In the United States Court of Appeals for the Third Circuit

No. 21-2424

DAVID RUFFING,
Plaintiff-Appellant,

v.

WIPRO, LTD.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania, C.A. No. 2:20-cv-05545
Honorable Harvey Bartle III

BRIEF OF *AMICUS CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, IN SUPPORT OF APPELLEE AND AFFIRMANCE

James M. Beck, PA Bar No. 37137
REED SMITH LLP
Three Logan Square, Suite 3100
1717 Arch Street
Philadelphia, PA 19103-2713
(215) 851-8168 (telephone)
(215) 851-1420 (facsimile)
jmbeck@reedsmith.com

Counsel for *Amicus Curiae* Pennsylvania Coalition for Civil Justice Reform

Dated December 17, 2021

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Third Circuit LAR 26.1, Pennsylvania Coalition for Civil Justice Reform, makes the following disclosure:

1) For non-governmental corporate parties please list all parent corporations: None.

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock: None.

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests: None.

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant. N/A

/s James M. Beck Dated: December 17, 2020
(Signature of Counsel or Party)

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

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 Pennsylvania entities. PCCJR is dedicated to bringing fairness to litigants by elevating awareness of civil justice issues and advocating for reform.

The outcome sought by plaintiff/appellant would expose any foreign corporation to general personal jurisdiction in Pennsylvania merely for registering to do business, regardless of other contacts. This flimsy jurisdictional basis directly conflicts with the Supreme Court's current Due Process approach to general jurisdiction. It is based on an obsolete, one-paragraph holding by a panel decision of this Court, which predated those Supreme Court decisions, and which in turn relied entirely on now-overruled cases antedating the Supreme Court's seminal shift in personal jurisdiction jurisprudence that began in 1945.

The overwhelming majority of decisions under current Supreme Court precedent – twelve of thirteen state high courts and every federal court of appeals

[1] All parties consent to the filing of this brief. Pursuant to F.R.A.P. 29(E), PCCJR states that no person, other than itself, its members, and its counsel, has paid for or authored this brief, in whole or in part.

decision – agrees that general jurisdiction may not constitutionally rest on a "fiction" of consent, grounded in nothing more than in-state registration to do business.

SUMMARY OF ARGUMENT

The United States Supreme Court and numerous appellate courts throughout the nation have repeatedly reaffirmed the Due Process limits to general personal jurisdiction: with one rare (and irrelevant) exception, a defendant corporation must be "at home" in the forum − incorporated or having its principal place of business – to be sued over matters having no nexus to that state.

Nor may plaintiffs rely on Pennsylvania's amended Long-Arm statute, 42 Pa.C.S. §5301(a), to thwart Due Process and impose "general" jurisdiction over any foreign corporation registered to do business. State statutes cannot override the federal constitution, and this statute expressly requires construction consistent with Due Process. See 42 Pa.C.S. §§5307, 5308. All states require foreign corporations to register, and Due Process precludes "exorbitant" or "unacceptably grasping" jurisdictional theories that would authorize every state to impose general jurisdiction on all foreign corporations.

Since Daimler AG v. Bauman, 571 U.S. 117 (2014), almost all states have rejected general personal jurisdiction based only on corporate registration, either as unconstitutional or by construing state statutes to avoid constitutional infirmity. Twelve of thirteen state high courts so hold, as do numerous appellate decisions and

trial courts in dozens of states. Plaintiffs would make Pennsylvania a constitutional outlier, inviting forum-shopping from all over the country.

Nor can plaintiff evade Due Process through a legal fiction equating corporate registration with "consent." Pennsylvania's Long-Arm statute separates registration from consent, but regardless, constitutional law does not treat mandatory corporate registration as "consent" – and has not for nearly a century.[2]

ARGUMENT

I. Registration To Do Business In 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, 141 S.Ct. 1017, 1024 (2021) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)). Except for an "extraordinary case" – which plaintiff does not advance – a corporation is "at home" "**only** in a forum where it is incorporated or has its principal place of business." Daimler AG v. Bauman, 571 U.S. 117, 760 (2014) (emphasis original). The "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). In BNSF the Court

[2] PCCJR addresses solely the general jurisdiction aspects of this appeal.

unanimously ruled that a state enactment's "found within" language could not expand general jurisdiction beyond constitutional limits – despite the defendant "not contest[ing]" that it fell 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"). BNSF thus precludes plaintiff's main argument – that state statutory language can somehow expand that state's general jurisdiction beyond accepted Due Process limits.

