



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

RALPH ALLAN CEPEC AND SANDRA )  
FAYE CEPEC, )  
 )  
Plaintiffs, ) C.A. NO.: N15C-02-184 ASB  
v. )  
 )  
ADVANCE AUTO PARTS, INC., et al., )  
 )  
Defendants. )

**DEFENDANT GENUINE PARTS COMPANY’S APPLICATION  
FOR CERTIFICATION OF INTERLOCUTORY APPEAL  
OF THIS COURT’S ORDER DENYING ITS MOTION TO DISMISS  
FOR LACK OF PERSONAL JURISDICTION**

Defendant Genuine Parts Company<sup>1</sup> (“GPC”) respectfully files this application, pursuant to Supreme Court Civil Rule 42, for an Order certifying an interlocutory appeal from the Court’s Order dated August 31, 2015,<sup>2</sup> denying its motion to dismiss for lack of personal jurisdiction.

**PROCEDURAL HISTORY AND STATEMENT OF FACTS**

This is an asbestos product liability case with absolutely no connection to Delaware. Plaintiffs’ allegations against GPC center on acts or omissions which allegedly occurred in or near Statesboro, Georgia, and Jacksonville, Florida. There are no allegations that GPC conducted any relevant activity – negligent or

<sup>1</sup> Incorrectly identified as Genuine Parts Company a/k/a NAPA (sued individually and as Rayloc brakes).

<sup>2</sup> *Ralph Allan Cepec and Sandra Faye Cepec v. Advance Auto Parts, Inc., et al.* Order dated August 31, 2015 [Transaction ID No. 57790170] (attached hereto as Exhibit A).

otherwise – within the State of Delaware.

Genuine Parts Company is incorporated and principally based in Georgia. GPC has never had any corporate offices in Delaware, and does not conduct board or shareholder meetings here.<sup>3</sup> Less than 1% of GPC’s employees nationwide work in Delaware, and there are no GPC officers in the state.<sup>4</sup> Less than 1% of GPC-owned automotive parts stores and less than 1% of GPC-operated real properties in the United States are in Delaware.<sup>5</sup> Finally, less than 1% of GPC’s national revenue is generated here.<sup>6</sup> While not incorporated in Delaware, GPC is registered to do business in Delaware.

Given that the underlying facts of Plaintiffs’ case have absolutely no connection to Delaware, and that GPC is not “at home” in Delaware, GPC moved to dismiss Plaintiffs’ claims for lack of personal jurisdiction on June 30, 2015.<sup>7</sup> In that motion, GPC reasoned that the Delaware courts lacked both specific and general personal jurisdiction over GPC. In their August 10, 2015, Response to GPC’s motion to dismiss, Plaintiffs did not contest, and therefore conceded, that this Court lacked specific personal jurisdiction over GPC, given that all of

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<sup>3</sup> See Exhibit A at ¶¶ 4, 6. See also, Affidavit of Bryon Frantz, Exhibit K to GPC’s Motion to Dismiss at ¶¶ 10-11.

<sup>4</sup> Affidavit at ¶¶ 12-13.

<sup>5</sup> Affidavit at ¶¶ 14-15.

<sup>6</sup> Affidavit at ¶ 16.

<sup>7</sup> Defendant Genuine Parts Company’s Motion to Dismiss Plaintiffs’ Complaint for Lack of Personal Jurisdiction filed on June 30, 2015 [Transaction ID No. 57477421] (attached hereto as Exhibit B).

Plaintiffs’ claims against GPC arose outside of Delaware. Plaintiffs argued, however, that this Court maintained general personal jurisdiction over GPC, despite the U.S. Supreme Court holding that general personal jurisdiction may only be exercised in those states where a defendant could be considered “essentially at home” in order to protect a defendant’s Due Process rights.<sup>8</sup>

In its Order, the Court acknowledged GPC’s lack of connection to Delaware as stated above.<sup>9</sup> However, the court denied GPC’s motion to dismiss, holding that GPC expressly consented to personal jurisdiction in Delaware through compliance with Delaware’s registration statute.<sup>10</sup> The Court based its ruling on its prior analysis and holding in *In re: Asbestos Litigation (Hudson) v. International Paper Co.*,<sup>11</sup> where the court, relying, in part, on *Sternberg v. O’Neil*,<sup>12</sup> determined that express consent – by registering to do business in a state in accordance with state statutes – remains a valid basis for personal jurisdiction.<sup>13</sup>

In light of the Court’s Order, GPC now files this Application for Certification of Interlocutory Appeal.

