

FOURTH CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

NO. 2016-C-0731

AMON MERRITT and SANDRA MERRITT

versus

TEXACO, INC., et al.

On supervisory writ from the Civil District Court
for the Parish of Orleans, State of Louisiana
Case No. 2015-10509, Division "A"
The Honorable Tiffany Chase

MOTION TO FILE AMICUS BRIEF IN SUPPORT OF
APPLICATION FOR SUPERVISORY WRIT OF
DEFENDANTS-APPLICANTS HUNT OIL COMPANY AND HUNT
REFINING COMPANY ON BEHALF OF THE CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA AND THE
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS,
AMICI CURIAE

CIVIL PROCEEDING

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**MOTION TO FILE ORIGINAL AMICUS BRIEF IN SUPPORT OF
APPLICATION FOR SUPERVISORY WRIT OF
DEFENDANTS-APPLICANTS HUNT OIL COMPANY AND HUNT
REFINING COMPANY ON BEHALF OF THE CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA AND THE
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS,
AMICI CURIAE**

The Chamber of Commerce of the United States of America (the “Chamber”) and the American Fuel & Petrochemical Manufacturers (AFPM) move this Court for leave to file the appended Original Amicus Brief in Support of Defendants-Applicants Hunt Oil Company and Hunt Refining Company.

1.

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.

2.

The American Fuel & Petrochemical Manufacturers (AFPM) is a national trade association of approximately 400 companies, including virtually all U.S.

refiners and petrochemical manufacturers; AFPM members operate 122 U.S. refineries comprising more than 95% of U.S. refining capacity. AFPM petrochemical members support 1.4 million American jobs, including approximately 214,000 employed directly in petrochemical manufacturing plants.

3.

Most Chamber and AFPM members conduct business in states other than their states of incorporation and principal place of business. Many such companies carry on some commerce in Louisiana 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.

4.

This issue is a vital one for businesses in and outside Louisiana, and *Amici* request that this Court allow them to express the concerns of the business community in this amicus brief. *Amici* believe that their perspective will be valuable to the Court as it considers the question whether Louisiana can compel out-of-state businesses to consent to general jurisdiction as a condition of doing business in this State.

5.

Amici aver that their undersigned counsel Archis A. Parasharami has read the original writ application of the defendants-applicants in this Court and the parties' briefs in the Civil District Court in this matter.

Wherefore, *amici curiae* move this Court for leave to file their amicus curiae brief herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded this day to all counsel of record, by e-mail, by facsimile, by hand, and/or by United States mail.

New Orleans, Louisiana, this 18th day of July 2016.

A handwritten signature in black ink, appearing to read 'Madeleine Fischer', written over a horizontal line.

MADELEINE FISCHER

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ORDER

CONSIDERING the foregoing Motion to File Original Amicus Brief in Support of Defendants-Applicants on behalf of The Chamber of Commerce of the United States of America and the American Fuel & Petrochemical Manufacturers, Amici Curiae;

IT IS ORDERED that The Chamber of Commerce of the United States of America and the American Fuel & Petrochemical Manufacturers be permitted to file their attached Original Amicus Brief in Support of Defendants-Applicants into the record of this matter.

New Orleans, Louisiana, this _____ day of _____, 2016.

JUDGE

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
STATEMENT OF IDENTITY OF <i>AMICI CURIAE</i> , THEIR INTEREST IN THE CASE, AND THE SOURCE OF THEIR AUTHORITY TO FILE	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	5
I. Louisiana May Not Subject Foreign Corporations To General Jurisdiction Based Solely On Their Registration To Do Business.	5
A. <i>Daimler</i> bars the assertion of general jurisdiction over a corporation that merely “does business” within a state.....	6
B. The Due Process Clause forbids states from requiring foreign corporations to consent to general personal jurisdiction.....	8
1. Requiring a foreign corporation to consent to general jurisdiction in order to do business violates the unconstitutional conditions doctrine.	8
2. Early U.S. Supreme Court decisions permitting general jurisdiction based on registration and appointment of an agent are no longer good law.....	11
II. Upholding The District Court’s Decision Would Harm Louisiana Citizens By Discouraging Out-Of-State Companies From Investing In This State.	14
CONCLUSION	18