Thus, a state statute cannot create general jurisdiction on lesser facts than the Supreme Court's "at home" Due Process standard. 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 read the Pennsylvania Long-Arm statute, 42 Pa.C.S. §5301(a), as conferring automatic "general" personal jurisdiction whenever a foreign corporation registers to do business. 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, plaintiff's general jurisdictional theory needs no "continuous and substantial" corporate activity, or indeed any activity at all beyond filling out a form, as a predicate to general jurisdiction.

That cannot be reconciled with Daimler. Such broad exercise of general jurisdiction would preclude out-of-state defendants from "'structur[ing] their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" Daimler, 571 U.S. at 139 (quoting Burger King Corp. v. Rudzewicz, 471 U. S. 462, 472 (1985)). "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." BNSF, 137 S.Ct. at 1559.

If Pennsylvania could statutorily defeat Due Process, 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 convert bare registration into general jurisdiction, in derogation of constitutional standards, would subject interstate corporations to general jurisdiction **everywhere** they conduct business, absent even the "continuous and systematic" activity held insufficient in Daimler. 571 U.S. at 138-39.

In Bane v. Netlink, Inc., 925 F.2d 637 (3d Cir. 1991) – decided twenty years before Goodyear, Daimler, and their Supreme Court progeny − a panel of this Court allowed general jurisdiction by consent as an "alternative" holding. Id. at 641. Bane's cursory "consent" analysis was two sentences, and relied solely on cases predating the high court's "canonical," Goodyear, 564 U.S. at 923, decision in International Shoe Co. v. Washington, 326 U.S. 310 (1945).[3] Bane never mentioned International Shoe, which expressly overruled Pennoyer v. Neff, 95 U.S. 714 (1877), and repudiated the territorial fictions underpinning the cases Bane cited.

However, following 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....

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[3] Bane, 925 F.2d at 641 ("Consent is a traditional basis for assertion of jurisdiction long upheld as constitutional. See Hess v. Pawloski, 274 U.S. 352, 356-57, (1927); see also Dehne v. Hillman Inv. Co., 110 F.2d 456, 458 (3d Cir. 1940)").

Burnham v. Superior Court, 495 U.S. 604, 617-18 (1990) (citations omitted). Shaffer expressly "overruled" all earlier decisions "inconsistent" with International Shoe Due Process standards. 433 U.S. at 212 n.39. Thus, the Pennoyer-era cases Bane cited were already impaired and certainly "should not attract heavy reliance today." Daimler, 571 U.S. at 138 n.18.

Judge Bartle here, along with Judge Robreno in In re Asbestos Products Liability Litigation (No. VI), 384 F.Supp.3d 532, 544 (E.D.Pa. 2019) ("Sullivan"), and Judge Pratter earlier this month in Metro Container Group v. AC&T Co., No. CV-18-3623, 2021 WL 5804374 (E.D. Pa. Dec. 7, 2021), all decline to follow Bane, given multiple intervening Supreme Court decisions that the "at home" standard is the only constitutional basis for general personal jurisdiction. Instead, they did what this Court did in Planned Parenthood of Southeastern Pennsylvania v. Casey, 947 F.2d 682 (3d Cir. 1991):[4]

> In order to change course in a particular area, it simply is unnecessary for the Supreme Court to go case-by-case through [decisions] under a repudiated standard. If the standard is replaced, decisions reached under the old standard are not binding. **We thus conclude that a change in the legal test or standard governing a particular area is a change binding on lower courts that makes results reached under a repudiated legal standard no longer binding**.

