No. 5-15-0529

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

IRENE JEFFS, Individually and as Special Administrator for the Estate of DALE E. JEFFS, Deceased,	)	On Appeal from the Circuit Court of Madison County, Illinois Third Judicial Circuit
Plaintiff-Appellee,	)	Circuit Court No. 15-L-533 Hon. Stephen Stobbs
v.	)	Judge Presiding
FORD MOTOR COMPANY,	)	
Defendant-Appellant.	)	

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* SUPPORTING DEFENDANT-APPELLANT

Michele Odorizzi, #2092263
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Phone: (312) 782-0600
Fax: (312) 701-7711
modorizzi@mayerbrown.com

Attorneys for Amicus Curiae *The Chamber of Commerce of the United States of America*

POINTS AND AUTHORITIES

Page(s)

POINTS AND AUTHORITIES (continued)

Page(s)

POINTS AND AUTHORITIES (continued)

Page(s)

POINTS AND AUTHORITIES (continued)

Page(s)

INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation, representing 300,000 direct members and indirectly representing an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country. One of the Chamber's most important responsibilities is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community.

Most Chamber members conduct business in states other than their states of incorporation and principal place of business. Many such companies carry on some commerce in Illinois with the expectation that such activities do not subject them to jurisdiction for all purposes in this State. They therefore have a substantial interest in the rules governing whether, and to what extent, a nonresident corporation may be subjected to general personal jurisdiction.

INTRODUCTION

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). This limitation on a court's authority "protects [the defendant's] liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (quoting *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 319 (1945)).

Applying this due process principle, the U.S. Supreme Court has recognized "two categories of personal jurisdiction." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014). Specific jurisdiction empowers courts to adjudicate claims relating to the defendant's in-forum conduct and exists when "the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum.'" *Id.* (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). General jurisdiction, by contrast, permits courts to adjudicate any claims against a defendant arising out of any actions occurring anywhere in the world (subject, of course, to limits specific to a particular cause of action).

It is undisputed that plaintiff's claims against defendant Ford Motor Company do not relate in any way to Ford's activities in Illinois, and that there accordingly is no specific personal jurisdiction over Ford. Illinois therefore may exercise jurisdiction over Ford in this case only if Ford is subject to general personal jurisdiction in Illinois.

The test for general jurisdiction is demanding: because of its extraordinary reach, general jurisdiction ordinarily may be exercised over a defendant only by those states in which the defendant is considered "at home"—its state of incorporation and its principal place of business. *Daimler*, 134 S. Ct. at 760.

Ford Motor Company is incorporated in Delaware and has its principal place of business in Michigan. It therefore is not "at home" in Illinois. But the trial court held that Ford is nonetheless subject to general personal jurisdiction in Illinois, on two theories: (1) that Ford "conducts substantial, not *de minim[i]s*, business" in Illinois—which amounted, in the trial court's view, to "significantly more than the minimum contacts required by federal due process standards" (A – 9); and (2) that when Ford registered to do business in Illinois and appointed an agent to receive service of process,

this constituted "unequivocal consent to jurisdiction in Illinois." (A – 8-9).

Both of these theories are wrong. The first flatly violates *Daimler*, which makes clear that doing a "substantial" amount of business in a State is not enough to render a corporation subject to general jurisdiction there; general jurisdiction is limited only to those forums in which the corporation is "essentially at home." *Daimler*, 134 S. Ct. at 754 (quoting *Goodyear*, 564 U.S. at 919).

The second theory fares no better: interpreting Illinois's laws governing foreign corporations to require them to consent to general jurisdiction in Illinois as a condition of doing business here would render those laws unconstitutional. Accordingly, this Court should—as many other courts have done since *Daimler*—interpret the law not to require such consent, in order to save it from unconstitutionality.

