In the Superior Court of Pennsylvania

NO. 1941 EDA 2020

GERALD SCHULZ and VICKI K. SCHULZ, h/w,
Plaintiffs/Appellees,

v.

UNION OIL COMPANY OF CALIFORNIA,
Defendant/Appellant.

And

UNITED STATES STEEL CORP.; CRC INDUSTRIES, INC.; SAFETY-KLEEN SYSTEMS, INC.; RADIATOR SPECIALTY CO.; BERRYMAN PRODUCTS, INC.; SHELL OIL CO.;SUNOCO, INC (R&M) f/k/a Sun Co., Inc., and f/k/a Sun Oil Co., Inc.**; ILLINOIS TOOL WORKS, INC.,** d/b/a Permatex and d/b/a Gumout and d/b/a LPS Laboratories**; HENKEL CORP.,** Individually and as Successor in Interest to Loctite Corporation and Henkel Loctite Corporation**; THE SHERWIN-WILLIAMS CO.,** Individually and as Successor in Interest to Minwax Co. and Pratt & Lambert United, Inc.; **THE BLASTER CORP., LOCTITE CORP.** n/k/a Henkel Corporation; and **E.I. DU PONT DE NEMOURS & CO., INC.,**

Defendants/Appellees.

BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, *ET AL.*, IN SUPPORT OF APPELLANTS

Appeal from the Order of the Philadelphia Court of Common Pleas, dated May 29, 2020, overruling Union Oil Company of California's Preliminary Objections to Plaintiffs' Complaint, Docket No. 191201612

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STATEMENTS OF INTEREST OF *AMICI CURIAE*

The Pennsylvania Coalition for Civil Justice Reform ("PCCJR") is a statewide, nonpartisan alliance representing businesses, professional and trade associations, health care providers, energy development companies, nonprofit groups, taxpayers, and other entities across Pennsylvania. The PCCJR is dedicated to bringing fairness to litigants by elevating awareness of civil justice issues and advocating for reform.

The Pennsylvania Chamber of Business & Industry ("PA Chamber") is Pennsylvania's largest broad-based business association. Its over 10,000 current members range from sole proprietors to Fortune 100 companies, and employ nearly 50% of Pennsylvania's private sector workforce. The PA Chamber is nonpartisan and non-governmental. It serves as a statewide voice of business and advocates on public policy issues that expand private-sector job creation and promote a more prosperous Commonwealth.

Founded in 1909, the Pennsylvania Manufacturers' Association ("PMA") is the statewide non-profit organization representing the manufacturing sector in the state public policy process in Harrisburg.

The Pennsylvania Bankers Association ("PBA") is a voluntary, nonprofit membership organization of over 120 federally- and state-chartered banks, savings associations and affiliates that do business in Pennsylvania, most of which lend and

provide deposit, payment, trust, custody, and/or fiduciary services to consumers. The PBA supports its membership's diverse needs through volunteer participation, industry advocacy, education, and membership services. It also advocates for its members in federal, state, and local public policy matters.

Members of these *amici*, as well as the citizens of the Commonwealth of Pennsylvania and the City of Philadelphia, have a strong interest in preventing forum shopping from clogging Pennsylvania – and especially Philadelphia – courts with litigation unrelated to the Commonwealth. Cases between non-Pennsylvania parties that concern non-Pennsylvania facts overtax our courts and unfairly burden Pennsylvania jurors.

This appeal could have wide-ranging consequences. It could attract extensive litigation to Pennsylvania from all fifty states. It could create an "unwelcome mat" for non-resident corporations, notifying businesses nationwide that Pennsylvania will not respect their constitutional rights. Plaintiffs' sweeping jurisdictional theory would actively deter businesses from starting or continuing commercial activity in Pennsylvania, thereby exacerbating the Commonwealth's ongoing hemorrhage of investment capital and jobs.[1]

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[1] Pursuant to Pa.R.A.P. 531(b)(2), *amici curiae* state that no person, other than themselves, their members, and their counsel, has paid for or authored this brief, in whole or in part.

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SUMMARY OF THE ARGUMENT

The Supreme Courts of both the United States and Pennsylvania have repeatedly reaffirmed the Due Process limits to general personal jurisdiction: with rare (and irrelevant) exceptions, a defendant corporation must be "at home" − incorporated or having its principal place of business – when sued over matters having no nexus to the forum state.

Nor may plaintiffs thwart Due Process limits by relying on Pennsylvania's amended Long-Arm statute, 42 Pa.C.S. §5301(a), to impose "general" jurisdiction over foreign corporations registering to do business here. State statutes cannot override the federal constitution. The statute itself provides that it must be construed consistent with federal constitutional limitations. See 42 Pa.C.S. §§5307, 5308. All states require foreign corporations to register, and Due Process precludes any "exorbitant" or "unacceptably grasping" approach to jurisdiction that would permit all states to impose general jurisdiction on all foreign corporations. Daimler AG v. Bauman, 571 U.S. 117, 138-39 (2014).

Since Daimler, the vast majority of states have found unconstitutional general personal jurisdiction based only on corporate registration. Nine state high courts unanimously so hold. Numerous appellate decisions, state and federal, agree, as do trial courts in dozens of states. Plaintiffs would make

Pennsylvania a constitutional outlier, inviting in forum-shopping plaintiffs from all over the country.

Nor can Due Process be evaded by a legal fiction equating corporate registration and "consent." The Long-Arm Statute separates registration from consent, but regardless, constitutional law does not consider mandatory corporate registration to be "consent" – and has not for nearly a century.