Id. at 697-98 (footnotes omitted) (emphasis added). "[A] panel of our Court may decline to follow a prior decision of our Court without the necessity of an en banc

[4] Aff'd in part & rev'd in part on other grounds, 505 U.S. 833 (1992).

decision when the prior decision conflicts with a Supreme Court decision." United States v. Tann, 577 F.3d 533, 541 (3d Cir. 2009). "[W]e must pay heed to intervening Supreme Court precedent." In re Remicade (Direct Purchaser) Antitrust Litig., 938 F.3d 515, 521 (3d Cir. 2019).[5]

Sullivan concluded that Supreme Court decisions since Goodyear "effectively disassembled the legal scaffolding upon which Bane was based." 384 F. Supp.3d at 543. Pennsylvania's statute cannot operate as Bane allowed, because that would "impermissibly re-open[] the door to nation-wide general jurisdiction that Daimler firmly closed." Id. Metro Container "agree[d]" with Sullivan. "[T]he constitutional regime under which Bane was decided has been superseded by a newer standard." 2021 WL 5804374, at *6. "[T]he Pennsylvania statutory scheme offers only a 'Hobson's choice'" for nationwide corporations and thus "does not constitute voluntary consent." Id. at *5. Accord, e.g., Reynolds v. Turning Point Holding Co., No. 2:19-cv-01935-JDW, 2020 WL 953279, at *4-5 (E.D.Pa. Feb. 26, 2020) ("agree[ing] with and adopt[ing]" Sullivan); Antonini v. Ford Motor Co., No. 3:16-CV-2021, 2017 WL 3633287, at *2 n.2 (M.D.Pa. Aug. 23, 2017) ("regist[ration] to

[5] Citing Karns v. Shanahan, 879 F.3d 504, 514-15 (3d Cir. 2018). Accord, e.g., Vickers v. Superintendent Graterford SCI, 858 F.3d 841, 857 n.15 (3d Cir. 2017); Baptiste v. Att'y Gen., 841 F.3d 601, 609 n.8 (3d Cir. 2016); Chester ex rel. N.L.R.B. v. Grane Healthcare Co., 666 F.3d 87, 94 (3d Cir. 2011); Animal Science Prods., Inc. v. China Minmetals Corp., 654 F.3d 462, 468 n.6 (3d Cir. 2011); Virgin Islands v. Martinez, 620 F.3d 321, 327 (3d Cir. 2010); In re Krebs, 527 F.3d 82, 86-87 (3d Cir. 2008); United States v. Singletary, 268 F.3d 196, 202 (3d Cir. 2001).

do business in Pennsylvania" held "insufficient to establish general jurisdiction"); McCaffrey v. Windsor at Windermere Ltd. P'ship, C.A. No. 17-460, 2017 WL 1862326, at *4 (E.D.Pa. May 8, 2017) (corporate registration lacked "contacts with Pennsylvania [that] are so continuous and systematic as to render them essentially at home") (citation and quotation marks omitted); Spear v. Marriott Hotel Servs., Inc., C.A. No. 15-6447, 2016 WL 194071, at *2 (E.D.Pa. Jan. 15, 2016) (no general personal jurisdiction based "solely on the fact that defendants are registered to do business" in Pennsylvania).[6]

The overwhelming weight of post-Daimler precedent has, like the Supreme Court, "declined to stretch general jurisdiction beyond limits traditionally recognized." Daimler, 571 U.S. at 132 (footnote omitted). To that precedent, *amicus* now turns.

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 the sole basis for general jurisdiction, has been widely litigated. Even before Daimler, many appellate decisions rejected compliance with mandatory state-law registration as creating

[6] Plaintiff's "Addendum 1" is incomplete, omitting Pennsylvania cases going both ways. For a complete list, see the Pennsylvania section of this writer's blogpost < https://www.druganddevicelawblog.com/2018/11/updating-our-post-bauman-50-state-survey-on-general-jurisdiction-by-consent.html >.

general jurisdiction for suits having no connection to a state.[7] In the seven years since Daimler, high courts in thirteen states have addressed this precise issue, twelve recognizing corporate registration to be constitutionally infirm as the only basis for general personal jurisdiction.

High courts in New York and New Mexico joined this majority in the last few months. Chavez v. Bridgestone Americas Tire Operations, LLC, ___ P.3d ___, Nos. S-1-SC-37489, *et al.*, 2021 WL 5294978 (N.M. Nov. 15, 2021), overruled "outmoded" contrary precedent because "[t]he consent by registration theory of personal jurisdiction … is a relic of the now-discarded Pennoyer … era of personal