TABLE OF AUTHORITIES

Page(s)

CASES

<i>AstraZeneca AB v. Mylan Pharm., Inc.</i> , 72 F. Supp. 3d 549 (D. Del. 2014).....	8
<i>Brown v. Lockheed Martin Corp.</i> , 814 F.3d 619 (2d Cir. 2016).....	8, 12, 13
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).....	2, 7, 14
<i>Chatwal Hotels & Resorts LLC v. Dollywood Co.</i> , 90 F. Supp. 3d 97 (S.D.N.Y. 2015).....	8
<i>Daimler AG v. Bauman</i> , 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014)	<i>passim</i>
<i>Display Works, LLC v. Bartley</i> , 2016 WL 1644451 (D.N.J. Apr. 25, 2016)	14
<i>Genuine Parts Co v. Cepec</i> , --- A.3d ---, 2016 WL 1569077 (Del. Apr. 18, 2016).....	13, 16
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 564 U.S. 915, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011).....	2, 9, 12
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> , 466 U.S. 408, 104 S. Ct. 1868, 80 L.Ed.2d 404 (1984).....	3
<i>Hertz Corp. v. Friend</i> , 559 U.S. 77, 130 S. Ct. 1181, 175 L. Ed. 2d 1029 (2010).....	15
<i>Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee</i> , 456 U.S. 694, 102 S. Ct. 2099, 72 L. Ed. 2d 492 (1982).....	9
<i>Int'l Shoe Co. v. Washington</i> , 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945).....	3, 11, 12
<i>Keeley v. Pfizer Inc.</i> , 2015 WL 3999488 (E.D. Mo. July 1, 2015)	8

<i>Koontz v. St. Johns River Water Mgmt. Dist.</i> , 133 S. Ct. 2586, 186 L. Ed. 2d 697 (2013)	9
<i>Merritt v. Texaco</i> , No. 2015-10509 (Dist. Ct. La. May 26, 2016).....	6
<i>Nat’l Equip. Rental, Ltd. v. Szukhent</i> , 375 U.S. 311, 84 S. Ct. 411, 11 L. Ed. 2d 354 (1964)	9
<i>Neeley v. Wyeth LLC</i> , 2015 WL 1456984 (E.D. Mo. Mar. 30, 2015)	8
<i>Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co.</i> , 243 U.S. 93, 37 S. Ct. 344, 61 L. Ed. 610 (1917).....	11, 12
<i>Pennoyer v. Neff</i> , 95 U.S. 714, 24 L. Ed. 565 (1877)	11, 12
<i>Perkins v. Benguet Consol. Mining Co.</i> , 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952).....	7
<i>S. Pac. Co. v. Denton</i> , 146 U.S. 202, 13 S. Ct. 44, 36 L. Ed. 942 (1892).....	10
<i>Shaffer v. Heitner</i> , 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977).....	12
<i>Siemer v. Learjet Acquisition Corp.</i> , 966 F.2d 179 (5th Cir. 1992).....	10
<i>Walden v. Fiore</i> , 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014)	17
<i>Wilson v. Humphreys (Cayman) Ltd.</i> , 916 F.2d 1239 (7th Cir. 1990).....	10
<i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286, 100 S. Ct. 559, 62 L.Ed.2d 490 (1980).....	14
<i>In re Zofran (Ondansetron) Products Liab. Litig.</i> , 2016 WL 2349105 (D. Mass. May 4, 2016)	8

STATUTES

La. Stat. Ann. § 13:3206.....*passim*
1887 Tex. Gen. Laws, pp. 116-17 10

OTHER AUTHORITIES

Lea Brilmayer et al., *A General Look at General Jurisdiction*,
66 Tex. L. Rev. 721 (1988)..... 12
N. Stephan Kinsella, *A Civil Law to Common Law Dictionary*,
54 La. L. Rev. 1265 (1994)..... 17
Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and
the Fallacy of Consent*, 36 Cardozo L. Rev. 1343 (2015) 7

STATEMENT OF IDENTITY OF *AMICI CURIAE*, THEIR INTEREST IN THE CASE, AND THE SOURCE OF THEIR AUTHORITY TO FILE

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Most Chamber and AFPM members conduct business in states other than their states of incorporation and principal place of business. Many such companies carry on some commerce in Louisiana with the expectation that such activities do not subject them to jurisdiction for all purposes in this State. They therefore have a

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substantial interest in the rules governing whether, and to what extent, a nonresident corporation may be subjected to general personal jurisdiction.