That is the right result as a matter of policy as well as governing legal principles. The trial court's decision—if permitted to stand—will discourage foreign investment in Illinois, because out-of-state companies will have less incentive to operate in Illinois if they would become subject to suit here for claims arising anywhere in the world. And the lower court's expansive approach to general jurisdiction is unnecessary to protect Illinois citizens from injury by foreign corporations: such companies can already be sued in Illinois on a specific jurisdiction theory when their business conduct in Illinois causes harm to in-state residents. In short, asserting general jurisdiction over all foreign companies registered to do business in Illinois would cause serious harm to the State's economy, with no corresponding benefit to the State or its citizens.

ARGUMENT

I. FORD'S "SUBSTANTIAL" BUSINESS IN ILLINOIS IS NOT A SUFFICIENT BASIS FOR GENERAL JURISDICTION.

In holding that Ford's business activities in Illinois were extensive enough to warrant the exercise of general jurisdiction, the trial court stated that Ford did "substantial" business in Illinois, which was "more than the minimum contacts required by federal due process standards." (A – 9). But this conclusion was incorrect as a matter of law: the Supreme Court squarely held in *Daimler* that doing "substantial" business in a State is not enough to subject a corporation to general jurisdiction there.

The plaintiffs in *Daimler* brought suit in California against Daimler AG, a German company, based on the actions of Daimler's Argentinean subsidiary during Argentina's "Dirty War." *Daimler*, 134 S. Ct. at 750-51. The Ninth Circuit held that Daimler was subject to general jurisdiction in California because its American subsidiary—Mercedes-Benz USA (MBUSA), a Delaware corporation with its principal place of business in New Jersey—was subject to general jurisdiction there and MBUSA's California contacts could be attributed to Daimler itself. *Id.* at 753.

The Supreme Court reversed, holding that even assuming that MBUSA's California activities could be attributed to Daimler, those activities did not make Daimler subject to general jurisdiction in California. The Court explained that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose [general] jurisdiction there." *Id.* at 760. Those affiliations, it stated, will virtually always be limited to the two paradigmatic forums in which the corporation is "fairly regarded as at home": its state of incorporation and its principal place of business. *Id.* (internal quotation marks omitted).

The plaintiffs argued that in addition to a corporation's state of incorporation and principal place of business, general jurisdiction was also available "in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'" *Id.* at 761. But the Supreme Court rejected "[t]hat formulation" of the standard as "unacceptably grasping." *Id.* General jurisdiction, the Court explained, "does not focus solely on the magnitude of the defendant's in-state contacts" but "instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide." *Id.* at 762 n.20 (internal quotation marks and brackets omitted). This is so because "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.*

Therefore, the Court held, the appropriate inquiry for general jurisdiction outside a corporation's state of incorporation and principal place of business "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's affiliations with the State are so 'continuous and systematic' as to render it ***essentially at home*** in the forum State." *Id.* at 761 (internal quotation marks and brackets omitted) (emphasis added). And it made clear that this test will permit the assertion of general jurisdiction by a state other than the states of incorporation and principal place of business only in "an exceptional case." *Id.* at 761 n.19.

The Court held that Daimler's California contacts did not meet this demanding test—even though MBUSA was "the largest supplier of luxury vehicles to the California market" and had "multiple California-based facilities," and "MBUSA's California sales account[ed] for 2.4% of Daimler's worldwide sales." *Id.* at 752. "If [these] activities

sufficed to allow adjudication of this Argentina-rooted case in California," the Court explained, "the same global reach would presumably be available in every other State in which MBUSA's sales are sizable. 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.'" *Id.* at 761-62 (emphasis added) (quoting *Burger King*, 471 U.S. at 472).

Daimler compels the conclusion that the trial court's analysis was erroneous and that Ford's business in Illinois does not subject it to general jurisdiction here. The proper inquiry, under *Daimler*, is not whether Ford does "substantial" business in Illinois but whether the nature of Ford's presence in Illinois is so great that Ford is "essentially at home" in Illinois (a state other than Ford's principal place of business and state of incorporation). *Id.* at 761 (quoting *Goodyear*, 564 U.S. at 919). It is not.