[7] Freeman v. Second Jud. Dist., 1 P.3d 963, 968 (Nev. 2000); Goodyear Tire & Rubber Co. v. Ruby, 540 A.2d 482, 487 (Md. 1988); Byham v. Nat'l 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); King v. Am. Family Mut. Ins. Co., 632 F.3d 570, 579 (9th Cir. 2011) (Montana law); Cossaboon v. Maine Med. Ctr., 600 F.3d 25, 37 (1st Cir. 2010) (New Hampshire law); N. Am. Catholic Educ. Programming Found., Inc. v. Cardinale, 567 F.3d 8, 16 n.6 (1st Cir. 2009) (Rhode Island) law; Consol. Dev. 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 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); 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).

jurisdiction jurisprudence." Id. at *1,4. Since foreign corporate registration is universal, that theory would create general jurisdiction in "any state." Id. at *6. But "[s]uch an expansive view of general personal jurisdiction would appear inconsistent with the 'at home' standard of Daimler." Id.

Aybar v. Aybar, ___ N.E.3d ___, No. 54, 2021 WL 4596367 (N.Y. Oct. 7, 2021), similarly reconsidered precedent that permitted general jurisdiction based solely on corporate registration. "[A]nalysis" under "current precedent is not the same as it was" when Pennoyer governed. Id. at *6. Rather, "[t]oday, 'the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business' would be 'unacceptably grasping.'" Id. (quoting Daimler, 571 U.S. at 138). To avoid possible unconstitutionality, Aybar decided that "a foreign corporation does not consent to general jurisdiction … merely by complying with [statutory] registration provisions." Id.

Before Daimler, in Delaware – "home" to more corporations than any other state − corporate registration sufficed to support general jurisdiction, exactly as plaintiff advocates here. In Genuine Parts Co. v. Cepec, 137 A.3d 123 (Del. 2016), the Delaware Supreme Court overruled that precedent because predicating general jurisdiction on registration alone was 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 corporate registration as "consent" to general jurisdiction in State ex. rel. Norfolk S. Ry Co. v. Dolan, 512 S.W.3d 41 (Mo. 2017). "[A] broad inference of 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.... [M]inimum contacts that suffice to provide specific jurisdiction ... do not also confer general jurisdiction … for a non-Missouri-related lawsuit." Id. at 47.[8]

The Illinois Supreme Court, in Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., 90 N.E.3d 440 (Ill. 2017), also denied that registration alone supports general jurisdiction. Registration "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.

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[8] 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) (rejecting "universal personal jurisdiction for corporations complying with registration statutes in many states" as "inconsistent with" Daimler).

Similarly, the Nebraska Supreme Court held that general jurisdiction based on corporate registration was no longer constitutional. Lanham v. BNSF Ry Co., 939 N.W.2d 363, 371 (Neb. 2020). Lanham overruled cases "reflect[ing] the 19th century's traditional view of personal jurisdiction" as contrary to Daimler. Id. at 368. Considering a foreign corporation's registration as "implied consent to personal jurisdiction" violates Due Process:

> 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 (citing Daimler; quotation marks, and footnote omitted). The court "h[e]ld that a corporation's registration ... does not provide an independent basis for the exercise of general jurisdiction." Id.

Likewise, the Montana Supreme Court "conclude[d that] a company does not consent to general personal jurisdiction by registering to do business in Montana." DeLeon v. BNSF Ry Co., 426 P.3d 1, 4 (Mont. 2018). Consent was "viable" only as to specific jurisdiction:

> 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 held that "[r]eading 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 (citations omitted).

While Bristol-Myers Squibb Co. v. Superior Ct., 137 S.Ct. 1773 (2017), reversed the California Supreme Court on specific personal jurisdiction, it left undisturbed that court's holding that corporate registration could not confer general personal jurisdiction. "[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 Ct., 377 P.3d 874, 884 (Cal. 2016), rev'd on other grounds, 137 S.Ct. 1773 (2017).

Wisconsin reached the same conclusion in Segregated Acct. of Ambac Assur. Corp. v. Countrywide Home Loans, 898 N.W.2d 70 (Wis. 2017), overturning contrary pre-Daimler precedent and holding corporate registration insufficient for general jurisdiction.

> 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 Ry Co., 390 P.3d 1019 (Or. 2017), "conclud[ing] that appointing a registered agent ... merely designates a person upon whom process may be served" and "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). Alabama followed suit in Facebook, Inc. v. K.G.S., 294 So.3d 122 (Ala. 2019), likewise rejecting "regist[ration] to do business" as conferring general jurisdiction because "the Supreme Court made it abundantly clear that … the exercise of general jurisdiction … based on a simple assertion that an out-of-state corporation does business in the forum state has become obsolete." Id. at 133.