INTRODUCTION AND SUMMARY OF ARGUMENT

The district court’s holding—that a foreign corporation consents to general personal jurisdiction in Louisiana simply by complying with the State’s basic requirements that foreign corporations register to do business and designate an in-state agent for service of process—violates due process and will discourage out-of-state companies from investing in Louisiana. This Court should hold that registration and designation of an agent do not subject a non-Louisiana corporation to general personal jurisdiction in this State.

“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, 131 S. Ct. 2846, 2853, 180 L. Ed. 2d 796 (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, 105 S. Ct. 2174, 2181, 85 L. Ed. 2d 528 (1985).

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, 187 L. Ed. 2d 624 (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, n. 8, 104 S. Ct. 1868, 80 L.Ed.2d 404 (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). Such all-purpose jurisdiction is limited; it exists only “where a foreign corporation’s ‘continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.’” *Daimler*, 134 S. Ct. at 754 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S. Ct. 154, 90 L. Ed. 95 (1945)). “[S]pecific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [plays] a reduced role.” *Id.* at 755.

Daimler held that—in the absence of exceptional circumstances—general personal jurisdiction over a corporation is available in only two, predictable forums: (1) the company’s state of incorporation and (2) its principal place of business. The district court’s decision, however, does not rely on any “exceptional circumstances.” Instead, the lower court held that a foreign corporation consents

to general jurisdiction in Louisiana by registering to do business in Louisiana, which subjects the corporation to suit in Louisiana on *any* claim.

But that approach would improperly swallow *Daimler*'s rule. *Daimler* emphasized that corporations should be able to structure their primary conduct to avoid being subject to expansive, all-purpose jurisdiction in multiple forums. Allowing Louisiana to impose general jurisdiction on all companies registered to do business in the state would undermine that principle: every other State could follow the same course, and companies would be subject to nationwide general personal jurisdiction—the precise result that *Daimler* rejected.

The district court's approach would also run afoul of the doctrine of “unconstitutional conditions.” That doctrine forbids states from conditioning the availability of government benefits (here, the ability to do business in Louisiana) on the forfeiture of constitutional rights (here, the due process right to limit the forums in which one may be sued). Thus, if Louisiana law did unambiguously require foreign corporations to consent to general jurisdiction, that requirement would be unconstitutional. Accordingly, this Court should interpret the law not to require such consent, in order to save the law from unconstitutionality.

That is the right result as a matter of policy as well as governing legal principles. The district court's decision—if permitted to stand—will discourage foreign investment in Louisiana, because out-of-state companies will have less

incentive to operate in Louisiana 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 Louisiana citizens from injury by foreign corporations: such companies can already be sued in Louisiana on a specific jurisdiction theory when their business conduct in Louisiana causes harm to in-state residents. In short, asserting general jurisdiction over all foreign companies registered to do business in Louisiana would cause serious harm to the State's economy, with no corresponding benefit to the State or its citizens.

ARGUMENT

I. Louisiana May Not Subject Foreign Corporations To General Jurisdiction Based Solely On Their Registration To Do Business.

It is undisputed that plaintiff's claims against defendants Hunt Oil Company and Hunt Refining Company (collectively "Hunt") do not relate in any way to Hunt's activities in Louisiana, and therefore that there is no specific personal jurisdiction over Hunt. Louisiana therefore may exercise jurisdiction over Hunt in this case only if Hunt is subject to general personal jurisdiction in Louisiana.

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.