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<sup>8</sup> *Daimler AG v. Bauman*, 134 S. Ct. 746 at 754 (2014).

<sup>9</sup> See Exhibit A at ¶¶ 3-4.

<sup>10</sup> See Exhibit A at ¶7.

<sup>11</sup> *Mary Anne Hudson v. Advance Auto Parts, Inc., et al.* Case No. N14C-03-247, Order denying Defendant International Paper Company’s Omnibus Motion to Dismiss all Claims and Crossclaims entered on July 9, 2015 [Transaction ID No. 57525855] and Order on Defendant International Paper Company’s Motion for Reargument of the Order Denying Its Motion to Dismiss dated September 1, 2015 [Transaction ID No. 57796301] (attached hereto respectively as Exhibits C and D).

<sup>12</sup> 550 A.2d 1105 (Del. 1988) (attached hereto as Exhibit E)

<sup>13</sup> See Exhibit D at ¶4 and transcript dated July 9, 2015 at pp. 6 – 42 (pertinent pages attached hereto as Exhibit F).

## **CERTIFICATION OF APPLICANT AND COUNSEL**

GPC and its counsel certify that we have determined in good faith that the application meets the criteria set forth in Delaware Supreme Court Rule 42(ii) and 42(iii). GPC further states that the issue presented is a broad-reaching issue that will affect litigation throughout the State of Delaware and resolution of this matter will serve the purpose of judicial economy for not only this case, but for other matters in which defendants are similarly situated.

### **ARGUMENT**

#### **I. STANDARD OF REVIEW FOR CERTIFICATION OF AN INTERLOCUTORY APPEAL**

Certification is proper because the issue at bar meets the criteria established by Rule 42. Rule 42(b)(i) provides, “[n]o interlocutory appeal will be certified by the trial court or accepted by this Court unless the order of the trial court decides a substantial issue of material importance that merits appellate review before a final judgment.” For the reasons set forth below, GPC submits that this Application for Certification meets the requirements of Rule 42(b)(iii)(A) – 42(b)(iii)(D) and 42(b)(iii)(G)-42(b)(iii)(H) and an interlocutory appeal is appropriate.

## II. THE COURT SHOULD CERTIFY THE ORDER FOR INTERLOCUTORY REVIEW

### A. The Order determines a substantial issue

This Court determined a substantial issue when the Court ruled that GPC expressly consented to general personal jurisdiction by compliance with Delaware’s business registration statute.<sup>14</sup> Following the U.S. Supreme Court’s holding in *Daimler*, Delaware’s highest Court has not resolved the question presented in this case:

Whether the holding in *Sternberg v. O’Neil, supra*, that a corporation consents to the general jurisdiction of Delaware courts when it registers to do business and appoints an agent in the state to receive service of process, is valid law despite the holding in *Daimler*, which restricted the imposition of general jurisdiction to only those states in which a defendant could be seen as “essentially at home.”

In applying this principle to this case, given the *Daimler* decision, whether GPC effectively consented to the general jurisdiction of the Delaware courts for any and all actions, including actions with no relationship to Delaware, by complying with Del. Code Ann. Tit. 8 §§ 376 and 371 is a substantial issue. As *Daimler* has changed the landscape of general personal jurisdiction pursuant to the U.S. Constitution, it is necessary to revisit this issue.

As previously stated by GPC in its motion to dismiss, the U.S. Supreme Court’s decision in *Daimler* is now the standard for determining the bounds of

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<sup>14</sup> See Exhibit A at ¶9.  
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general personal jurisdiction. *Daimler* involved a group of non-California plaintiffs who sued Daimler, a German corporation that was neither incorporated in, nor had its principal place of business in, California, in California federal court for acts which unquestionably occurred outside of California. Plaintiffs claimed that general personal jurisdiction over plaintiff Daimler was appropriate because of its subsidiaries' business dealings in the State of California. Despite the fact that Daimler unquestionably had connections to California, and that 2.4% of its worldwide sales occurred in California, the U.S. Supreme Court held that these contacts and activities were not sufficient to subject Daimler to the general jurisdiction of the California courts.