Several federal courts of appeals, post-Daimler, agree that corporate registration cannot suffice for general jurisdiction. The Second Circuit, in Brown v. Lockheed-Martin Corp., 814 F.3d 619 (2d Cir. 2016) (Connecticut law), recognized that, although such registration "might have sufficed under the more forgiving standard that prevailed in the past," it "fail[s] to clear the high bar set by Daimler to

a state's exercise of general jurisdiction over a foreign corporation." Id. at 626. Deeming registration "consent" was simply a "back-door" attempt to avoid Daimler:

> 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 Chen v. Dunkin' Brands, Inc., 954 F.3d 492, 499 (2d Cir. 2020) ("a foreign corporation does not consent to general personal jurisdiction … by merely registering to do business"; prior controlling precedent no longer valid "in light of Daimler") (New York law); Fidrych v. Marriott Int'l, 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 likely "inconsistent with the Supreme Court's decision in Daimler") (Florida law); Gulf Coast Bank & Trust Co. v. Designed Conveyor Sys., LLC, 717 F.Appx. 394, 398 (5th Cir. 2017) (eschewing "outdated view[s] of general jurisdiction" based on corporate registration) (Louisiana law).

Several intermediate state appellate courts also hold that mandatory corporate registration statutes cannot create general personal jurisdiction contrary to Due Process limitations.

> **Arizona**: Wal-Mart Stores, Inc. v. Lemaire, 395 P.3d 1116, 1120 (Ariz. App. 2017) (we "agree … that registration statutes do not imply consent to general jurisdiction"; finding "no need to base personal jurisdiction solely upon a murky implication of consent to suit").
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> **Florida**: Woodruff-Sawyer & Co. v. Ghilotti, 255 So.3d 423, 429 (Fla. App. 2018) (general jurisdiction "not appropriate" under Daimler "without more" than registration); Magwitch, LLC v. Pusser's W. Indies, Ltd., 200 So.3d 216, 218 (Fla. App. 2016) (registration cannot by itself create general jurisdiction).
>
> **Kansas**: Kearns v. New York Comm'y 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").
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> **New Jersey**: Dutch Run Mays Draft, LLC v. Wolf Block LLP, 164 A.3d 435, 444 (N.J. App. Div. 2017) (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").
>
> **Texas**: Weeks Marine, Inc. v. Carlos, No. 01-21-00015-CV, 2021 WL 4897714, at *4 (Tex. App. Oct. 21, 2021) ("[c]onducting business in Texas and having a registered agent … are not, alone, enough to confer general jurisdiction") (citations omitted); FedEx Corp. v. Contreras, No. 04-19-00757-CV, 2020 WL 4808721, at *8 (Tex. App. Aug. 19, 2020) ("declining to hold that a corporation automatically subjects itself to general jurisdiction in Texas by registering to do business"); EnerQuest Oil & Gas, LLC v. Antero Res. Corp., No. 02-18-00178-CV, 2019 WL 1583921, at *5 (Tex. App. April 11, 2019) (registration to do business "not on [its] own enough to establish personal jurisdiction").

Federal district court decisions in many states likewise do not recognize general jurisdiction over registered corporate defendants that are not "at home" as required by BNSF and Daimler. Beyond the Pennsylvania cases already discussed, district courts have held, contrary to Bane, that general jurisdiction by consent does not exist anywhere in this Circuit. See Kim v. Korean Air Lines Co., 513 F.Supp.3d 462, 469 (D.N.J. 2021) ("registration does not confer jurisdiction"; Bane "cannot be squared with Daimler"); Metro. Group Prop. & Cas. Ins. Co. v. Electrolux Home Prods, Inc., C.A. No. 17-cv-11865(PGS)(DEA), 2018 WL 2422023, at *2 (D.N.J. May 29, 2018) (assertion "that a corporation consents to personal jurisdiction based solely on registration" held "inconsistent with Daimler"); Horowitz v. AT&T, Inc., C.A. No. 3:17-cv-4827-BRM-LHG, 2018 WL 1942525, at *12 (D.N.J. April 25, 2018) ("consent by registration is inconsistent with … Daimler" and "outmoded"); 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); AstraZeneca AB v. Mylan Pharms., Inc., 72 F.Supp.3d 549, 556 (D.Del. 2014) ("[i]n light" of Daimler, defendant's "compliance with Delaware's registration statutes − mandatory for doing business within the state − cannot constitute consent to jurisdiction"), aff'd, 925 F.2d 637 (Fed. Cir. 1991); In re Asbestos Prods. Liab. Litig. (No. VI), MDL No. 875, 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).

