 (internal quotation marks omitted) and the decision rested primarily on the demands of constitutional due process, which apply to both U.S. and non-U.S. defendants. See id. at 763. The issue in *Daimler* was whether in-state business contacts were enough to give rise to *in*

personam jurisdiction in California. The Supreme Court of the United States held that the contacts in *Daimler* were insufficient, but in the instant case Ford and Goodyear both consented to jurisdiction in New York. As a result, the *Aybar* case is not governed by the rule in *Daimler*.

The *Daimler* decision has nothing to do with a defendant's consent to jurisdiction in a state by registering to do business there. Instead, the *Daimler* plaintiffs attempted to gain jurisdiction over the German *Daimler* by piggybacking on the defendant's U.S. subsidiaries' California contacts and imputing them back to the defendant. Thus, *Daimler* does not address the issue of a corporation's consent to a state's jurisdiction, and it is not a change in the law under *Bagdon v. Phila. & Reading Coal & Iron Co*., 217 N.Y. 432 (1916). *Daimler* never ruled against contractual consent to jurisdiction by registering to do business in New York. *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122 (2d Cir. 2014):

> "Even without general personal jurisdiction, the district court may be able to require BOC's compliance with the Asset Freeze Injunction by exercising specific jurisdiction…[t]he district court may also consider whether BOC has consented to personal jurisdiction in New York by applying for authorization to conduct business in New York and designating the New York Secretary of State as its agent for service of process. N.Y. Bus. Corp. Law § § 1301(a), 1304(a)(6); N.Y. Banking Law § 200; *Bagdon v. Phila. & Reading Coal & Iron Co.*, 217 N.Y. 432, 111 N.E. 1075 (1916) (Cardozo, J.). *See also, Daimler*, 134 S.Ct. at 755-56 (noting that general jurisdiction defines the scope of a court's jurisdiction when an entity "has not consented to suit in the forum" (quoting *Goodyear*, 131 S.Ct. at 2856))."

As noted by the *Gucci* court, consent jurisdiction was not negated by the holding in *Daimler*. This is because the main issue in *Daimler* was whether *Daimler,* a German company, should be sheltered from suit in the United States based on conduct abroad, unless their "affiliations with the [forum] in which suit is brought are so constant and pervasive 'as to render it essentially at home [there].'" *Daimler AG v. Bauman*, 571 U.S. 117 (2014) (slip op., at 2-3) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); alterations omitted).

Notwithstanding *Daimler,* jurisdiction against a corporation may be applied in New York under CPLR § 301 by the corporation consenting to register as a foreign corporation and designating a local agent. *See Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 170, 175 (1939); *Application of Amarnick*, 558 F.2d 110, 113 (2d Cir. 1977).

This is because the agreement between the State and the corporation is a contract; the corporation obtains access to the state's intrastate business market, and the state gains the power to subject the corporation to its jurisdiction, courts and laws. This is conceptually identical to an entity contracting or stipulating to permit proceedings in a state's courts, notwithstanding the existence of a remote distance from the state of its operations and organization. *E.g., Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964) (noting that " parties to a contract may agree in advance to submit to the jurisdiction of a given court"); *Petrowski v. Hawkeye-Sec.*

Ins. Co., 350 U.S. 495, 495-96 (1956) (*per curiam*) (relying on parties' stipulation to sustain exercise of personal jurisdiction).

The instant decision appealed from, *Aybar v. Aybar*, 169 A.D.3d 137 (2d Dept. 2019) held that *Daimler* required the abrogation of consent general jurisdiction under New York law. However, decisions from 1980 to the present, even post *Daimler*, show this is not the case. First, the First Department, in *Acciaierie E. Ferriere Lombarde Falck S.p.A. v Pete Sublett & Co*., 78 A.D.2d 834 (1st Dept. 1980), reached this conclusion, holding:

> "Order, Supreme Court, New York County, entered January 8, 1980, reversed, on the law and the facts, and the motion of defendant-respondent to dismiss the complaint for lack of jurisdiction unanimously denied, with costs and disbursements. Defendant-respondent has sufficiently projected itself into this State in connection with the subject matter of the litigation to have conferred jurisdiction on our courts. In addition, it still has on file a certificate of doing business here, and has designated the Secretary of State its agent to accept service of process in its behalf. (See *Pohlers v Exeter Mfg. Co.*, 293 NY 274.)"