Instead, the U. S. Supreme Court in *Daimler*, building off of *Goodyear*, held that for a state to have personal jurisdiction over a party, that party must have contacts with the state that “are so ‘continuous and systematic’ as to render them essentially at home in the forum state.”<sup>15</sup> The “paradigm” locations for general jurisdiction are a corporation’s state of incorporation and principal place of business.<sup>16</sup> While general jurisdiction over a corporation could theoretically be found in non-paradigm locations, such a finding would only occur in “an

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<sup>15</sup> *Daimler*, 131 S. Ct. at 749, quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011).

<sup>16</sup> *Daimler*, 131 S. Ct. at 760.

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exceptional case.”<sup>17</sup>

The plaintiffs in *Daimler* “would have [the Supreme Court] look beyond the exemplar bases *Goodyear* identified, and approve the exercise of general jurisdiction in every state in which a corporation engages in a substantial, continuous, and systematic course of business...That formulation, [the Supreme Court held], is unacceptably grasping.”<sup>18</sup> Plaintiffs in the instant action are seeking a similar imposition of general jurisdiction – except that Plaintiffs cannot even claim that GPC’s contacts with Delaware are “substantial, continuous, [or] systematic.” If the plaintiffs in *Daimler* could not establish general jurisdiction based on “substantial, continuous, and systematic” business dealings, then any attempted imposition of general jurisdiction on GPC in Delaware must surely fail as well.

In a similar vein, the *Daimler* court held that “[a] corporation that operates in many places can scarcely be deemed at home in all of them.”<sup>19</sup> “Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.”<sup>20</sup>

If even “a substantial, continuous, and systematic course of business” does

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<sup>17</sup> *Id.* at fn. 19.

<sup>18</sup> *Id.* at 760-761 (internal quotation and citation omitted).

<sup>19</sup> *Id.* at 761, fn. 20.

<sup>20</sup> *Id.* at 762 (internal quotations omitted).

not justify general personal jurisdiction<sup>21</sup> then surely mere registration to do business cannot suffice. Allowing states to treat business registration as consent to general jurisdiction would render *Daimler* a practical nullity. Even only considering GPC's registration to do business in a number of the fifty United States, a problem quickly arises. If each of the other states where GPC is registered to do business chose to follow Delaware's example of equating registration to do business with consent to general personal jurisdiction, then GPC would effectively "be deemed at home in all of them" – a result that was clearly anticipated and rejected by the *Daimler* court as being "exorbitant."

Thus, an interlocutory appeal is appropriate pursuant to Rule 42(b)(iii)(A).

**B. The decisions of the trial courts are conflicting upon the question of law**

While this case, along with the *Hudson* case cited by this Court in its Order denying GPC's motion to dismiss, are the first Delaware state court cases to address this issue, the Delaware federal courts have a split in authority as to the viability of *Sternberg's* interpretation of Del. Code Ann. Tit. 8, §§ 376 and 371 implying consent to general jurisdiction following the *Daimler* decision.<sup>22</sup> In *AstraZeneca v. Mylan Pharm. Inc.*, Judge Sleet found that *Daimler* does "weigh

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<sup>21</sup> *Daimler*, 134 S. Ct. at 761

<sup>22</sup> See *Novartis Pharm. Corp. v. Mylan Inc.*, 2015 U.S. Dist. LEXIS 31812 (D. Del. March 16, 2015); *Forest Labs., Inc. v. Amneal Pharm. LLC*, 2015 U.S. Dist. LEXIS 23215 (D. Del. Feb. 26, 2015); *Acorda Therapeutics, Inc. v. Mylan Pharm. Inc.* 2015 U.S. Dist. LEXIS 4056 (D. Del. Jan. 14, 2015); *AstraZeneca AB v. Mylan Pharm. Inc.*, 72 F. Supp. 3d 549 (D. Del. 2014)(unreported opinions attached hereto respectively as Exhibits G, H and I).