The trial court cited statistics about how many employees and dealerships Ford has in Illinois, and how many vehicles it sells here. (A – 8-9). But under *Daimler*, those contacts must be assessed in light of Ford's "activities in their entirety, nationwide and worldwide." *Daimler*, 134 S. Ct. at 762 n.20. Ford's Illinois workforce is less than 7.5% of its total workforce; its Illinois independent dealerships amount to only 5% of its total independent dealerships; and its vehicle sales in Illinois in 2014 totaled only 4.5% of its sales that year. (C – 758). As in *Daimler*, if these figures were enough to establish that Ford is "essentially at home" in Illinois, it would also be considered at home in many other States beyond its principal place of business (Michigan) and its state of incorporation (Delaware).

That result would be irreconcilable with *Daimler*'s admonition that "[a]

corporation that operates in many places can scarcely be deemed at home in all of them" (*Daimler*, 134 S. Ct. at 762 n.20)—and with Illinois Supreme Court and Seventh Circuit decisions recognizing that it should be exceptionally rare that a company is subject to general jurisdiction outside its state of incorporation and principal place of business. See *Russell v. SNFA*, 2013 IL 113909, ¶ 36 (explaining that "the standard for finding general jurisdiction is very high" and requires that "the foreign corporation ha[ve] taken up residence in Illinois" (internal quotation marks omitted)); see also, *e.g.*, *Kipp v. Ski Enter. Corp. of Wis., Inc.*, 783 F.3d 695, 698 (7th Cir. 2015) (explaining that in *Daimler* and other decisions, the Supreme Court has "raised the bar for [general] jurisdiction" and "emphasized that it should not lightly be found").

Indeed, *Daimler*'s analysis underscores just how rare such "exceptional case[s]" will be. The *only* example that *Daimler* gave of such an "exceptional case" was *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447-48 (1952). See *Daimler*, 134 S. Ct. at 755-56 & n.8. In *Perkins*, a corporation had temporarily moved its headquarters from the Philippines to Ohio during World War II. The Court thus held that Ohio could exercise general jurisdiction over the corporation, on the theory that Ohio had become a "surrogate for the place of incorporation." *Id.* at 756 n.8 (internal quotation marks omitted).

This case is not even close to the sort of "exceptional case" contemplated in *Daimler*: Illinois cannot be considered Ford's "surrogate" home state when Ford makes less than 5% of its sales here. And no one has suggested for a moment that Ford, an iconic Detroit-based company, has temporarily moved its headquarters to this State. This Court therefore should reject the trial court's holding on this issue and affirm that the

level of business Ford does in Illinois is insufficient to subject it—or any other company—to general jurisdiction in this State consistent with due process.

II. ILLINOIS MAY NOT SUBJECT FOREIGN CORPORATIONS TO GENERAL JURISDICTION BASED SOLELY ON THEIR REGISTRATION TO DO BUSINESS.

The other basis for the trial court's decision—its conclusion that Ford "unambiguous[ly]" consented to general jurisdiction by registering to do business in Illinois and appointing an agent for service of process—is also legally flawed. *Amicus* agrees with Ford that the trial court's interpretation of Illinois law on this point is wrong. Moreover, if the State's registration statutes did require consent to general jurisdiction, such a consent requirement would violate both due process and the doctrine of "unconstitutional conditions."

A. *Daimler* Bars The Assertion Of General Jurisdiction Over A Corporation That Merely "Does Business" Within A State.

As explained above, by effectively restricting general jurisdiction to the two States in which a corporation is truly "at home"—its States of incorporation and principal place of business—*Daimler* precludes general jurisdiction based on the relatively low level of corporate activity sufficient to trigger business registration. Otherwise, virtually every state and federal court could become an all-purpose forum with respect to every corporation registered to do business, because "[e]ach of the fifty states has a registration statute." Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1345 (2015). A number of courts have for that reason recognized that subjecting out-of-state corporations to general jurisdiction based on registration to do business would raise the very same due process concerns underlying *Daimler*—depriving a nonresident business of its due process right to be able to

"'structure [its] primary conduct with some minimum assurance as to where that conduct will and will not render [it] liable to suit.'" *Daimler*, 134 S. Ct. at 762 (quoting *Burger King*, 471 U.S. at 472).[1] Due process thus bars the assertion of general jurisdiction simply because a corporation's level of business activity satisfies the registration statute standard.