ARGUMENT

I. PENNSYLVANIA CANNOT CONSTITUTIONALLY SUBJECT FOREIGN CORPORATIONS TO GENERAL PERSONAL JURISDICTION.

"A state court may exercise general jurisdiction only when a defendant is 'essentially at home' in the State." Ford Motor Co. v. Montana Eighth Judicial District Court, ___ S.Ct. ___, 2021 WL 1132515, at *4 (U.S. March 25, 2021). General jurisdiction is "limited to where corporations are headquartered or incorporated." Hammons v. Ethicon, Inc., 240 A.3d 537, 555 (Pa. 2020). Unlike "case-specific" jurisdiction, "general jurisdiction is proper only when a corporation's contacts are 'so continuous and systematic as to render [it] essentially at home in the forum State.'" Id. (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011)); see Hammons v. Ethicon, Inc., 190 A.3d 1248, 1261 (Pa. Super. 2018) (general jurisdiction "will not lie" unless a corporate defendant "is incorporated or has its principal place of business" in Pennsylvania), aff'd, 240 A.3d 537 (Pa. 2020).

Without question, state statutes cannot defeat Due Process limits enunciated by the Supreme Court, and applicable to the states under the Fourteenth Amendment. Commonwealth v. Noel, 857 A.2d 1283, 1287-88 (Pa. 2004); Commonwealth v. Williams, 733 A.2d 593, 603 (Pa. 1999); In re Estate of Carter, 159 A.3d 970, 977-78 (Pa. Super. 2017) (all finding Pennsylvania statutes unconstitutional for violating federal Due Process).

Where "the United States Supreme Court has quite plainly decreed" a constitutional outcome, that result cannot "be supplanted by the invocation of a contrary approach to [the same issue] under state law." Annenberg v. Commonwealth, 757 A.2d 338, 351 (Pa. 2000). "[T]his Court, like all state courts, is bound by decisions of the U.S. Supreme Court with respect to the federal Constitution." Commonwealth v. Batts, 163 A.3d 410, 439 (Pa. 2017) (citation and quotation marks omitted).

Both the United States and Pennsylvania Supreme Courts thus have repeatedly "emphasiz[ed]" that general jurisdiction exists only where the Due Process "at home" test is satisfied. Daimler, 571 U.S. at 139; Goodyear, 564 U.S. at 919; Hammons, 240 A.3d at 556 (quoting and following Daimler and Goodyear).

> [T]he Fourteenth Amendment's Due Process Clause does not permit a State to hale an out-of-state corporation before its courts when the corporation is not "at home" in the State and the episode-in-suit occurred elsewhere.

BNSF Railway. v. Tyrrell, 137 S.Ct. 1549, 1554 (2017) ("Tyrrell"). In Tyrrell the Court unanimously ruled that a state enactment's "found within" language could not expand general jurisdiction beyond existing constitutional limits – despite the Tyrrell defendant "not contest[ing]" that it was within that state-law definition. 137 S.Ct. at 1558-59 ("Daimler, however, applies to all state-court assertions of general jurisdiction over nonresident defendants").

Thus, a state statute cannot impose general jurisdiction on lesser facts than the Supreme Court's Due Process standards. Indeed, to "requir[e] [a] corporation, as a condition precedent to obtaining a permit to do business within the State, to surrender a right and privilege secured to it by the Constitution" would impose an "unconstitutional condition" on foreign corporations' right to conduct interstate commerce. Koontz v. St. Johns River Water Management District, 570 U.S. 595, 607 (2013) (citations and quotation marks omitted).

It thus would be unconstitutional to interpret the Pennsylvania Long-Arm Statute, 42 Pa.C.S.A. §5301(a), to confer automatic "general" personal jurisdiction solely because a foreign corporation registers to do business in Pennsylvania. Daimler specifically rejected, as "unacceptably grasping," legal theories that "approve the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business." 571 U.S. at 138 (quotation marks omitted). Yet here, plaintiffs' general jurisdictional theory needs no "continuous and substantial" corporate activity, or indeed any activity at all, as a predicate to general jurisdiction.

That cannot be reconciled with Daimler and Hammons. "[S]uch a broad exercise of general jurisdiction would not allow 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.'" Hammons, 240 A.3d at

555 (quoting Daimler, 571 U.S. at 139) (internal quotations omitted). "A corporation that operates in many places can scarcely be deemed at home in all of them." Daimler, 571 U.S. at 139 n.20. "[I]n-state business ... does not suffice to permit the assertion of general jurisdiction." Tyrrell, 137 S.Ct. at 1559. Indeed, earlier this year, the Court again "reject[ed]" the "view that a state court should have jurisdiction over a nationwide corporation … on any claim, no matter how unrelated to the State." Ford Motor, 2021 WL 1132515, at *5 n.3.

If Pennsylvania could defeat Due Process by statute, so could any other state. All 50 states require corporate registration. E.g., T. Monestier, "Registration Statutes, General Jurisdiction, & the Fallacy of Consent," 36 CARDOZO L. REV. 1343, 1363-64 n.109 (2015) (collecting all 50 states' registration statutes). Permitting state statutes to create general jurisdiction, in derogation of constitutional standards, would subject interstate corporations to general jurisdiction **everywhere** they conduct business, without "continuous and substantial" activity, and even without any actual in-state conduct.

Webb-Benjamin, LLC v. International Rug Group, LLC, 192 A.3d 1133 (Pa. Super. 2018), a pre-Hammons decision of this Court, actually reached this unconstitutional extreme. It allowed a Pennsylvania plaintiff to bring a contract claim against a non-resident defendant that literally did nothing relevant in Pennsylvania – solely because the defendant's later registration to

do business created "jurisdiction by consent." 192 A.3d at 1137-38 ("general" jurisdiction allowed by §5301(a), despite no contemporaneous Pennsylvania activity). Webb-Benjamin followed erroneous – and non-binding − federal district court precedent. Id. at 1138-39.[2] That result, always questionable, cannot survive the express recognition of the Daimler/Goodyear "at home" test for general jurisdiction in Hammons, 240 A.3d at 555-56.

Far closer to this appeal is Seeley v. Caesars Entertainment Corp., 206 A.3d 1129 (Pa. Super. 2019), another personal injury action involving, as here, non-resident plaintiffs **and** defendants. Id. at 1131. Seeley declined to find jurisdiction by "consent" even though one defendant was "a registered business in Pennsylvania." Id. at 1134. But it had "clearly not consented to being sued in Pennsylvania," since it "fil[ed] preliminary objections on the basis of lack of personal jurisdiction." Id. at 1133 n.9. Seeley should be followed because its "approach comports with the weight of authority on this point." Van der Laan v. Nazareth Hospital, 703 A.2d 540, 542 (Pa. Super. 1997).[3] To that weight of precedent, *amici* now turn.