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on” consent jurisdiction because it is rooted in due process and can not “offend transitional notions of fair play and substantial justice... .”<sup>23</sup> Judge Sleet reasoned that *Daimler* determined that continuous and systemic contacts aren’t sufficient to establish general jurisdiction and must have rejected the idea that merely “doing business” in a state meets due process. The Court held that “compliance with Delaware’s regulation statutes – mandatory for *doing business* within the state – cannot constitute consent to jurisdiction, and the Delaware Supreme Court’s decision in *Sternberg* can no longer be said to comport with federal due process.”<sup>24</sup>

The contrary decisions relied on *Sternberg* and determined that *Daimler* had no import on compelled consent jurisdiction by mandatory business registration statutes. Notably, in one case against GPC’s position (*Acorda*), U.S. District Court Judge Leonard Stark even admits that the result is “odd” and in conflict with *Daimler*.<sup>25</sup> Judge Stark further noted in *Acorda* that U.S. District Court Judge Gregory Sleet’s opinion rejecting “consent as a basis for general jurisdiction ... is well-reasoned and may well be the correct view.”<sup>26</sup> The federal trial court decisions are conflicting as to the application of the Delaware statutes following *Daimler*. The U.S. Court of Appeals for the Federal Circuit has acknowledged this by granting permission to appeal the interlocutory orders in *AstraZeneca* and

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<sup>23</sup> *AstraZeneca*, 72 F. Supp. 3d at 556 (citing *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (U.S. 1945)).

<sup>24</sup> *Id.*

<sup>25</sup> See Exhibit I, *Acorda*, *supra*, at \*42.

<sup>26</sup> *Id.*, at \*43.

*Acorda Therapeutics* and the issue has been briefed in that Court.<sup>27</sup> The U.S. Court of Appeals should be guided by the Delaware Supreme Court's current view of *Sternberg* and the impact of *Daimler* on it.

Thus, an interlocutory appeal is appropriate pursuant to Rule 42(b)(iii)(B).

**C. The question of law relates to the constitutionality, construction, or application of a statute of this State, which has not been, but should be, settled by this Court in advance of an appeal from a final order**

As discussed above the question presented is the construction and application of Del. Code Ann. Tit. 8, §§ 376 and 371 following the *Daimler* decision. Thus, an interlocutory appeal is appropriate pursuant to Rule 42(b)(iii)(C).

**D. The interlocutory order has sustained the controverted jurisdiction of the trial court**

GPC's motion to dismiss was based on the Delaware Superior Court's lack of personal jurisdiction over this matter. By denying GPC's motion to dismiss, the trial court's order (the subject of the interlocutory appeal) sustained the controverted jurisdiction of the trial court. Thus, an interlocutory appeal is appropriate pursuant to Rule 42(b)(iii)(D).

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<sup>27</sup> *AstraZeneca A.B. v. Mylan Pharm. Inc.*, 2015 U.S. App. LEXIS 15267 (interlocutory appeal accepted by Order dated Mar. 17, 2015) and *Acorda Therapeutics Inc. v. Mylan Pharm. Inc., et al.*, U.S. App. Ct., Case No. 2015-124, (interlocutory appeal accepted by Order dated Mar. 17, 2015) (unreported orders attached hereto respectively as Exhibits J and K).

**E. Review of the interlocutory order may terminate the litigation**

A dismissal of this action against GPC will terminate the litigation in this matter against it. Further, a decision in GPC's favor will terminate litigation against other similarly situated defendants advancing judicial economy in the trial courts of this state as well as in the federal trial courts.<sup>28</sup> Thus, an interlocutory appeal is appropriate pursuant to Rule 42(b)(iii)(G).

**F. Review of the interlocutory order may serve considerations of justice**

As discussed in *Daimler*, the issue of jurisdiction raises issues of Due Process. The appropriate application of Due Process serves the considerations of justice. Moreover, permitting interlocutory review of the decision whether Delaware courts have jurisdiction over GPC impacts its due process rights, which serve considerations of justice. Furthermore, this Court's guidance on an issue of Delaware law and precedent would serve the interests of justice and may be beneficial for the Federal Circuit Court of Appeals currently considering the same issues of Delaware law. Thus, an interlocutory appeal is appropriate pursuant to Rule 42(b)(iii)(H).

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<sup>28</sup> See, e.g. *Warner v. Star Enter.* 1995 Del. Super. LEXIS 391 at \*5 (Del. Super. Ct. Aug. 31, 1995) (certifying appeal in part because a reversal would result in dismissal of moving defendant and "such a decision is case dispositive as to it.")(attached hereto as Exhibit I).

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## CONCLUSION

For the foregoing reasons, Defendant Genuine Parts Company respectfully requests that the Court grant its request for certification of appeal.

### **MARON MARVEL BRADLEY & ANDERSON LLC**

*/s/ Paul A. Bradley*

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Rayloc brakes)

Date: September 9, 2015