B. The Due Process Clause Forbids States From Requiring Foreign Corporations To Consent To General Personal Jurisdiction.

A plaintiff cannot circumvent the due process limits on general jurisdiction by arguing that a corporation's registration to do business constitutes consent" to general jurisdiction. To the contrary, Illinois's registration laws would be unconstitutional if they required foreign corporations to consent to general jurisdiction as a condition of doing business. This Court should therefore interpret the registration laws not to require such consent, as courts in other states have done with respect to similar statutes.

---

[1] See, *e.g.*, *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 640 (2d Cir. 2016) ("If mere registration and the accompanying appointment of an in-state agent * * * 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."); *In re Zofran (Ondansetron) Prods. Liab. Litig.*, 2016 WL 2349105, at *4 (D. Mass. May 4, 2016) (explaining that interpreting registration statute to require consent to general jurisdiction "would distort the language and purpose of the" statute and "would be inconsistent with the Supreme Court's ruling in *Daimler*"); *Keeley v. Pfizer Inc.*, 2015 WL 3999488, at *4 (E.D. Mo. July 1, 2015) ("If following [corporate registration] statutes creates jurisdiction, national companies would be subject to suit all over the country. This result is contrary to the holding in *Daimler* that merely doing business in a state is not enough to establish general jurisdiction."); *Neeley v. Wyeth LLC*, 2015 WL 1456984, at *3 (E.D. Mo. Mar. 30, 2015); *Chatwal Hotels & Resorts LLC v. Dollywood Co.*, 90 F. Supp. 3d 97, 105 (S.D.N.Y. 2015); *AstraZeneca AB v. Mylan Pharm., Inc.*, 72 F. Supp. 3d 549, 557 (D. Del. 2014).

1. Requiring a foreign corporation to consent to general jurisdiction in order to do business violates the unconstitutional conditions doctrine.

The trial court's conclusion that registration to do business constitutes "consent" to general jurisdiction in Illinois is wrong. But even if Illinois law required such consent, that compelled "consent" would not provide a constitutionally valid basis for jurisdiction.

Parties may *voluntarily* consent to jurisdiction in a particular forum in particular cases in a variety of ways—such as by entering into a contract with a forum selection clause, *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964), or by appearing voluntarily in court, *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). That is why *Daimler* and predecessor decisions state that their focus is on defendants who have "'not consented to suit in the forum.'" *Daimler*, 134 S. Ct. at 756 (quoting *Goodyear*, 564 U.S. at 928). But while voluntary consent is a permissible basis for personal jurisdiction, the doctrine of "unconstitutional conditions" prohibits jurisdiction based on involuntary, *compelled* consent.

The unconstitutional conditions doctrine has long provided that a state may not "'requir[e] [a] corporation, as a condition precedent to obtaining a permit to do business within [a] State, to surrender a right and privilege secured to it by the Constitution.'" *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2596 (2013) (quoting *S. Pac. Co. v. Denton*, 146 U.S. 202, 207 (1892)). In *Denton*, for example, the Supreme Court invalidated a Texas law that, as a condition of doing business in Texas, barred a company from exercising its right to remove to federal court a suit filed in state court. 146 U.S. at 206-07 (citing 1887 Tex. Gen. Laws 116-17). Describing the statute's "attempt to prevent removals" as "vain," the Court concluded that the law "was

unconstitutional and void." *Id.* at 207.