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[2] Following Gorton v. Air & Liquid Systems Corp., 303 F.Supp.3d 278, 299 (M.D. Pa. 2018), and Bors v. Johnson & Johnson, 208 F.Supp.3d 648, 651-52 (E.D. Pa. 2016).

[3] If Webb-Benjamin's Pennsylvania plaintiff does not "distinguish[]" that case," from this one, the Court "would be compelled to request en banc certification to resolve the conflict." Commonwealth v. Karash, 175 A.3d 306, 307 (Pa. Super. 2017).

II. SINCE THE SUPREME COURT'S DAIMLER DECISION, OVERWHELMING NATIONWIDE PRECEDENT REJECTS CORPORATE REGISTRATION AS A BASIS FOR GENERAL PERSONAL JURISDICTION.

Since Daimler, the sufficiency of corporate registration, as a sole basis for general jurisdiction, has been widely litigated. See Murray v. American Lafrance, LLC, 234 A.3d 782, 789 n.6 (2020) (en banc) (noting, after finding waiver, both "abundant" precedent and "divergent views" on this issue). Even before Daimler, many states' appellate courts did not allow a foreign corporation's compliance with mandatory state-law registration to create general jurisdiction over matters (as here) having nothing to do with a state.[4]

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[4] Freeman v. Second Judicial District, 1 P.3d 963, 968 (Nev. 2000); Goodyear Tire & Rubber Co. v. Ruby, 540 A.2d 482, 487 (Md. 1988); Byham v. National Cibo House Corp., 143 S.E.2d 225, 231 (N.C. 1965); Renfroe v. Nichols Wire & Aluminum Co., 83 N.W.2d 590, 594 (Mich. 1957); Asshauer v. Glimcher Realty Trust, 228 S.W.3d 922, 933 (Tex. App. 2007); Thomson v. Anderson, 6 Cal. Rptr.3d 262, 269 (Cal. App. 2003); Alderson v. Southern Co., 747 N.E.2d 926, 939 (Ill. App. 2001); Washington Equipment Manufacturing Co. v. Concrete Placing Co., 931 P.2d 170, 172-73 (Wash. App. 1997); Gray Line Tours v. Reynolds Electrical & Engineering Co., 238 Cal. Rptr. 419, 421 (Cal. App. 1987); Juarez v. United Parcel Service de Mexico S.A., 933 S.W.2d 281, 284-85 (Tex. App. 1996); King v. American Family Mutual Insurance Co., 632 F.3d 570, 579 (9th Cir. 2011) (Montana law); Cossaboon v. Maine Medical Center, 600 F.3d 25, 37 (1st Cir. 2010) (New Hampshire law); North American Catholic Education Programming Foundation, Inc. v. Cardinale, 567 F.3d 8, 16 n.6 (1st Cir. 2009) (Rhode Island law); Consolidated Development Corp. v. Sherritt, Inc., 216 F.3d 1286, 1293 (11th Cir. 2000) (Florida law); Pittock v. Otis Elevator Co., 8 F.3d 325, 328-29 (6th Cir. 1993) (Ohio law); Wenche Siemer v. Learjet Acquisition Corp., 966 F.2d 179, 181-82 (5th Cir. 1992) (Texas law); Wilson v. Humphreys (Cayman) Ltd., 916 F.2d 1239, 1245 (7th Cir. 1990) (Indiana law); Sandstrom v. ChemLawn Corp., 904 F.2d 83, 89 (1st Cir. 1990) (Maine law); Pearrow v. National Life & Accident Insurance

Daimler erased any prior doubt about Due Process prerequisites for general personal jurisdiction. In the six years since the Supreme Court decided Daimler, high courts in nine states have addressed this precise issue, unanimously holding that corporate registration is constitutionally insufficient to support the exercise of general personal jurisdiction.

Before Daimler, Delaware – "home" to more corporations than any other state − had permitted corporate registration to support general jurisdiction, exactly as plaintiffs advocate here. See Sternberg v. O'Neil, 550 A.2d 1105 (Del. 1988). In Genuine Parts Co. v. Cepec, 137 A.3d 123 (Del. 2016), the Delaware Supreme Court overruled Sternberg and recognized that predicating general jurisdiction on registration alone is incompatible with Daimler:

> Daimler makes plain that it is inconsistent with principles of due process to exercise general jurisdiction over a foreign corporation that is not "essentially at home" in a state for claims having no rational connection to the state.... Hence, Delaware cannot exercise general jurisdiction over it consistent with principles of due process.

137 A.3d at 127-28 (footnote omitted).

Following Cepec, the Missouri Supreme Court rejected general jurisdiction based on corporate registration in State ex. rel. Norfolk Southern Railway Co. v. Dolan, 512 S.W.3d 41 (Mo. 2017). "[A] broad inference of

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Co., 703 F.2d 1067, 1069 (8th Cir. 1983) (Arkansas law); Budde v. Ling-Temco-Vought, Inc., 511 F.2d 1033, 1036 (10th Cir. 1975) (New Mexico law); Ratliff v. Cooper Laboratories, Inc., 444 F.2d 745, 748 (4th Cir. 1971) (South Carolina law).

consent based on registration would allow national corporations to be sued in every state, rendering Daimler pointless." Id. at 51.

> [Plaintiff's] arguments blur the distinction between general and specific jurisdiction.... The prior suits against [defendant] were suits based on specific jurisdiction because they concerned injuries that occurred in Missouri or arose out of [defendant's] activities in Missouri.... [M]inimum contacts that suffice to provide specific jurisdiction ... do not also confer general jurisdiction over a particular company for a non-Missouri-related lawsuit.