Hunt Oil Company is incorporated in Delaware and has its principal place of business in Texas; Hunt Refining Company is incorporated in Delaware with its principal place of business in Alabama. Therefore, neither company is “at home” in Louisiana. But the district court held that Hunt is nonetheless subject to general personal jurisdiction in Louisiana, on the theory that when Hunt registered to do business in Louisiana, it consented to being treated as a Louisiana corporation for general jurisdiction purposes. *See* Tr. of Proceedings at 42:19-25, *Merritt v. Texaco*, No. 2015-10509 (Dist. Ct. La. May 26, 2016) (citing La. Stat. Ann. § 13:3206).

That holding should be reversed, for two reasons: *First*, the contacts between a foreign corporation and Louisiana that trigger the registration requirement are plainly insufficient under *Daimler* to permit the assertion of general jurisdiction. And *second*, interpreting Section 3206 to require foreign corporations to consent to jurisdiction would render the law unconstitutional.

A. *Daimler* bars the assertion of general jurisdiction over a corporation that merely “does business” within a state.

The plaintiffs in *Daimler* argued that general jurisdiction was available “in every state in which a corporation ‘engages in a substantial, continuous, and systematic course of business.’” 134 S. Ct. at 761. But the Supreme Court rejected “[t]hat formulation” of the standard as “unacceptably grasping.” *Id.*

The Court explained that “[a] corporation that operates in many places can scarcely be deemed at home in all of them.” *Id.* at 762 n.20. A corporation therefore may not be subject to general jurisdiction outside its state of incorporation and its principal place of business, except in an “exceptional case.”¹

By restricting general jurisdiction to places in which a corporation is truly “at home,” *Daimler* precludes general jurisdiction based merely on corporate activity sufficient to trigger business registration. If the rule were 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). That would deprive 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 Corp.*, 471 U.S. at 472).

¹ *Daimler*, 134 S. Ct. at 762 n.19. The only example that *Daimler* gave was one in which a State had become a “surrogate” for the company’s place of incorporation or headquarters. *Id.* at 756 & n.8 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447-48, 72 S. Ct. 413, 96 L. Ed. 485 (1952), as an example of an “exceptional case” because the corporation had temporarily moved its headquarters from the Philippines to Ohio during World War II).

For that reason, a number of courts have acknowledged that subjecting out-of-state corporations to general jurisdiction based on registration to do business would raise due process concerns under *Daimler*.²

B. The Due Process Clause forbids states from requiring foreign corporations to consent to general personal jurisdiction.

Section 3206 would be unconstitutional if it required foreign corporations to consent to general jurisdiction as a condition of doing business, and accordingly this Court should interpret the registration statute not to require such consent, as courts in other states have done with respect to similar statutes.

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

² 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) Products 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).

The district court appears to have distinguished *Daimler* by concluding that under Louisiana law, foreign corporations consent to general jurisdiction in Louisiana by registering to do business. If Louisiana law did require such consent, that “consent” is not the sort that provides 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, 84 S. Ct. 411, 414, 11 L. Ed. 2d 354 (1964), or by appearing voluntarily in court, *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703, 102 S. Ct. 2099, 2105, 72 L. Ed. 2d 492 (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*, 131 S. Ct. at 2856). 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,

186 L. Ed. 2d 697 (2013) (quoting *S. Pac. Co. v. Denton*, 146 U.S. 202, 207, 13 S. Ct. 44, 36 L. Ed. 942 (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, pp. 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 Louisiana 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 Louisiana. The Constitution therefore bars Louisiana 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, 37 S. Ct. 344, 345, 61 L. Ed. 610 (1917). But that rule was a product of the “strict territorial approach” to personal jurisdiction adopted in *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (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. The compelled consent theory of general jurisdiction cannot be upheld on the basis of that now-rejected doctrine.

Specifically, 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 litigators . . . became the central concern of the inquiry into personal jurisdiction.” *Id.* at 754. 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 v. Heitner*, 433 U.S. 186, 212 & n.39, 97 S. Ct. 2569, 2584, 53 L. Ed. 2d 683 (1977) (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, “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*.” *Brown*, 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 Section 3206 requires foreign corporations to consent to general jurisdiction in order to register to do business in Louisiana, it should invalidate the statute as unconstitutional.