Finding general jurisdiction in Illinois solely on the basis of registration to do business would impose precisely the same kind of unconstitutional choice on foreign corporations that the Court held impermissible in *Denton*: an out-of-state company would have to surrender its Fourteenth Amendment due process right to avoid general personal jurisdiction in states other than its states of incorporation and principal place of business, or else completely avoid doing business in Illinois. The Constitution therefore bars Illinois from invoking the state's registration law as a basis for compelling consent to general jurisdiction. See, *e.g.*, *Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 183 (5th Cir. 1992) ("[A] foreign corporation that properly complies with the Texas registration statute only consents to personal jurisdiction where such jurisdiction is constitutionally permissible."); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1245 (7th Cir. 1990) (it would be "constitutionally suspect" to subject a corporation to general jurisdiction as a consequence of registering to do business in the state).

2. Early U.S. Supreme Court decisions permitting general jurisdiction based on registration and appointment of an agent are no longer good law.

Nearly a century ago, registering to do business in a forum and designating an agent for service of process there was considered sufficient to render a foreign corporation subject to general jurisdiction. See, *e.g.*, *Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 94-95 (1917). But that rule was a product of the "strict territorial approach" (*Daimler*, 134 S. Ct. at 753) to personal jurisdiction adopted in *Pennoyer v. Neff*, 95 U.S. 714 (1877). *Pennoyer*'s territorial approach was discarded seven decades ago by the "canonical" decision in *International Shoe Co. v. Washington*,

and the Supreme Court has expressly stated that decisions relying on *Pennoyer* have been overruled. *Daimler*, 134 S. Ct. at 754 (internal quotation marks omitted). The compelled consent theory of general jurisdiction cannot be upheld on the basis of that now-rejected doctrine.

Under *Pennoyer*, a tribunal's personal jurisdiction "reache[d] no farther than the geographic bounds of the forum." *Id.* at 753. But *International Shoe* brought about a sea change: "'the relationship among the defendant, the forum, and the litigation * * * became the central concern of the inquiry into personal jurisdiction.'" *Id.* at 754 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). In light of *Daimler* and other post-*International Shoe* rulings, a state's assertion of personal jurisdiction "*must* be evaluated according to the standards set forth in *International Shoe* and its progeny," and "[t]o the extent that prior decisions are inconsistent with this standard, they are overruled." *Shaffer*, 433 U.S. at 212 & n.39 (emphasis added); see also *Daimler*, 134 S. Ct. at 761 n.18 (cases "decided in the era dominated by *Pennoyer*'s territorial thinking * * * should not attract heavy reliance today").

Thus, the outmoded notion that a corporation consents to general jurisdiction simply by registering to do business or designating an agent for service of process violates the Due Process Clause of the Fourteenth Amendment. As the U.S. Court of Appeals for the Second Circuit recently put it in *Brown*, "the holding in *Pennsylvania Fire* cannot be divorced from the outdated jurisprudential assumptions of its era" and "has yielded to the doctrinal refinement reflected in *Goodyear* and *Daimler*." 814 F.3d at 639; see also Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 758 (1988) (noting that neither pre-*International Shoe* cases addressing general

jurisdiction, such as *Pennsylvania Fire*, nor "their underlying theories seem[] viable under today's due process standard"). If this Court concludes that Illinois's registration laws require foreign corporations to consent to general jurisdiction in order to do business in Illinois, it should invalidate those laws as unconstitutional.

But the Court need not reach the constitutional question because it can instead interpret Illinois's registration laws not to require companies to consent to general jurisdiction. In a widely recognized opinion,[2] the Delaware Supreme Court recently took this approach with respect to Delaware's corporate registration law—interpreting the relevant statutes not to require consent to general jurisdiction in order to avoid conflict with *Daimler*. *Genuine Parts Co. v. Cepec*, 137 A.3d 123 (Del. 2016). The court explained that its interpretation would have "the intuitively sensible effect of not subjecting properly registered foreign corporations to an 'unacceptably grasping' and 'exorbitant' exercise of jurisdiction, consistent with *Daimler*'s teachings." *Id.* at 141.[3]