Id. at 47. Accord State ex rel. Cedar Crest Apartments, LLC v. Grate, 577 S.W.3d 490, 494 (Mo. 2019) (corporate registration "fall[s] far, far short of establishing … general jurisdiction"); State ex rel. Bayer Corp. v. Moriarty, 536 S.W.3d 227, 232-33 (Mo. 2017) (consent-based general jurisdiction creates "universal personal jurisdiction for corporations complying with registration statutes in many states and would be inconsistent with" Daimler).

The Illinois Supreme Court, in Aspen American Insurance Co. v. Interstate Warehousing, Inc., 90 N.E.3d 440 (Ill. 2017), likewise denied that mere corporate registration supports general jurisdiction:

> [T]hat a foreign corporation has registered to do business under the Act does not mean that the corporation has thereby consented to general jurisdiction over all causes of action, including those that are completely unrelated to the corporation's activities in Illinois.

Id. at 447-48. Accord Campbell v. Acme Insulations, Inc., 105 N.E.3d 984, 993 (Ill. App. 2018) ("Nor does the fact that [defendant] has a registered agent … in Illinois show that it consented to jurisdiction in this State").

Last year, the Nebraska Supreme Court held that general jurisdiction based on corporate registration could no longer be considered constitutional. Lanham v. BNSF Railway Co., 939 N.W.2d 363, 371 (Neb. 2020). Lanham overruled prior precedent that "reflect[ed] the 19th century's traditional view of personal jurisdiction" − a view that did not survive Daimler. Id. at 368.

> [T]reating [defendant's] registration to do business in Nebraska as implied consent to personal jurisdiction would exceed the due process limits prescribed in … Daimler. Currently, every state requires a foreign corporation doing business in the state to register…. Consequently, consent by registration would permit a corporation to be subject to general jurisdiction in every state in which it does business. This is the same type of global reach jurisdiction the U.S. Supreme Court expressly rejected as being inconsistent with due process.

Lanham, 939 N.W.2d at 371 (citations, quotation marks, and footnote omitted). The court thus "join[ed] the majority of jurisdictions" to "hold that a corporation's registration ... does not provide an independent basis for the exercise of general jurisdiction." Id.

Likewise, the Supreme Court of Montana "conclude[d that] a company does not consent to general personal jurisdiction by registering to do business in Montana." DeLeon v. BNSF Railway Co., 426 P.3d 1, 4 (Mont. 2018). The court distinguished registration from viable "consent" theories:

> Registration-based consent is distinguishable from other types of consent jurisdiction in its breadth. It permits a court to obtain **general** personal jurisdiction over a defendant − it is not limited to one case or one contract.

Id. at 6 (emphasis original). Finding pre-Daimler decisions outdated, DeLeon refused to "extend[] general personal jurisdiction over all foreign corporations that registered to do business in Montana":

> [That] would extend our exercise of general personal jurisdiction beyond the narrow limits recently articulated by the Supreme Court.... Every state requires foreign corporations doing in-state business to register.... Reading our registration statutes to confer general personal jurisdiction over foreign corporations would swallow the Supreme Court's due process limitations on the exercise of general personal jurisdiction, and we accordingly refuse to do so.

Id. at 8-9 (citations omitted).

While Bristol-Myers Squibb Co. v. Superior Court, 137 S.Ct. 1773 (2017), reversed the California Supreme Court on specific "case-linked" personal jurisdiction (not at issue here), it left undisturbed the California Supreme Court's earlier holding eliminating corporate registration as grounds for general personal jurisdiction. The California Supreme Court explained, "a corporation's appointment of an agent for service of process, when required by state law, cannot compel its surrender to general jurisdiction for disputes unrelated to its California transactions." Bristol-Myers Squibb Co. v. Superior Court, 377 P.3d 874, 884 (Cal. 2016), reversed on other grounds, 137 S.Ct. 1773 (2017).

Wisconsin reached the same conclusion in Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, 898 N.W.2d 70 (Wis.

2017). Ambac overturned contrary pre-Daimler precedent and refused to base general jurisdiction solely on corporate registration:

> The shade of constitutional doubt that Goodyear and Daimler cast on broad approaches to general jurisdiction informs our assessment of this court's older cases.... [W]e instead give preference to prevailing due process standards.... [S]ubjecting foreign corporations to general jurisdiction wherever they register an agent for service of process would reflect the "sprawling view of general jurisdiction" rejected by the Supreme Court.

Id. at 81-82 (citations and quotation marks omitted).

The Oregon Supreme Court took the same position in Figueroa v. BNSF Railway Co., 390 P.3d 1019 (Or. 2017), "conclud[ing] that appointing a registered agent to receive service of process merely designates a person upon whom process may be served. It does not constitute implied consent to the jurisdiction of the Oregon courts." Id. at 1021-22. Similarly, under Colorado law, corporate registration cannot support general jurisdiction where a defendant's in-state contacts "pale in comparison to the significant contacts that were deemed 'slim' in Daimler." Magill v. Ford Motor Co., 379 P.3d 1033, 1038 (Colo. 2016).

Numerous other post-Daimler appellate courts, state and federal, agree with these nine state high courts' unanimous rejection of corporate registration as grounds for general jurisdiction. Under New York law, several intermediate appellate courts, and the Second Circuit, recognize the obsolescence of pre-

Daimler New York precedent that once allowed general jurisdiction based on nothing more than corporate registration to do business.

> [I]n view of the evolution of *in personam* jurisdiction jurisprudence, and, particularly the way in which Daimler has altered that jurisprudential landscape, it cannot be said that a corporation's compliance with the existing business registration statutes constitutes consent to the general jurisdiction of New York courts [over] causes of action that have no relation to New York.

Aybar v. Aybar, 93 N.Y.S.3d 159, 166 (N.Y.A.D. 2019) (footnote omitted), app. granted, 139 N.E.3d 391 (N.Y. 2019); accord Fekah v. Baker Hughes, Inc., 110 N.Y.S.3d 1, 2 (N.Y.A.D. 2019) ("registration to do business … does not constitute consent by the corporation to submit to the general jurisdiction of New York"); Best v. Guthrie Medical Group., P.C., 107 N.Y.S.3d 258, 260 (N.Y.A.D. 2019) (defendant "did not consent to the general jurisdiction of New York courts by registering as a foreign corporation"); Aybar v. Goodyear Tire & Rubber Co., 106 N.Y.S.3d 361, 362 (N.Y.A.D. 2019) (following related Aybar decision); Chufen Chen v. Dunkin' Brands, Inc., 954 F.3d 492, 499 (2d Cir. 2020) ("a foreign corporation does not consent to general personal jurisdiction in New York by merely registering to do business").

