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Professor Tanya Monestier's Post

Is Corporate Registration a Proper Basis for General Jurisdiction?

Posted by Tanya Monestier on 02/09/2016 at 01:11 PM



In January 2014, I taught Conflict of Laws for the first time at RWU Law. As part of my preparation, I encountered what seemed to be a throwaway sentence in a study aid that said something to the effect of, “Some courts have held that registering to do business in a state subjects a company to general jurisdiction.”

My first response was, “What? That can’t be the case.” But I dug a little deeper and discovered that, in fact, that *was* the case. Many courts have held that the act of registering to do business and/or appointing an agent for service of process constitutes consent to being sued in that state with respect to any and all causes of action. The issue mainly seemed to be an academic one, however, since most courts at the time also had an alternative basis for asserting jurisdiction: that a corporation was “doing business” in a state.

Even though registration as a basis for jurisdiction wasn’t a hot-button issue (in fact, no one had really written about it for over a decade), something about the rule just did not sit right with me. How could it be the case that something you are *forced to do* (i.e., register to do business) can then be deemed to be voluntary consent to being sued on any cause of action? I decided to write about the issue (see [Registration Statutes, General Jurisdiction, and the Fallacy of Consent](#)), and argued that a corporation’s act of registering to do business in a state does not amount to consent, and accordingly, cannot be used to ground general jurisdiction over a corporation.

One of the things that bothered me the most about the cases holding that registration confers general jurisdiction is that they assumed that a corporation *knows* that by registering to do business in a given state, it is consenting to general jurisdiction in that state. I picked a state that regards registration as consent to general jurisdiction (Delaware) and decided to do some investigation.

I looked at the relevant paperwork and noticed that nowhere in the registration form, or in the accompanying instructions, was there any indication that the form was anything other than a routine administrative filing. There was no mention of "jurisdiction" or that there were any additional legal consequences associated with registering to do business. In fact, no Delaware government website contained any information on the topic of registering to do business and personal jurisdiction. So I contacted a representative at the Delaware Division of Corporations to see what information a corporation could get on the consequences of registering to do business in Delaware. The following is a transcription of my conversation with "Lora," a representative at the Delaware Division of Corporations:

“
Me: *I was wondering whether there are any jurisdictional consequences associated with qualifying to do business in Delaware? In other words, if I have an out-of-state corporation and I register in Delaware, does that subject me to the jurisdiction of Delaware courts? Thanks.*”

“
Lora: *Yes, any processes served on the Corporation would have to be done through the Delaware Court System.*”

“
Me: *Sorry, that's not really my question. Let me give you an example — let's say I'm a business that's incorporated in New York but I want to expand to Delaware. Can I be sued in Delaware based on my New York business contracts?*”

“
Lora: *That is more of a Legal question, our office is administrative only, you would need to seek the advice of a corporate attorney.*”

“
Me: *Is there an attorney in your office I could contact?*”

“
Lora: *We do not have any attorneys on staff.*”

“
Me: *So there is no way for me to find out what the legal consequences are of registering to do business in Delaware without hiring an attorney?*”

“
Lora: *Other than looking at the laws on our website, that is correct.*”

“
Me: *I've already done that. The laws don't indicate if there are any legal consequences associated with registering to do business. It seems odd to me that there is no way to find out if I'm taking any legal risks by registering under the Delaware statute.*”

“
Lora: *I apologize however, you would need to speak to an attorney for further clarification*”

“
Me: *Ok, thanks anyway.*”

My little experiment, while far from scientific, really showed the disconnect between theory (judges pronouncing that by registering to do business, a corporation knowingly consents to general jurisdiction) and reality (the on-the-ground dearth of information available to a corporation on the consequences of registering to do business).

As I was writing the paper, the Supreme Court issued a game-changing decision which, as luck would have it, put registration as a basis for general jurisdiction center stage. In [Daimler v. Bauman](#), the Supreme Court did away with “doing business” jurisdiction, which left registration to do business as the only available basis for jurisdiction in many cases. Registration to do business has now become the

jurisdictional issue *du jour*. The Federal Circuit Court of Appeals just heard oral argument on the issue in *Acorda Therapeutics* and *AstraZeneca AB v. Mylan Pharmaceuticals*, and the Delaware Supreme Court seems poised to address this issue in two separate cases, *Genuine Parts Company v. Cepec* and *International Paper Company v. Hudson*.

Little did I know when I read that throwaway sentence in early 2014 that I would have stumbled onto such a controversial issue — one that the Supreme Court is very likely to take up in the near future.