---

[2] See, *e.g.*, Christopher M. Coggins & R. Montgomery Donaldson, *Delaware Supreme Court: No General Jurisdiction Over Non-Delaware Businesses Simply by Virtue of Registering to Do Business in Delaware*, The Nat'l L. R. (Apr. 21, 2016), http://www.natlawreview.com/article/delaware-supreme-court-no-general-jurisdiction-over-non-delaware-businesses-simply; John D. Donovan, Jr. & Gregg L. Weiner, Genuine Parts Co. v. Cepec: *Business Registration and Personal Jurisdiction*, Harv. L. Sch. Forum on Corporate Governance and Fin. Regulation (May 14, 2016), https://corpgov.law.harvard.edu/2016/05/14/genuine-parts-co-v-cepec-business-registration-and-personal-jurisdiction/; Jeff Mordock, *Merely doing business in Delaware not enough for lawsuit*, The News J. (Apr. 21, 2016), http://www.delawareonline.com/story/news/2016/04/20/merely-doing-business-delaware-not-enough-lawsuit/83293736/.

[3] The court also noted that its interpretation would avoid the "perverse result of subjecting foreign corporations that lawfully do business in Delaware to an overreaching consequence—general jurisdiction—that does not apply to foreign corporations that do business in Delaware without properly registering." *Cepec*, 137 A.3d at 140. The trial court's interpretation of the Illinois registration laws similarly creates the same "perverse result"—it penalizes foreign corporations that follow Illinois's registration laws, while unjustly rewarding companies that do business here without registering.

The Second Circuit took a similar approach in interpreting Connecticut's registration law, concluding that if the Connecticut law were "construed as requiring foreign corporations to consent to general jurisdiction, we would be confronted with a more difficult constitutional question about the validity of such consent after *Daimler*." *Brown*, 814 F.3d at 640. And a federal court in New Jersey likewise interpreted New Jersey's registration law not to require consent to general jurisdiction because "to infer general jurisdiction into the otherwise ambiguous [r]ule * * * would potentially raise serious constitutional issues" under *Daimler*. *Display Works, LLC v. Bartley*, 2016 WL 1644451, at *7 (D.N.J. Apr. 25, 2016).

This Court should do the same. Because the registration statutes do not expressly require foreign corporations to consent to general jurisdiction in Illinois, this Court should hold that these laws do not impose a compelled-consent-to-general-jurisdiction requirement, in order to avoid constitutional difficulty.

III. UPHOLDING THE TRIAL COURT'S DECISION WOULD HARM ILLINOIS CITIZENS BY DISCOURAGING OUT-OF-STATE COMPANIES FROM INVESTING IN THIS STATE.

If the trial court's decision is permitted to stand, operating in Illinois will be far less attractive for out-of-state corporations. And a significant burden will be imposed on the State's court system. This Court should avoid these serious costs on the State and its citizens.

The due process limits on personal jurisdiction confer "'a degree of predictability to the legal system" (*Burger King*, 471 U.S. at 472 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980))): a corporation's place of incorporation and principal place of business—the jurisdictions in which it is subject to general

jurisdiction under *Daimler*—"have the virtue of being unique" and "easily ascertainable." *Daimler*, 134 S. Ct. at 760. *Daimler*'s rule thus allows corporations to anticipate that they will be subject to general jurisdiction in only a few (usually one or two) well-defined jurisdictions. This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

Permitting general jurisdiction based on the trial court's expansive reading of *Daimler* and of Illinois's registration statutes would destroy that predictability, making it impossible for corporations to structure their affairs to limit the number of jurisdictions in which they can be haled into court on any claim by any plaintiff residing anywhere. Many corporations do some amount of business in a large number of states; thus, if merely making sales or registering to do business in a forum were deemed sufficient to give rise to general jurisdiction, a corporation could be sued throughout the country on claims arising from anywhere. "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants" to structure their affairs to provide some assurance regarding where a claim might be asserted. *Daimler*, 134 S. Ct. at 761-62. Indeed, a corporation would be completely unable to predict where any particular claim might be brought.