But the Court need not reach the constitutional question because it can instead interpret Section 3206 as not requiring companies to consent to general jurisdiction. 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*, --- A.3d ---, 2016 WL 1569077 (Del. Apr. 18, 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 *13.³

The Second Circuit did the same 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

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*, 2016 WL 1569077, at *12. The district court’s interpretation of Section 3206 creates that very “perverse result”—it penalizes foreign corporations that follow Louisiana’s registration laws, while unjustly rewarding companies that do business here without registering.

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 Section 3206 clearly does not expressly require foreign corporations to consent to general jurisdiction in Louisiana, this Court should interpret it to lack any consent requirement, in order to avoid constitutional difficulty.

II. Upholding The District Court’s Decision Would Harm Louisiana Citizens By Discouraging Out-Of-State Companies From Investing In This State.

It is imperative that this Court correct the district court’s error. If permitted to stand, the decision below will greatly expand the scope of general personal jurisdiction in Louisiana, making it far less attractive for out-of-state corporations to operate in Louisiana and increasing the burden on the State’s court system. It will thereby impose serious costs on the State and its citizens.

The due process limits on personal jurisdiction confer “a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.” *Burger King*, 471 U.S. at 472 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L.Ed.2d 490 (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.” *Daimler*, 134 S. Ct. at 760. “[T]hat is, each ordinarily indicates only one place”—a forum that is “easily ascertainable.” *Id.* *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, 130 S. Ct. 1181, 1193, 175 L. Ed. 2d 1029 (2010).

Permitting general jurisdiction based on the district court’s expansive reading of Section 3206 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 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 doing business in Louisiana, any rational business would have little choice but to reconsider the benefits of investing in Louisiana in light of the substantial risk of being sued here on claims arising anywhere in the world. Nonresident companies already operating in Louisiana would have to reexamine their operations and sales, and companies planning new investment in Louisiana would have to reconsider those plans in light of their jurisdictional implications.

The likeliest consequence would be the flight of jobs and capital away from Louisiana and the deferral or cancellation of new investment in the State. For similar reasons, 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. *See Cepec*, 2016 WL 1569077, at *14 (“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 Louisiana might well have to pass on their increased legal costs to consumers, creating a new burden on Louisiana residents.

These costs to out-of-state corporations are likely to be particularly significant in Louisiana, which alone among the states operates under the civil-law

system. Companies from outside of Louisiana—along with their trusted legal advisors—are less likely to be in a position to navigate the legal system in this State. As one observer has put it: “Alone in the common-law ocean of these United States, Louisiana is an island of civil law. . . . American common-law lawyers often encounter Louisiana’s civilian terms and concepts when dealing with lawsuits or transactions in Louisiana. No doubt they (and even Louisiana lawyers) are sometimes confused.” N. Stephan Kinsella, *A Civil Law to Common Law Dictionary*, 54 La. L. Rev. 1265, 1265 (1994).

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

There are no countervailing benefits to Louisiana from imposing these significant costs on the court system and the state economy. If a nonresident corporation creates meaningful contacts with Louisiana and its in-state conduct harms a Louisiana resident, it may be sued in Louisiana on a specific jurisdiction theory. *See, e.g., Walden v. Fiore*, 134 S. Ct. 1115, 1121, 188 L. Ed. 2d 12 (2014). And Louisiana corporations, by virtue of being incorporated here, can already be

sued in Louisiana on any cause of action arising anywhere without resort to any compelled consent theory. *See Daimler*, 134 S. Ct. at 760.

Compelling corporations to “consent” to general jurisdiction is therefore not necessary to ensure that companies incorporated in Louisiana or conducting business here may be held accountable for their in-state conduct. Rather, it serves only to consume the resources of the Louisiana judiciary in deciding disputes that—like this case—have nothing to do with Louisiana.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court’s decision and order it to dismiss the complaint against Hunt Oil Company and Hunt Refining Company for lack of personal jurisdiction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded this day to all counsel of record, by e-mail, by facsimile, by hand, and/or by United States mail.

New Orleans, Louisiana, this 18th day of July 2016.

A handwritten signature in black ink, appearing to read 'Madeleine Fischer', written over a horizontal line.

MADELEINE FISCHER