Next, the Second Department, in *Weinstein v Kmart Corporation*, 99 A.D.3d 997 (2d Dept. 2012), held:

> "Sequoia's authorization to do business in New York, and its statutorily required appointment of the Superintendent of Insurance as its agent for service of process "in any proceeding against it on a contract delivered or issued for delivery, or on a cause of action arising, in this state" (Insurance Law § 1212[a]), constituted a consent to jurisdiction for claims within the scope of that appointment (see *Pennsylvania Fire Ins. Co. of Philadelphia v Gold Issue Mining & Milling Co.*, 243 U.S. 93, 95; *STX Panocean [UK] Co., Ltd v Glory Wealth Shipping Pte Ltd.*, 560 F.3d 127, 131; *The Rockefeller Univ. v Ligand Pharmaceuticals*,

> 581 F.Supp.2d 461, 466-467; *Amalgamet, Inc. v Ledoux & Co.*, 645 F.Supp 248, 249; *Augsbury Corp. v Petrokey Corp.*, 97 A.D.2d 173, 175; *Comprehensive Mental Assessment & Med. Care v Merchants & Businessmen's Mut. Ins. Co.*, 196 Misc.2d 134, 136-137; *Le Vine v Isoserve, Inc.*, 70 Misc.2d 747, 749; *Robfogel Mill-Andrews Corp. v Cupples Co., Mfrs.*, 67 Misc.2d 623, 624; see also *Vincent Alexander*, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, C301:1, at 21-24)"

Similarly, the court, in *Augsbury Corp. v Petrokey Corp.,* 97 A.D.2d 173 (3d Dept. 1983) the Third Department held:

> "We reject defendant Petrokey's argument that due process has been violated by the finding of personal jurisdiction solely on the basis of its registration to do business. The privilege of doing business in New York is accompanied by an automatic basis for personal jurisdiction (Siegel, New York Practice, § 82, p 93)."

Another New York appellate decision on this issue is *Matter of B&M Kingstone, LLC v. Mega International Commercial Bank Co.*, 131 A.D.3d 259 (1st Dept. 2015), where the appellate division held that because respondent had registered and obtained a license, that the court had jurisdiction over it, holding "[f]oreign corporations [that] do business in New York are bound by the laws of both the state of New York and the United States and are bound by the same judicial constraints as domestic corporations."

Since consent general jurisdiction by registration survives *Daimler*, it should be recognized as remaining in effect, for the purposes identified in *William L. Bonnell Co., supra*, that foreign corporations should be held subject to the same laws of the State of New York and bound by the same judicial constraints as domestic

corporations. This does not violate due process, because corporations are not required to register to do business in New York. Rather, as noted by the Appellate Division, doing business in New York is a privilege, not a right. *Augsbury Corp. v Petrokey Corp.*, 97 A.D.2d 173 (3d `Dept. 1983).

Also importantly, New York has a sovereign interest in enforcing its laws and ensuring a uniform and fair playing field between New York corporations and foreign corporations doing business here, which would be upset if foreign corporations, doing business in New York, were permitted to evade New York jurisdiction, the scope of its courts, and thereby, the reach of its laws.

Since consent jurisdiction was not involved in *Daimler*, *Daimler* should be interpreted narrowly to nonconsensual jurisdiction and limited to its facts. Consensual jurisdiction should remain when a "defendant purposefully avail[s] itself of the forum" state. *Daimler,* 134 S. Ct. at 755. The rationale in preserving the longstanding rule that registration to do business in New York gives rise to consent jurisdiction is simply that because the jurisdiction asserted in *Daimler* was nonconsensual, the Supreme Court of the United States' decision does not address (or apply to) consensual jurisdiction, as is at issue in the instant case.