Federal courts of appeals have reached the same conclusion. For example, the Second Circuit, in Brown v. Lockheed-Martin Corp., 814 F.3d 619, 636 (2d Cir. 2016) (Connecticut law), refused to "err[] in casually dismissing related federal due process concerns" implicated by basing general

jurisdiction solely on registration. Such jurisdiction was an ill-concealed "back door" attempt at avoiding what Daimler mandates:

> If mere registration and the accompanying appointment of an in state agent – without an express consent to general jurisdiction – nonetheless 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.

Id. at 640. Accord Fidrych v. Marriott International, Inc., 952 F.3d 124, 137 (4th Cir. 2020) ("foreign corporations would likely be subject to general jurisdiction in every state where they operate − a result directly at odds with the views expressed by the Court in Daimler") (South Carolina law); Waite v. All Acquisition Corp., 901 F.3d 1307, 1319 & n.5 (11th Cir. 2018) ("reject[ing] the exercise of general personal jurisdiction based on such implied consent" as "inconsistent with the Supreme Court's decision in Daimler") (Florida law); Gulf Coast Bank & Trust Co. v. Designed Conveyor Systems, LLC, 717 F.Appx. 394, 398 (5th Cir. 2017) (rejecting "outdated view[s] of general jurisdiction" based on corporate registration) (Louisiana law).

Several other intermediate state appellate courts also hold that state corporate registration statutes cannot create general personal jurisdiction in defiance of constitutional Due Process limitations.

> **Arizona**: "[T]here is no need to base personal jurisdiction solely upon a murky implication of consent to suit − for all purposes and in all cases − from the bare appointment of an agent for service. We therefore agree … that registration statutes do not imply

consent to general jurisdiction." Wal-Mart Stores, Inc. v. Lemaire, 395 P.3d 1116, 1120 (Ariz. App. 2017).

Florida: Woodruff-Sawyer & Co. v. Ghilotti, 255 So.3d 423, 429 (Fla. App. 2018) (general jurisdiction "not appropriate" under Daimler "without more" than corporate registration); Magwitch, LLC v. Pusser's West Indies, Ltd., 200 So.3d 216, 218 (Fla. App. 2016) (corporate registration cannot by itself create general jurisdiction).

Kansas: Kearns v. New York Community Bank, 400 P.3d 182 (table), 2017 WL 1148418, at *6 (Kan. App. March 24, 2017) ("being licensed to do business in a state does not make a corporation at home in that state").

New Jersey: Given Daimler's "clear narrow application of general jurisdiction," the court "cannot agree [that] business registration rises to consent to submit to the general jurisdiction in the forum." Dutch Run Mays Draft, LLC v. Wolf Block LLP, 164 A.3d 435, 444 (N.J. App. Div. 2017).

Texas: FedEx Corp. v. Contreras, 2020 WL 4808721, at *8 (Tex. App. Aug. 19, 2020) ("we join our sister courts in declining to hold that a corporation automatically subjects itself to general jurisdiction in Texas by registering to do business"); EnerQuest Oil & Gas, L.L.C. v. Antero Resources Corp., 2019 WL 406172, at *5 (Tex. App. Jan. 31, 2019) (registration to do business "not on [its] own enough to establish personal jurisdiction"); Salgado v. OmniSource Corp., 2017 WL 4508085, at *5 (Tex. App. Oct. 10, 2017) (registration "without evidence of substantial business relations … is not enough to subject a nonresident defendant to general jurisdiction") (citation omitted).[5]

Trial court decisions from many states likewise refuse to recognize general jurisdiction predicated on registration of corporate defendants not "at home" as required by Tyrrell and Daimler. Most directly on point is In re

[5] The only contrary post-Daimler appellate decision outside Pennsylvania is Rodriguez v. Ford Motor Co., 458 P.3d 569, 575-78 (N.M. App. 2018), cert. granted, No. S-1-SC-37491 (N.M. April 8, 2019).

Asbestos Products Liability Litigation (No. VI), 384 F.Supp.3d 532, 543 (E.D.Pa. 2019) ("Asbestos VI"), which exhaustively reviewed Daimler and its progeny, and concluded that general jurisdiction cannot constitutionally be based on bare registration to do business in Pennsylvania:

> [Section §5301(a)] allows Pennsylvania to impermissibly extract consent at a cost of the surrender of a constitutional right. Absent voluntary consent, Daimler teaches that a corporation is only subject to general jurisdiction where it is "at home." The Pa. Statutory Scheme impermissibly re-opens the door to nation-wide general jurisdiction that Daimler firmly closed … violates the Due Process Clause and is unconstitutional.

Id. at 543. Other decisions applying Pennsylvania,[6] New Jersey,[7] Delaware,[8] and Virgin Islands[9] law, reach similar results, all undercutting the pre-Daimler

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[6] Ruffing v. Wipro Limited, 2021 WL 1175190, at *2-5 (E.D.Pa. March 29, 2021) (following "persuasive" Asbestos VI decision; Daimler was a "seismic change … the world of personal jurisdiction"); Reynolds v. Turning Point Holding Co., 2020 WL 953279, at *4-5 (E.D.Pa. Feb. 26, 2020) ("agree[ing] with and adopt[ing]" Asbestos VI); Antonini v. Ford Motor Co., 2017 WL 3633287, at *2 n.2 (M.D.Pa. Aug. 23, 2017) ("regist[ration] to do business in Pennsylvania" was "insufficient to establish general jurisdiction"); McCaffrey v. Windsor at Windermere Ltd. Partnership, 2017 WL 1862326, at *4 (E.D.Pa. May 8, 2017) (Pennsylvania corporate registration did not show "contacts with Pennsylvania [that] are so continuous and systematic as to render them essentially at home") (citation and quotation marks omitted).