Post-Daimler federal district court decisions in twenty-one more jurisdictions reject general personal jurisdiction predicated on corporate registration alone.

> **Arkansas**: Antoon v. Securus Techs., Inc., No. 5:17-CV-5008, 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").

> **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 grounds for general jurisdiction, as it would subject defendants to jurisdiction in multiple states).

> **Hawai'i**: Saunders v. San Juan Const. Co., No. 19-00631 JAO-RT, 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 Nat'l Ass'n v. Bank of Am., N.A., No. 1:14-cv-01492-TWP-DKL, 2015 WL 5971126, at *6 (S.D.Ind. Oct. 14, 2015) ("[m]erely registering to do business in Indiana ... does not establish personal jurisdiction").

> **Kentucky**: Lubbers v. John R. Jurgensen Co., C.A. No. 20-115-DLB-CJS, 2021 WL 4066663, at *5 (E.D. Ky. Sept. 7, 2021) ("reject[ing] the argument that designating an agent for service of process is sufficient to establish personal jurisdiction").

> **Maryland**: Rivera v. Altec, Inc., C.A. No. ELH-21-0681, 2021 WL 2784265, at *8-9 (D.Md. July 2, 2021) (general jurisdiction based on corporate registration would "likely" subject defendant "to general jurisdiction in all 50 states" contrary to Daimler).

> **Massachusetts**: D.S. Brown Co. v. White-Schiavone, JV, 502 F.Supp.3d 584, 591 (D.Mass. 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 Mats. 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 "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., No. 2:15-cv-00520-JCM-NJK, 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 Grp., Inc., 117 F.Supp.3d 732, 739 (M.D.N.C. 2015) (under Daimler "mere conformance with a State's business registration statute cannot constitute consent to jurisdiction" and "is not sufficient for general jurisdiction") (citations and quotation marks omitted).

North Dakota: HomeRun Prods., LLC v. Twin Towers Trading, Inc., No. 3:16-cv-436, 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, No. 3:19-cv-169, 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 Pharms., 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 Ins. Co. v. Cincinnati Indem. Co., C.A. No. 16-223S, 2017 WL 3225924, at *4 (Mag. D.R.I. March 3, 2017) ("designation of an agent for service of process cannot alone establish

general jurisdiction"), adopted, 2017 WL 2983879 (D.R.I. July 13, 2017).

Tennessee: W. Exp., Inc. v. Villanueva, No. 3:17-cv-01006, 2017 WL 4785831, at *6 (M.D.Tenn. Oct. 24, 2017) ("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 Transp. Serv., No. 2:15-cv-00535-JNP, 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").

Vermont: Bertolini-Mier v. Upr. Valley Neurology Neurosurgery, P.C., No. 5:16-cv-35, 2016 WL 7174646, at *4 (D.Vt. Dec. 7, 2016) ("mere registration to do business … is not determinative of the jurisdictional question[]").

Virginia: Mondul v. Biomet, Inc., No. 1:19CV00004, 2019 WL 2619541, at *3 n.3 (W.D.Va. June 26, 2019) ("application to do business … is of no special weight" in determining general jurisdiction) (citation and quotation marks omitted).

Washington: Dokoozian Const. LLC v. Exec. Risk Specialty Ins. Co., No. C15-703 MJP, 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, No. 3:17-CV-82, 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").

