

Missouri Personal Jurisdiction After *Daimler*:

*Service on a Defendant's Registered Agent, Without More,
Should Not Qualify As Consent*

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In the recently argued matter of *State ex rel. Norfolk Southern Railway Company v. The Honorable Colleen Dolan*, No. SC95514, 2016 Mo. LEXIS 396 (Apr. 5, 2016), the Missouri Supreme Court could determine whether in-state service on an out-of-state corporate defendant's agent registered in Missouri amounts to consent by that out-of-state corporate defendant to personal jurisdiction over that defendant in Missouri, regardless of where the defendant's alleged misconduct occurred. Recent decisions by the United States Supreme Court make clear that in-state service alone is not a proper means for a state court to exercise personal jurisdiction over an out-of-state corporate defendant.

Broadly, a court may exercise personal jurisdiction over a party in three ways: (1) in-state action, i.e. specific jurisdiction; (2) in-state presence, i.e. general jurisdiction; or (3) consent. Recently, foreign plaintiffs have been arguing that a non-Missouri defendant "consented" to jurisdiction merely because its registered agent was served in Missouri, regardless of where the non-Missouri defendant's actions occurred or where it resided.

In Missouri, foreign companies must register with the Secretary of State before transacting or doing business in Missouri.¹ This Missouri registration process includes declaring and maintaining a registered agent in Missouri to receive service of process.²

Under the line of argument put forth by these non-Missouri plaintiffs, all out-of-state defendants who legally transact business in Missouri (by appointing and maintaining a registered agent as required by law) have implicitly consented to the jurisdiction of Missouri courts. In essence,

foreign plaintiffs argue that because Missouri statutes provide a mechanism for service on a non-Missouri defendant in Missouri via the company's registered agent and because a foreign defendant must comply with the law the same as a Missouri defendant, Missouri statutes also empower Missouri courts with consensual jurisdiction over the registered, non-Missouri company.

The adoption of such an argument leads to spurious results. For example, assume ABC Company has its principal place of business in Vermont, is incorporated in Vermont, and manufactures its products in Vermont. Wanting to expand its Vermont business by distributing products in Missouri, ABC registers with the Missouri Secretary of State and appoints the required registered agent in Missouri. Now, if a Vermont resident claims injury as a result of purchasing and using ABC's products in Vermont, under the jurisdiction argument suggested above, this Vermont resident could file a complaint against ABC in Missouri despite there being no connection whatsoever between Missouri and any party to the litigation nor any connection between Missouri and plaintiff's allegations.

As noted by Delaware's Chief Justice Stine:

Businesses select their states of incorporation and principal places of business with care, because they know that those jurisdictions are in fact "home" and places where they can be sued generally. An incentive scheme where every state can claim general jurisdiction over every business that does any business within its borders for any claim would reduce the certainty of the law and subject

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¹ MO. REV. STAT. § 351.572.1.

² *Id.* at § 351.586.

³ *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 127-128 (Del. 2016) (finding that states now have effective means "to hold foreign corporations

accountable for their activities within their borders" without forcing them to become state residents and that "*Goodyear* and *Daimler*... made clear that it is inconsistent with principles of due process for a corporation to be subject to general jurisdiction in every place it does business.")

businesses to capricious litigation treatment as a cost of operating on a national scale or entering any state's market.³

Such an exercise of “consensual” jurisdiction through in-state service of process on an out-of-state company’s registered agent is a misguided attempt to sidestep recent personal jurisdiction limitations set by the US Supreme Court. The US Supreme Court’s decisions make clear that merely doing business in a state does not confer jurisdiction.⁴

Without a doubt, Missouri has the right and an obligation to ensure that companies conducting business in Missouri abide by its laws and that Missouri residents have viable access to the legal system. However, Missouri dockets should not be forced to bear the burdens of a foreign plaintiff initiating litigation in Missouri courts arising from foreign events with a foreign defendant. Such an argument has neither statutory foundation nor legal precedent in Missouri. Furthermore, it creates financial disincentives for new foreign companies to register to do business in Missouri or for existing companies to stay in Missouri because the foreign company could then be forced to bear higher litigation costs in Missouri where

the company has never planned nor anticipated being “at home” as defined by US Supreme Court precedent.

Given the recent clarifications by the Supreme Court regarding personal jurisdiction, in-state service of process, “without more,” should not constitute consent to jurisdiction and is not enough to confer personal jurisdiction over an out-of-state corporate defendant. While the Missouri Supreme Court could determine that personal jurisdiction over the defendant in the matter of *State ex rel. Norfolk Southern Railway Company v. The Honorable Colleen Dolan* exists on another basis, e.g. general jurisdiction, the Missouri Supreme Court should at least indicate that “without more” companies simply meeting the legal requirements to do business in Missouri is an insufficient basis to confer personal jurisdiction to Missouri courts over these foreign companies.



⁴ See *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923, 131 S.Ct. 2846 (2011); *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014).



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