[7] Kim v. Korean Air Lines Co., ___ F.Supp.3d ___, 2021 WL 129083, at *2-3 (D.N.J. Jan. 14, 2021) ("registration does not confer jurisdiction"; Bane "cannot be squared with Daimler"); Metropolitan Group Property & Casualty Insurance Co. v. Electrolux Home Products, Inc., 2018 WL 2422023, at *2 (D.N.J. May 29, 2018) ("to conclude that a corporation consents to personal jurisdiction based solely on registration would be inconsistent with Daimler"); Horowitz v. AT&T, Inc., 2018 WL 1942525, at *12 (D.N.J. April 25, 2018) ("consent by registration is inconsistent with … Daimler" and is "an outmoded

decision in Bane v. Netlink, Inc., 925 F.2d 637 (3d Cir. 1991), upon which the federal cases Webb-Benjamin cited wrongly thought were controlling.

Post-Daimler federal district decisions in twenty-two more jurisdictions reject general personal jurisdiction based only on corporate registration.

> **Alabama**: Beasley v. Providence Hospital, 2018 WL 2994380, at *3 (S.D.Ala. June 13, 2018) ("difficult to imagine a less exceptional circumstance than the unremarkable commonplace of an entity registering to do business in a foreign state").
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> **Arkansas**: Antoon v. Securus Technologies, Inc., 2017 WL 2124466, at *3 (W.D.Ark. May 15, 2017) (rejecting claim "that every single foreign corporation who lawfully conducts business within the state of Arkansas consents thereby to the exercise of general jurisdiction").
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> **District of Columbia**: Freedman v. Suntrust Banks, Inc., 139 F.Supp.3d 271, 279 (D.D.C. 2015) (Daimler "explicitly foreclose[d]" corporate registration as sufficient for general jurisdiction, as it would subject defendants to jurisdiction in multiple states).
>
> **Georgia**: Orafol Americas, Inc. v. DBi Services, LLC, 2017 WL 3473217, at *3 (N.D.Ga. July 20, 2017) (being "registered to do

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way of thinking about jurisdiction"); Display Works, LLC v. Bartley, 182 F.Supp.3d 166, 178 (D.N.J. 2016) (rejecting "a single sweeping rule: registration equals general jurisdiction," given Daimler's "at home" standard).

[8] AstraZeneca AB v. Mylan Pharmaceuticals, Inc., 72 F.Supp.3d 549, 556 (D.Del. 2014) ("In light of the holding in Daimler, … [defendant's] compliance with Delaware's registration statutes − mandatory for doing business within the state − cannot constitute consent to jurisdiction"), aff'd on other grounds, 925 F.2d 637 (Fed. Cir. 1991).

[9] In re Asbestos Products Liability Litigation (No. VI), 2014 WL 5394310, at *11 (E.D.Pa. Oct. 23, 2014) (registration "alone is not enough to establish that [defendant] 'is fairly regarded as at home' in the forum") (Virgin Islands law).

business" held "woefully insufficient to render [defendant] 'at home' in Georgia").

Hawai'i: Saunders v. San Juan Construction Co., 2020 WL 3052206, at *3 (D.Haw. June 8, 2020) ("[e]vidence that [defendant] is registered to do business ... does not suffice to establish that it is 'essentially at home' in Hawai'i").

Indiana: U.S. Bank National Ass'n v. Bank of America, N.A., 2015 WL 5971126, at *6 (S.D.Ind. Oct. 14, 2015) ("[m]erely registering to do business in Indiana ... does not establish personal jurisdiction").

Maryland: Arkansas Nursing Home Acquisition, LLC v. CFG Community Bank, 460 F.Supp.3d 621, 640 (D.Md. 2020) (being "registered to do business in Maryland" does "not provide[] any basis … to exercise general jurisdiction").

Massachusetts: D.S. Brown Co. v. White-Schiavone, JV, ___ F. Supp.3d ___, 2020 WL 6526877, at *4 (D.Mass. Nov. 5, 2020) ("that [defendant] is registered to do business here ... without more, fails to create the exceptional circumstance required to render [it] 'essentially at home' in Massachusetts").

Michigan: Magna Powertrain De Mexico S.A. v. Momentive Performance Materials USA LLC, 192 F.Supp.3d 824, 830 (E.D.Mich. 2016) ("reject[ing] the idea that the registration statutes allow an inference of consent to general personal jurisdiction").

Mississippi: Pitts v. Ford Motor Co., 127 F.Supp.3d 676, 683 (S.D.Miss. 2015) (defendant being "qualified and registered to do business in the State of Mississippi" held "insufficient to establish that [it] is susceptible to general jurisdiction").

Nevada: Hunt v. Auto-Owners Insurance Co., 2015 WL 3626579, at *5 n.2 (D.Nev. June 10, 2015) (corporate registration "insufficient to bring defendants within this court's jurisdiction").

North Carolina: Public Impact, LLC v. Boston Consulting Group, Inc., 117 F.Supp.3d 732, 739 (M.D.N.C. 2015) ("courts have interpreted Daimler to mean that a defendant's mere conformance with a State's business registration statute cannot

constitute consent to jurisdiction and therefore is not sufficient for general jurisdiction") (citations and quotation marks omitted).

North Dakota: HomeRun Products, LLC v. Twin Towers Trading, Inc., 2017 WL 4293145, at *4 (D.N.D. Sept. 27, 2017) ("[m]ere registration to transact business in North Dakota does not render [defendant] subject to general jurisdiction").

Ohio: Stehle v. Venture Logistics, LLC, 2020 WL 127707, at *5 (S.D.Ohio Jan. 10, 2020) (defendant "has not consented to personal jurisdiction in this Court for this case by registering an agent for service in Ohio"; contrary precedent no longer valid).

Oklahoma: Aclin v. PD-RX Pharmaceuticals, Inc., 189 F.Supp.3d 1294, 1305 (W.D.Okla. 2016) ("declin[ing] to exercise general jurisdiction over the Defendants on the basis of their registration").