The only state high court permitting general jurisdiction by consent post-Daimler, Cooper Tire & Rubber Co. v. McCall, 863 S.E.2d 81 (Ga. 2021), did so where a poorly drafted Long Arm statute excluded specific jurisdiction over

registered foreign corporations. Id. at 92. Facing the "perverse consequence" of "effectively immunizing" such defendants "from suit for any cause whatsoever," id., Cooper Tire opted for registration-based general jurisdiction despite constitutional qualms. Id. ("noting" the "tension" with "recent United States Supreme Court precedent" and advising the legislature to "preemptively obviate that risk by modifying the governing statutes").[9]

The only other appellate precedent retaining general jurisdiction by consent after Daimler is from Pennsylvania – the state presently at issue. Webb-Benjamin, LLC v. International Rug Group, LLC, 192 A.3d 1133 (Pa.Super. 2018), followed two decisions by federal district courts that considered Bane still binding.[10] Webb-Benjamin allowed general jurisdiction despite the defendant not actually conducting any Pennsylvania business. 192 A.3d at 1137 (gravamen of suit arose "prior to registration").

Conversely, Seeley v. Caesars Entertainment Corp., 206 A.3d 1129 (Pa.Super. 2019), denied jurisdiction by "consent" where the defendant was "registered business in Pennsylvania." Id. at 1134. The defendant had "clearly not consented

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[9] Cooper Tire relied on New York and New Mexico precedent, 863 S.E.2d at 89, but both of those states have since repudiated general jurisdiction by consent.

[10] 192 A.3d at 1138-39 (following Gorton v. Air & Liquid Systems Corp., 303 F.Supp.3d 278 (M.D. Pa. 2018), and Bors v. Johnson & Johnson, 208 F.Supp.3d 648 (E.D. Pa. 2016)). Both Gorton, 303 F.Supp.3d at 298, and Bors, 208 F.Supp.3d at 653, declined to reconsider Bane – without considering BNSF's statutory analysis.

to being sued in Pennsylvania," since it "fil[ed] preliminary objections on the basis of lack of personal jurisdiction." Id. at 1133 n.9.

A third Pennsylvania case of interest is Mallory v. Norfolk Southern Railway Co., No. 1961, 2018 WL 3043601 (Pa.C.P. Philadelphia Co. May 30, 2018), holding that "federalism prevents this Court from exercising general jurisdiction over Defendant simply because Defendant does business in Pennsylvania," and that to so interpret Pennsylvania's registration statute would render it unconstitutional. Id. at *4-5. Mallory is pending before the Pennsylvania Supreme Court on this issue. See Dkt. No. 3 EAP 2021 (Pa., argued Sept. 21, 2021).

As a practical matter, since no other state with a large mass-tort docket allows general jurisdiction based solely on corporate registration,[11] plaintiff's position would undoubtedly "open[] the floodgates to nation-wide … class actions brought by out-of-state plaintiffs" – and, indeed, to all kinds of litigation pitting non-resident plaintiffs against non-resident corporations over out-of-state injuries. Maniscalco v. Brother Int'l (USA) Corp., 709 F.3d 202, 210 (3d Cir. 2013). New York asbestos claimants, disgruntled California employees, Texans disputing oil extraction leases – all could burden already overcrowded Pennsylvania dockets with litigation having no relationship to Pennsylvania.

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

III. Corporate Registration In Pennsylvania Is Not "Consent" To General Personal Jurisdiction.

Plaintiff treats corporate registration requirements and "consent" synonymously. The Supreme Court, however, does not – and has not since abandoning Pennoyer territoriality for its current "contacts" approach to personal jurisdiction in International Shoe.

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.

(Emphasis added). By treating registration and "consent" separately, the Long-Arm statute's language belies plaintiff's attempt to equate the two.

Indeed, if "general jurisdiction" in §5301(a) could overcame federal Due Process limitations on that statute's "qualification" and "consent" prongs, the same would be true for that subsection's third prong – conducting "continuous and systematic … general business." But "continuous and systematic" business alone is

insufficient, and no contrary state statute can defeat Due Process. BNSF, 137 S.Ct. at 1558-49. "[M]erely 'continuous and systematic' contacts in [a] state would not result in the imposition of general personal jurisdiction." Hammons v. Ethicon, Inc., 240 A.3d 537, 556 (Pa. 2020) (Daimler citation omitted).

The Supreme Court's most thorough post-International Shoe consent discussion **did not even recognize** corporate registration as relevant. See Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982) ("ICI"). Rather, the Court discussed various forms of "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;"[12]
- "[W]aive[r] if not timely raised"; and
- "[F]ail[ure] to comply with a pretrial discovery order."

