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April 22, 2016

VIA ECF

Catherine O'Hagan Wolfe  
Clerk of Court  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Ritchie Capital Mgmt., L.L.C. v. Costco Wholesale Corp.*,  
No. 15-3294-cv

Dear Ms. Wolfe:

We respond to Costco's letter concerning *Genuine Parts Co. v. Cepec*, No. 528, 2015 (Del. Apr. 18, 2016).

Like this Court's *Lockheed* decision, *Genuine Parts* does not answer the question presented here: whether a federal court may flout Supreme Court precedent to strike down a consent-via-registration regime firmly established in state law. Rather, in *Genuine Parts*, a majority of the Delaware Supreme Court read Delaware's registration statutes "as providing a means for service of process and not as conferring general jurisdiction" in order to avoid a reading that the majority believed would be unconstitutional. Maj. 44.

As both *Genuine Parts* and *Lockheed* acknowledge, other courts have determined that consent-via-registration is constitutionally valid. Maj. 37; Reply 14. This Court should reject the contrary conclusions of the *Genuine Parts* majority for the reasons in Appellants' briefs and because the majority rests on faulty premises and fails to engage in meaningful analysis.

Catherine O'Hagan Wolfe  
April 22, 2016

Page 2

First, the reach of consent-via-registration is more limited than the majority concludes. Not all foreign corporations “seeking to sell any product or provide any service in Delaware” must register. Maj. 32. A corporation that engages in interstate commerce, without localizing business in Delaware, need not register. Reply 11, 26. Upholding consent-via-registration also will not expose corporations “to the general jurisdiction of all fifty states.” Maj. 36. While the majority identifies only Mississippi law as providing that registration does not constitute consent to jurisdiction (Maj. 37 n.114), that is the law in at least eleven other states and the District of Columbia. Reply 11-12. In contrast, only a few states (formerly including Delaware) provide for consent to general jurisdiction via registration. *Id.*

Second, it is not true that most post-*Daimler* federal decisions find consent-via-registration to be unconstitutional. Maj. 38. As the citations in *Genuine Parts* make clear, more decisions *support* the constitutionality of consent-via-registration than reject it. Maj. 37-39 nn.115-16, 119; Dissent 1 n.130.

Third, although Costco relies on *Genuine Parts* to support its unconstitutional-conditions and Commerce Clause arguments, the majority’s single-sentence conclusions do not analyze the issues and are thus not persuasive. Maj. 35 & n.108, 42 & nn.124-125; Reply 22-30.

Respectfully submitted,

/s/ Alexandra A.E. Shapiro  
Alexandra A.E. Shapiro  
*Counsel for Appellants*

cc: Counsel of Record (by CM/ECF)