Rhode Island: Phoenix Insurance Co. v. Cincinnati Indemnity Co., 2017 WL 3225924, at *4 (D.R.I. March 3, 2017) ("mere designation of an agent for service of process cannot alone establish general jurisdiction"), adopted, 2017 WL 2983879 (D.R.I. July 13, 2017).

Tennessee: Western Express, Inc. v. Villanueva, 2017 WL 4785831, at *6 (M.D.Tenn. Oct. 24, 2017) ("mere designation of an agent for service of process ... does not, standing alone, constitute consent to the general jurisdiction of the state").

Utah: Oversen v. Kelle's Transportation Service, 2016 WL 8711343, at *3 (D.Utah May 12, 2016) (no general jurisdiction, given "constitutional questions that would arise if the [registration] statute were interpreted to require that all entities must consent to general personal jurisdiction in Utah").

Vermont: Bertolini-Mier v. Upper Valley Neurology Neurosurgery, P.C., 2016 WL 7174646, at *4 (D.Vt. Dec. 7, 2016) ("mere registration to do business in Vermont is not determinative of the jurisdictional question[]").

Virginia: Mondul v. Biomet, Inc., 2019 WL 2619541, at *3 n.3 (W.D.Va. June 26, 2019) (an "application to do business … is of

no special weight" in determining general jurisdiction) (citation and quotation marks omitted).

Washington: Dokoozian Construction LLC v. Executive Risk Specialty Insurance Co., 2015 WL 12085859, at *2 (W.D.Wash. July 28, 2015) ("reject[ing] the idea that the appointment of an agent for service of process alone works as consent to be sued in that state").

West Virginia: Javage v. General Motors, LLC, 2017 WL 6403036, at *1 (N.D.W.Va. Aug. 18, 2017) (claim "that this Court may exercise personal jurisdiction … simply because [defendant] is a corporation that is registered to do business" did "not comport" with Supreme Court precedent), aff'd, 736 F.Appx. 418 (4th Cir. 2018) (affirming "for the reasons stated by the district court").

Bane and cases following it are unconstitutional relics. Bane's one-paragraph discussion held only that "consent" was "a traditional basis of jurisdiction," citing pre-International Shoe precedent. 925 F.2d at 641. Daimler instructs that such Pennoyer-era cases "should not attract heavy reliance today." 571 U.S. at 138 n.18. Bane is neither persuasive nor controlling.

Practically, since all other states with large mass-tort dockets already reject general jurisdiction based on corporate registration alone,[10] plaintiffs' position would surely "open the floodgates to a myriad of lawsuits." U.S. Sugar Co. v. American Sweeteners, Inc., 750 A.2d 344, 347 (Pa. Super. 2000).

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[10] As already discussed, appellate precedent in California, Florida, Illinois, Maryland, Missouri, New Jersey, New York, Ohio, and Texas rejects general personal jurisdiction based on bare corporate registration.

The present cases, all brought by non-Pennsylvania plaintiffs, are the harbingers of that flood. New York asbestos claimants, disgruntled California employees, Texans litigating oil extraction leases – all could burden the Commonwealth's already taxed judicial resources with litigation having no relationship to Pennsylvania.

III. CORPORATE REGISTRATION IN PENNSYLVANIA IS NOT "CONSENT" TO GENERAL PERSONAL JURISDICTION.

Plaintiffs treat corporate registration requirements and "consent" synonymously. The Supreme Court, however, does not – and has not since abandoning territoriality for its current "contacts" approach to personal jurisdiction in International Shoe Co. v. Washington, 326 U.S. 310 (1945).[11]

Indeed, the very statute at issue, 42 Pa.C.S. §5301, **itself** expressly distinguishes between "qualification as a foreign corporation" and "consent":

> (a) **General rule**. − The existence of any of the following relationships … shall constitute a sufficient basis … to exercise **general personal jurisdiction**….
>
> * * * *
>
> (2) Corporations. −
>
> (i) Incorporation under or **qualification as a foreign corporation** under the laws of this Commonwealth.
>
> (ii) **Consent**, to the extent authorized by the consent.
>
> (iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

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[11] Overruling Pennoyer v. Neff, 95 U.S. 714 (1877).

(Emphasis added). By treating registration and "consent" separately, the Long-Arm Statute's language belies plaintiffs' arguments equating the two.[12]

After International Shoe, the United States Supreme Court expressly abandoned "the fiction[] of implied consent to service on the part of a foreign corporation" in favor of "ascertain[ing] what dealings make it just to subject a foreign corporation to local suit." Shaffer v. Heitner, 433 U.S. 186, 202-03 (1977). The Court "cast aside" the registration theory of "consent" to general jurisdiction as "purely fictional":

> We initially upheld these [corporate registration] laws … on grounds that they complied with Pennoyer's rigid requirement of either "consent," or "presence." As many observed, however, the consent and presence were purely fictional. Our opinion in International Shoe cast those fictions aside....

Burnham v. Superior Court, 495 U.S. 604, 617-18 (1990) (citations omitted). Shaffer expressly "overruled" all earlier decisions "inconsistent" with current Due Process standards. 433 U.S. at 212 n.39.

Thus, the Supreme Court's most thorough post-International Shoe consent discussion **did not even recognize** corporate registration as relevant.

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[12] Thus, if express inclusion of "general jurisdiction" in §5301(a) could overcame federal Due Process limitations on that subsection's "qualification" and "consent" prongs, it would do likewise for that subsection's third prong − "carrying on of a continuous and systematic part of [a registrant's] general business within this Commonwealth." But "merely 'continuous and systematic' contacts in [a] state would not result in the imposition of general personal jurisdiction." Hammons, 240 A.3d at 556 (citing and following Goodyear and Daimler).

See Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982) ("ICI"). Rather, the Court discussed various ways how a corporation might "consent" to the exercise of specific jurisdiction:

- "[S]ubmi[ssion] to the jurisdiction of the court by appearance";
- "[P]arties to a contract may agree in advance";
- "[A] stipulation entered into by the defendant";
- "[C]onsent [is] implicit in agreements to arbitrate";
- "[C]onstructive consent … [inheres] in the voluntary use of certain state procedures;"[13]
- "[W]aive[r] if not timely raised"; and
- "[F]ail[ure] to comply with a pretrial discovery order."

456 U.S. at 704-06 (citations and quotation marks omitted). See J. McIntyre Machinery, Ltd. v. Nicastro, 564 U.S. 873, 880-81 (2011) (consent discussion following ICI) (plurality opinion). Corporate registration statutes are conspicuously absent from both ICI and McIntyre. That is unsurprising, given that "[c]onsent" extracted from threats to prohibit conducting business in Pennsylvania is no consent at all. Koontz, 570 U.S. at 607. Cf. Mitchell v. Wisconsin, 139 S.Ct. 2525, 2532-33 (2019) (drunk driving statutory-consent regime does not "create actual consent") (plurality).

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[13] The examples in ICI were specific to individual cases. See Adam v. Saenger, 303 U.S. 59, 67-68 (1938) (non-resident plaintiff consents to counterclaims); Chicago Life Insurance Co. v. Cherry, 244 U.S. 25, 30 (1917) ("filing a plea in abatement, or taking the question to a higher court").

The Supreme Court did allow general jurisdiction based on corporate registration in Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co., 243 U.S. 93 (1917), a decision from the now-defunct Pennoyer era. Given Shaffer's rejection of that theory of "consent" as "fictional," see, supra, at p.23, Pennsylvania Fire is undoubtedly among the decisions Shaffer overruled. Thus, Pennsylvania Fire "should not attract heavy reliance today." Daimler, 571 U.S. at 138 n.18 (citation omitted).

> Pennsylvania Fire cannot be divorced from the outdated jurisprudential assumptions of its era. The sweeping interpretation ... [of] a routine registration statute … that Pennsylvania Fire credited as a general "consent" has yielded to the doctrinal refinement reflected in Goodyear and Daimler and the Court's 21st century approach to general and specific jurisdiction.

Brown, 814 F.3d at 639. "Pennsylvania Fire followed "a disfavored approach to general jurisdiction ... [supplanted by] prevailing due process standards." Countrywide Home Loans, 898 N.W.2d at 82. Its "strict territorial approach [has] yielded to a less rigid understanding." Aybar, 93 N.Y.S.3d at 148 (quoting Daimler, 571 U.S. at 126).

Today, business registration can no longer be considered "consent" to general jurisdiction. "'Extorted actual consent' and 'equally unwilling implied consent' are not the stuff of due process." Leonard v. USA Petroleum Corp.,

829 F.Supp. 882, 889 (S.D.Tex. 1993) (citation omitted). Corporate registration is irrelevant here, as specific jurisdiction is not asserted.[14]

Recognizing that "[t]he requirement that a court have personal jurisdiction flows ... from the Due Process Clause," ICI, 456 U.S. at 702, Pennsylvania's Long-Arm Statute instructs that it should not be interpreted to authorize jurisdiction beyond the bounds of federal constitutional law. See 42 Pa.C.S. §5308 (allowing "exercise [of] jurisdiction … only where … sufficient under the Constitution of the United States"); 42 Pa.C.S. §5307 (jurisdiction only "to the extent permitted by the Constitution of the United States"). These sections preclude the Long-Arm Statute's unconstitutional application, even if it could otherwise be viewed as treating registration as consent. See also 1 Pa.C.S. §1922(3) ("presum[ing]" that "the General Assembly does not intend to violate the Constitution of the United States").[15]

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[14] In any event the Supreme Court in Ford Motor was explicit that non-residents, such as these plaintiffs, injured elsewhere, cannot assert specific jurisdiction. 2021 WL 1132515, at *8 ("forum-shopping" plaintiffs suing in a state "because it was thought to be plaintiff-friendly" lack specific jurisdiction because "their cases had no tie to the State").

[15] "The 'canon of constitutional avoidance' provides that when a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." Commonwealth v. Ricker, 170 A.3d 494, 513 (Pa. 2017) (quoting MCI WorldCom, Inc. v. Pa. Public Utility Comm'n, 844 A.2d 1239, 1249-50 (Pa. 2004)) (internal citations omitted).

Similarly, "the presumption must always be against the waiver of a constitutional right," Commonwealth v. Robinson, 970 A.2d 455, 458 (Pa. Super. 2009) (en banc), and personal jurisdiction is an "individual liberty interest preserved by the Due Process Clause." ICI, 456 U.S. at 702 n.10. Consequently, "courts must indulge every reasonable presumption against waiver of fundamental constitutional rights." Commonwealth v. Johnson, 158 A.3d 117, 121 (Pa. Super. 2017) (citation and quotation marks omitted). This presumption against waiver further precludes plaintiffs' "consent" rationale.

Finally, as a matter of jurisprudence, plaintiffs' position fails because it would reward foreign corporations for breaking the law. Had defendants here ignored Pennsylvania law, and never registered, plaintiffs would have no "consent" argument. Having the Long-Arm Statute favor corporate lawbreakers over those that comply is an absurd result. Neighboring New Jersey rightly rejected any "principle [that] would place 'an outlaw who refused to obey the laws of the state in better position than a corporation which chooses to conform.'" Dutch Run, 164 A.3d at 444 (citation and quotation marks omitted). This Court should do likewise.

CONCLUSION

For all of the above reasons, and for those articulated by the defendant in its papers, the order of the Court of Common Pleas, should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that the foregoing brief complies with the word limit of Pennsylvania Rule of Appellate Procedure 531(b)(3). Specifically, it contains 6874 words based on the word count of Microsoft Word 2010, the word processing system used to prepare the brief.

I hereby further certify that on March 31, 2021, I caused true and correct copies of the foregoing Brief Of *Amici Curiae* Pennsylvania Coalition For Civil Justice Reform, *et al.*, in Support of Appellants to be electronically served on all parties listed in this Court's docket:

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