POINT II

THE "*DAIMLER*" RULE HAS BEEN MISAPPLIED TO CONSENT JURISDICTION BY REGISTRATION, WHICH WAS NOT INVOLVED IN THE DAIMLER CASE

The lack of clear authority from this Court has, unfortunately, led to the development of precedent, among federal courts interpreting New York law, construing *Daimler* as a determination that registration does not constitute consent jurisdiction. This Court has never intimated such a conclusion and this matter presents the opportunity to provide clarity for all courts and litigants.

In New York, *Bagdon* and its progeny have provided definitive authority on this subject, prior to *Daimler*. *Bagdon* has been the law of New York since 1916, and the Supreme Court has twice recognized that a corporation's statutorily required designation of a local agent to accept process rationally may be interpreted as consent to general jurisdiction: "(W)hen a power is actually conferred by a document, the party executing it takes the risk of the interpretation that may be put upon it by the courts. The execution was the defendant's voluntary act." *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.,* 243 U.S. 93, 96 (1917); *see also Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 174-75 (1939).

However, the Second Circuit appears to have construed *Daimler* as requiring a departure from Bagdon, when this Court has not so held. In *Sonera Holding B.V.*

v. Cukurova Holding A.S., 750 F.3d 221 (2d Cir. 2014), the court noted that *Daimler* cast doubt on that state's previous personal jurisdiction jurisprudence.

> "[W]e note some tension between [Daimler's] "at home" requirement and New York's "doing business" test for corporate "presence," which subjects a corporation to general jurisdiction. . . . Not every company that regularly "does business" in New York is "at home" there. [Bauman's] gloss on due process may lead New York courts to revisit Judge Cardozo's well-known and oft-repeated jurisdictional incantation. Id. at 224 n.2.

The Court then refused to read ambiguous contractual language as "waiv[ing] any defense based on lack of personal jurisdiction and to consent to the jurisdiction of any court...with subject matter jurisdiction." Id. at 226-27." Specifically, the court held:

> "We do not read the [contractual] provision so broadly. Article 5.4(e) appears to be a standard entry-of-judgment clause designed to clarify that, following any arbitration award, a court of the arbitral venue or in any jurisdiction in which the parties' persons or assets are located would have jurisdiction to enter judgment on that award.[3] Article 5.4(e) does not speak to personal jurisdiction, and we decline to interpret the provision as Cukurova's consent to personal jurisdiction in New York."

In the instant case, jurisdiction by registration to do business in New York is a doctrine that has been clearly laid out since 1916, and therefore *Sonera* has no application here.

In *Chen v. Dunkin Brands, Inc.*, 954 F.3d 492 (2d Cir. 2020), the court, in finding that registration to do business in New York did not confer jurisdiction, ruled:

> "Admittedly, lower New York courts are not unanimous on this interpretation since Daimler. But absent 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." *In re Thelen LLP*, 736 F.3d at 219 (internal quotation marks omitted); see also *V.S. v. Muhammad*, 595 F.3d 426, 432 (2d Cir. 2010) ("This Court is bound to apply the law as interpreted by a state's intermediate appellate courts unless there is persuasive evidence that the state's highest court would reach a different conclusion."). We note that nothing in the statutory text of BCL § 1301(a) expressly conditions registration on consent to general jurisdiction in the state, and that the constitutional concerns we expressed in Brown -- including that such a regime "could justify the exercise of general jurisdiction over a corporation in a state in which the corporation had done no business at all, " 814 F.3d at 640, and that "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, " id. -- are also present here. "

This analysis ignores that contacts, not consent, were at issue in *Daimler*, and with this distinction, and the vital principle that where a corporation is licensed gives rise to jurisdiction and the longstanding principle that states have the power to regulate entrance into the intrastate business market, *Daimler* is consistent with consent jurisdiction. For this reason, Chen, *supra*, should not be followed.