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

456 U.S. at 704-06 (citations and quotation marks omitted). See J. McIntyre Mach., 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). Business registration no longer qualifies as "consent" to general jurisdiction. "'Extorted actual consent' and 'equally unwilling implied consent' are not the stuff of due process." Leonard v. USA Petrol. Corp., 829 F.Supp. 882, 889 (S.D.Tex. 1993) (citation omitted).

During the Pennoyer era, Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co., 243 U.S. 93 (1917), did allow general jurisdiction based on corporate registration. Given Shaffer's rejection of "consent" theories as "fictional," see, supra, at p.7, Pennsylvania Fire is undoubtedly among the decisions Shaffer overruled, and like other decisions of that vintage, "should not attract heavy reliance today." Daimler, 571 U.S. at 138 n.18 (citation omitted).

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 construed to allow jurisdiction beyond

federal constitutional bounds. 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 thus preclude plaintiff from applying this statute unconstitutionally, even if expansively it could be read as treating registration as consent to general jurisdiction.[13]

Finally, as a matter of jurisprudence, plaintiff's position should fail because it would reward foreign corporations for breaking the law. Here, if the defendant ignored Pennsylvania law, and never registered, plaintiff would have no "consent" argument. Reading the Long-Arm statute to favor corporate lawbreakers over those that comply would be an absurd result.

[13] The "cardinal principle" of "constitutional avoidance" provides that when a statute is "susceptible of more than one construction," one of which "raises a serious doubt as to its constitutionality," courts will adopt the construction "by which the [constitutional] question may be avoided." Guerrero-Sanchez v. Warden York Cty. Prison, 905 F.3d 208, 223 (3d Cir. 2018) (citation and quotation marks omitted).

CONCLUSION

For all of the above reasons, and for those articulated by the defendant in its papers, the order of the Eastern District of Pennsylvania should be affirmed.

Respectfully submitted,

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/s/ James M. Beck

JAMES M. BECK (#37137)
Reed Smith LLP
Three Logan Square
Suite 3100
1717 Arch Street
Philadelphia, PA 19103-7301
(215) 851-8168

Counsel for *Amicus Curiae* Pennsylvania Coalition for Civil Justice Reform

CERTIFICATES OF COMPLIANCE REQUIRED BY FEDERAL AND LOCAL RULES OF APPELLATE PROCEDURE

Bar Membership

Pursuant to Third Circuit L.A.R. 28.3(d), I hereby certify that I am a member of the Bar of the Court of Appeals for the Third Circuit.

Word Count

The Brief of *Amicus Curiae* Pennsylvania Coalition for Civil Justice Reform in Support of Appellee and Affirmance complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because this brief contains more than 15 pages but less than 6,500 words (6490), as counted by Microsoft Word 2010, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Third Circuit L.A.R. 29.1(b). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

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Pursuant to Fed. R. App. P. 25(d), I certify that a true and correct copy of the Brief of *Amicus Curiae* Pennsylvania Coalition for Civil Justice Reform in Support of Appellee and Affirmance was filed electronically using the Court's CM/ECF System. This System sent a Notice of Docket Activity to counsel of record, who are Filing Users. In addition, I sent one copy of the foregoing document by electronic mail to counsel of record at the following addresses:

Counsel for Plaintiff-Appellant David Ruffing

Adam Hansen
Colin Reeves
Apollo Law LLC
333 Washington Avenue North
Suite 300
Minneapolis, MN 55401
adam@apollo-law.com
colin@apollo-law.com

M. Frances Ryan
Wusinich Sweeney & Ryan LLC
211 Welsh Pool Road, Ste. 236
Exton, PA 19341
mfrancesryan@wusinichsweeney.com

Amici curiae supporting Plaintiff-Appellant

Adina Rosenbaum
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
arosenbaum@citizen.org

Charles Becker
Ruxandra Laidacker
Kline & Specter, PC
1525 Locust St.
Philadelphia, PA 19102
charles.becker@klinespecter.com
andra.laidacker@klinspecter.com

Counsel for Defendant-Appellee Wipro Limited

Amanda K. Rice
Jones Day
150 W. Jefferson Ave., Suite 2100
Detroit, MI 48226
arice@jonesday.com

Matthew J. Hank
Tanner McCarron, Littler Mendelson, P.C.
Three Parkway
1601 Cherry Street, Suite 1400
Philadelphia, PA 19102
mhank@littler.com

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Dated: December 17, 2021

/s/ James M. Beck
James M. Beck