

The Georgia Supreme Court Upheld Out-of-State Corporations' Consent to Suit by State Registration – But Will the U.S. Supreme Court Weigh in?

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In a recent decision, the Georgia Supreme Court reaffirmed that under Georgia law, when an out-of-state corporation registers with the Georgia Secretary of State to conduct business in Georgia, it consents to general personal jurisdiction— meaning that it can be sued in Georgia's courts for any claim, including claims unrelated to its activities in Georgia. *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422, 422 (2021). But the legal ground underlying general personal jurisdiction has been shifting, and the Georgia Supreme Court's view has been disfavored by other courts since the U.S. Supreme Court decisions *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), and *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Now, a challenge of the Georgia Supreme Court's decision in *Cooper Tire* to the U.S. Supreme Court is underway. See *Cooper Tire*, No. 21-926 (filed Dec. 20, 2021).

To provide some background, courts in a given state can exercise personal jurisdiction over a corporation in two ways: first, specific jurisdiction, wherein a corporation can be sued for claims arising out of the corporation's conduct in that state; and second, general jurisdiction, which has been referred to as "all-purpose jurisdiction," under which a corporation can be sued in a state for claims arising from any conduct, anywhere, regardless of whether it is connected to the corporation's conduct in that state. General jurisdiction, as its description indicates, allows plaintiffs to sue for a much wider range of activities than specific jurisdiction. In the interest of fairness, general personal jurisdiction has been limited under the U.S. Supreme Court's decisions in *Goodyear* and *Daimler* to states where a corporation can be "fairly regarded as at home" – generally, 1) its state of incorporation and 2) the state of its principal place of business (usually, its main headquarters), if different.

In *Cooper Tire & Rubber Co. v. McCall*, the plaintiffs sued Cooper Tire and co-defendants in Georgia, claiming that a tire manufactured by Cooper Tire malfunctioned, resulting in an auto accident in Florida. The defendants tried to have the case dismissed because Cooper Tire is incorporated in Delaware and has a principal place of business in Ohio. But the plaintiffs argued that because Cooper Tire was registered to do business in Georgia, it was therefore subject to general personal jurisdiction under Georgia law.

On appeal, the Georgia Supreme Court agreed with the plaintiffs, upholding its prior ruling in *Allstate*

Insurance Co. v. Klein, in which it held that under Georgia's statutes, "Georgia courts may exercise general personal jurisdiction over any out-of-state corporation that is 'authorized to do or transact business in this state at the time a claim arises.'" *Cooper Tire*, 312 Ga. at 422, quoting *Klein*, 262 Ga. 599 (1992). Klein relied on a 1917 U.S. Supreme Court decision, *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93.

In *Pennsylvania Fire*, the U.S. Supreme Court upheld a Missouri statute which required out-of-state corporations registering to do business in Missouri to file a power of attorney with the state's superintendent of insurance stating that service upon the superintendent should be deemed personal service on the company. 243 U.S. at 94.

That statute did not violate due process, according to the Court, because the defendant voluntarily consented by executing the required power of attorney. 243 U.S. at 95-96. *Pennsylvania Fire* has never been explicitly overruled, despite the significant changes in the general personal jurisdiction landscape since it was decided in 1917. On the basis of that precedent, the Georgia Supreme Court found that consent by registration remains a permissible ground for asserting general personal jurisdiction over a defendant.

And despite the fact that Georgia's business registration process does not notify out-of-state corporations that registering to transact business in the state will subject them to general personal jurisdiction, the Georgia Supreme Court stated that corporations are on notice of that fact based on its prior decision in *Klein*. But the Georgia Supreme Court acknowledged that the U.S. Supreme Court's view of general personal jurisdiction has shifted in the time since *Klein* was decided and that there was "tension" between its holding and recent U.S. Supreme Court jurisprudence in *Goodyear* and *Daimler*. *Cooper Tire*, 312 Ga. at 422.

Some of the Georgia Supreme Court's hesitance to overrule Georgia's existing statutory scheme may be due to the language of Georgia's code, which implicitly classifies registered out-of-state corporations as "residents." O.C.G.A. § 9-10-90 defines a non-resident as "a corporation which is not organized or existing under the laws of this state and is not authorized to do or transact business in this state at the time a claim or cause of action...arises." Only non-residents are subject to the state's long arm statute, which provides for specific jurisdiction. Therefore, as the Georgia Supreme Court reasoned in *Klein* and reiterated in *Cooper Tire*, an out-of-state corporation that is authorized to transact business in Georgia is a "resident" for purposes of personal jurisdiction, making it subject to general personal jurisdiction, but notably not subject to specific personal jurisdiction under the long arm statute.

As the Georgia Supreme Court described in *Cooper Tire*, if the court were to overrule *Klein*'s general jurisdiction holding, it would lead to the absurd result that registered out-of-state corporations would not be subject to either specific or general jurisdiction in Georgia: "This outcome would allow out-of-state corporations to insulate themselves from personal jurisdiction in Georgia simply by obtaining the requisite certificate of authority and registering to do business here, thereby effectively immunizing themselves from suit for any cause whatsoever." *Cooper Tire*, 312 Ga. at 436. Justice Bethel concurred specially in the *Cooper Tire* decision to call the attention of lawmakers to this statutory issue, wherein he noted that there is a "meaningful chance that the current law of Georgia will, at some point, be found to be inconsistent with the requirements of federal due process," which would open the door to a situation in which registered out-of-state corporations would not be subject to suit in Georgia at all. 312 Ga. at 437.

One reason the U.S. Supreme Court may be more likely to grant certiorari in *Cooper Tire* is that the

Pennsylvania Supreme Court recently considered the constitutionality of consent-by-registration with regard to Pennsylvania's statute (which contains similar, but not identical language to Georgia's) and came to the opposite conclusion— finding that Pennsylvania's statute violated due process and was therefore unconstitutional. *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542 (Pa. 2021). The decision in *Mallory* has also been challenged to the U.S. Supreme Court. See *Mallory*, No. 21-1168 (filed Feb. 18, 2022).

The parties in both *Cooper Tire* and *Mallory* have now completed their briefing on their respective petitions for writ of certiorari, and each petition will be submitted to the justices for consideration. If four justices vote to grant the petition in either case, that case will be put on the U.S. Supreme Court's docket, to be heard this fall.

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