The Second Circuit also held as follows in *EMI Christian Music Group, Inc. v. MP3TUNES, LLC*, 844 F.3d 79 (2d Cir. 2016):

> "Robertson also argues that, in any event, he and MP3tunes combined lacked sufficient "minimum contacts" as required by the Due Process Clause. But Robertson was aware both that MP3tunes had at least 400 users located in New York and that his company provided services to New York customers. Under these circumstances, the District Court's exercise of personal jurisdiction over Robertson comported with due process. He knew, in other words, that MP3tunes had "purposefully avail[ed] [it]self of the privilege of conducting activities within [New York], thus invoking the benefits and protections of its laws." See *Chloé v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 171 (2d Cir.

> 2010) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). "[J]urisdiction is appropriate in New York because [MP3tunes] has developed and served a market for its products there." Id. That MP3tunes served a national market, as opposed to a New York-specific market, has little bearing on our inquiry, as attempts to serve a nationwide market constitute "evidence of [the defendant's] attempt to serve the New York market, albeit indirectly." *Kernan v. Kurz-Hastings, Inc.*, 175 F.3d 236, 243 (2d Cir. 1999); see *Chloé*, 616 F.3d at 171."

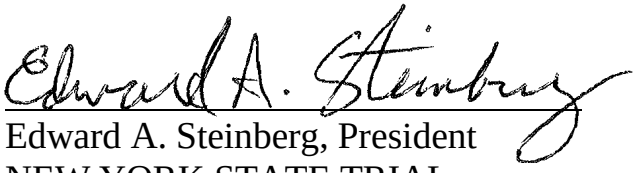
This supports the principle and policy that consent to enter an intrastate market confers personal jurisdiction in that state's courts, which is a concept alien to the holding in *Daimler*.

While *Daimler* may shelter corporations from jurisdiction that have not consented to a state's jurisdiction, it does not, and the Supreme Court has not held otherwise, vitiate contractual consent jurisdiction between states and corporations. Daimler's holding pertains to a German company that the plaintiff tried to sue in California, for actions by another company that occurred in Argentina, based on the in California business contacts of yet another company. The ruling in *Daimler* was not that every corporation in the country now can only be sued in its states of principal office and incorporation. Abandoning registration consent general jurisdiction does not serve due process, because it gives corporations special rights, in excess of their rights under due process, to make agreements to operate intrastate across the country, without being subject to the courts and laws of the forum, and, in effect, shielding themselves from suit. No-one is entitled to such a privilege.

CONCLUSION

Daimler AG v. Bauman, holds only that general jurisdiction over a foreign corporation may not be predicated solely on the ground that the corporation "engages in a substantial, continuous, and systematic course of business" in the state, 134 S.Ct. 746, 761 [2014] [internal quotation marks and citation omitted]). Since the corporate defendants have consented to jurisdiction in New York, an issue that the United States Supreme Court has not ruled upon (*Daimler*, *supra*) and which is supported by longstanding New York authority. *Bagdon v. Phila. & Reading Coal & Iron Co.*, 217 N.Y. 432 (1916), there is no bar to personal jurisdiction in New York, and New York jurisdiction should be found to exist against both Ford and Goodyear.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR §500.13(c) that the foregoing brief was prepared on a computer.

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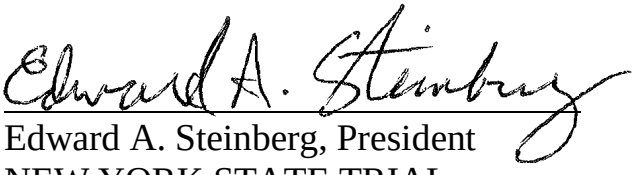
Dated: September 25, 2020

Respectfully submitted,



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