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The Georgia Supreme Court upholds an expansive "consent by registration" approach to general personal jurisdiction

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Companies authorized to transact business in Georgia may not be aware of the potential consequences: merely registering to do business with the Georgia Secretary of State confers general personal jurisdiction in Georgia over a foreign business, according to the Georgia Supreme Court's recent decision in *Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81 (Ga. 2021).

Background of corporate "consent by registration"

By way of background, in 1917, the U.S. Supreme Court held that a state statute notifying a foreign corporation that it consented to general personal jurisdiction in that state by registering to do business in the state did not violate due process. *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling*, 243 U.S. 93, 95 (1917).

Then, in 1992, the Georgia Supreme Court held that any corporation registered to do business in Georgia is considered a Georgia resident for purposes of personal jurisdiction. *Allstate Insurance Co. v. Klein*, 262 Ga. 599, 601 (1992).

Since the Georgia Supreme Court's decision in *Klein*, however, the U.S. Supreme Court has repeatedly held that general personal jurisdiction can be exercised only in those states where a corporation is essentially "at home" – in its state of incorporation and the state of its principal place of business. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014); *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, -- U.S. --, 141 S. Ct. 1017, 1024 (2021).

In *Cooper Tire*, the Georgia Supreme Court reaffirms "consent by registration"

In *Cooper Tire*, a Florida plaintiff alleged he sustained injuries in a car accident in Florida. 863 S.E.2d at 83. He sued Cooper Tire, a tire manufacturer incorporated in Delaware with its principal place of business in Ohio, in Georgia state court. *Id*. Cooper Tire moved to dismiss on personal jurisdiction grounds, but the plaintiff argued that Cooper Tire consented to general personal jurisdiction in Georgia by securing authorization to transact business in the state. *Id*. at 83-84. The trial court granted Cooper Tire's motion to dismiss, but the Court of Appeals reversed.

The Georgia Supreme Court granted certiorari, reaffirmed its prior decision in *Klein*, and found general personal jurisdiction over Cooper Tire based on its registration to do business in Georgia. The court recognized the

"tension" between its holding and the "trajectory" of U.S. Supreme Court cases that had narrowed general personal jurisdiction over foreign corporations, but it reasoned that the U.S. Supreme Court had never expressly overruled *Pennsylvania Fire* and the cases following it. *Id*. at 84.

In a concurrence, Justice Bethel issued a clarion call to the Georgia Legislature, writing separately "for the sole purpose of calling the General Assembly's attention to the peculiar and precarious position of the current law of Georgia." *Id*. at 92 (Bethel, J., concurring). Justice Bethel reasoned that Georgia's current "consent by registration" approach runs "contrary to the often-expressed desire to make Georgia a 'business-friendly' state.'" *Id*.

The "consent by registration" divide widens between Georgia and other states

Since the Georgia Supreme Court issued its opinion in *Cooper Tire* in September 2021, at least three state supreme courts have declined to recognize a "consent by registration" approach to general personal jurisdiction. *See Aybar v. Aybar*, 37 N.Y.3d 274, 283, 177 N.E.3d 1257, 1261, 156 N.Y.S.3d 104, 107 (2021) ("Accordingly, a foreign corporation's registration to do business and designation of an agent for service of process in New York does not constitute consent to general jurisdiction under the Business Corporation Law's plain terms."); *Chavez v. Bridgestone Americas Tire Operations, LLC*, --- P.3d ----, No. S-1-SC-37489, 2021 WL 5294978, at *9 (N.M. Nov. 15, 2021); *Mallory v. Norfolk S. Ry. Co*., --- A.3d ----, No. 3 EAP 2021, 2021 WL 6067172, at *17 (Pa. Dec. 22, 2021) (invalidating a state statute that found registration to do business constituted consent to general personal jurisdiction as violating due process).

As the Georgia legislature enters its 2022 session, it has the opportunity to align Georgia's personal jurisdiction doctrine with that of the U.S. Supreme Court and other states. As Justice Bethel pointed out in his *Cooper Tire* concurrence, the current state of Georgia law may disincentivize foreign corporations from registering to do business in Georgia in order to minimize their risk of being hauled into the state on general personal jurisdiction grounds.