If companies were required to face all-purpose liability merely by virtue of making sales or doing business in Illinois, any rational business would have little choice but to reconsider the benefits of investing in Illinois in light of the substantial risk of being sued here on claims arising anywhere in the world. Nonresident companies already operating in Illinois would have to reexamine their operations and sales, and companies planning new investment in Illinois would have to reconsider those plans in light of their

jurisdictional implications.

The most likely consequence would be the flight of jobs and capital away from Illinois and the deferral or cancellation of new investment in the State. Indeed, the Delaware Supreme Court—recognizing the importance of investment by out-of-state companies to the citizenry of that State—refused to interpret Delaware's corporate registration statute to compel consent to general jurisdiction there for this very reason. See *Cepec*, 137 A.3d at 142 ("Our citizens benefit from having foreign corporations offer their goods and services here. If the cost of doing so is that those foreign corporations will be subject to general jurisdiction in Delaware, they rightly may choose not to do so."). And even companies that choose to remain in Illinois might well have to pass on their increased legal costs to consumers, creating a new burden on Illinois residents.

Expanding general jurisdiction to all corporations registered to do business or doing "substantial" business in Illinois would also impose significant burdens on the State's court system. It would encourage forum-shopping by out-of-state plaintiffs, by enabling them to bring cases in Illinois that lack any connection to this State. Illinois courts would accordingly become less able to deliver speedy justice to plaintiffs whose claims are properly brought here.

There are no countervailing benefits to Illinois from imposing these significant costs on the court system and the State economy. If a nonresident corporation creates meaningful contacts with Illinois and its in-state conduct harms an Illinois resident, it may be sued in Illinois on a specific jurisdiction theory. See, *e.g.*, *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). And Illinois corporations, by virtue of being incorporated here, can already be sued in Illinois on any cause of action arising anywhere without resort to

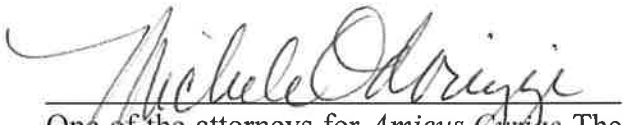
any compelled consent theory. See *Daimler*, 134 S. Ct. at 760.

Subjecting corporations to general jurisdiction based on their volume of business—or compelling them to "consent" to general jurisdiction in order to do business—is therefore not necessary to ensure that companies incorporated in Illinois or conducting business here may be held accountable for their in-state conduct. Rather, it serves only to consume the resources of the Illinois judiciary in deciding disputes that—like this case—have nothing to do with Illinois.

CONCLUSION

For the foregoing reasons, the trial court's order should be reversed and the case remanded with instructions to dismiss Plaintiff's claims against Ford for lack of personal jurisdiction.

Respectfully submitted,



One of the attorneys for *Amicus Curiae* The Chamber of Commerce of the United States of America

Michele Odorizzi, #2092263
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Phone: (312) 782-0600
Fax: (312) 701-7711
modorizzi@mayerbrown.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 17 pages.

Michele Odorizzi

CERTIFICATE OF SERVICE

I, Michele Odorizzi, an attorney, hereby certify that I served three copies of the foregoing Brief for The Chamber of Commerce of The United States of America as *Amicus Curiae* Supporting Defendant-Appellant to be served on all counsel of record by causing said copies to be sent, via overnight courier, to each of the following on August 10, 2016:

David W. Ybarra
James A. Bock
GREENSFELDER, HEMKER & GALE, P.C.
12 Wolf Creek Drive, Suite 100
Swansea, Illinois 62226
Phone: (618) 257-7308
Fax: (618) 257-7353
dwy@greensfelder.com
jbock@greensfelder.com

Margaret Samadi,
Nate Mudd
MAUNE RAICHLE HARTLEY FRENCH & MUDD, LLC
1015 Locust Street, Suite 1200
St. Louis, Missouri 63101
Phone: (314) 241-2003
Fax: (314) 241-4838
msamadi@mrhfmlaw.com
nmudd@mrhfmlaw.com

Sean Marotta
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Phone: (202) 637-4881
Fax: (202) 637-5910
sean.marotta@hoganlovells.com

Michele Odorizzi