

Memorandum in Support

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

CPLR #1

April 24, 2015

S. 4846

By: Senator Bonacic

A. 6714

By: M. of A. Weinstein

Senate Committee: Judiciary

Assembly Committee: Judiciary

Effective Date: On the first of January next
succeeding the date on which it
shall have become a law

AN ACT to amend the civil practice law and rules, the business corporation law, the general associations law, the limited liability company law, the not-for-profit corporation law and the partnership law, in relation to consent to jurisdiction by foreign business organizations authorized to do business in New York.

LAW & SECTION REFERRED TO: CPLR 301-a (new), BCL §1301, GAL §18, LLC Law §802, NFPCL §1301, Partnership Law §§121-902 and 121-1502

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES SUPPORTS THIS LEGISLATION

This bill was introduced at the request of the Chief Administrative Judge upon the recommendation of the Office of Court Administration's Advisory Committee on Civil Practice. It is a response to an opinion of the United States Supreme Court in *Daimler AG v. Bauml*, 134 S.Ct. 746 (2014).

CPLR 301 provides for general jurisdiction over certain defendants based upon a variety of theories developed from the law at the time of the enactment of the CPLR. General jurisdiction confers jurisdiction over defendants in the New York courts regardless of the connection between the New York activities of the defendant and the action brought. It is in contrast to specific, or long-arm, jurisdiction, codified in New York in CPLR 302.

General jurisdiction, as it existed prior to the Supreme Court's determination in *Daimler*, was found in the following situations: (1) Service on the defendant or the defendant's agent while physically present in New York; (2) Service on a domiciliary within or without the state; (3) Consent to jurisdiction by express or implied agreement; (4) Doing business in New York. *See, generally*, New York Civil Practice CPLR, Weinstein Korn & Miller, ¶¶301.04.

The United States Supreme Court in *Daimler* evinced a distaste for general jurisdiction, preferring specific jurisdiction, and found that traditional tests of "doing business" within the state were violative of due process. The Court of Appeals has not yet modified New York's "doing business" test, developed through a century of jurisprudence, to the requirements of *Daimler*, so it is difficult to state exactly whether a corporation or other entity doing business within the state of New York is subject to general jurisdiction.

Nonetheless, the Supreme Court did not jettison the other traditional tests of general jurisdiction. In fact, the Court did confirm that it was appropriate to exercise general jurisdiction over a domiciliary. The Court did not comment in any way on whether consent to jurisdiction or service of the defendant within the state would continue to confer general jurisdiction. The Court specifically had approved the latter most recently in *Burnham v. Superior Court of California, Marin County*, 495 U.S. 604, 110 S.Ct. 2105 (1990).

Because of the uncertainty of the survival of the "doing business" test in light of the *Daimler* case, it is prudent to codify the other principal basis of general jurisdiction over corporations and other entities that are registered to do business in the state of New York, *i.e.*, consent. While the filing of registration to do business, and the specification of the Secretary of State as an agent for service, has been considered to be a consent to jurisdiction, *see, Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432 (1916), it has never been explicitly codified. (*But see* BCL §1301(a), 304.) Given the uncertainty of jurisdiction under the "doing business" test, codification is appropriate. This bill seeks to codify the consent to jurisdiction for each corporation or corporate-like entity (except for not-for-profit corporations, and foreign banks and insurance companies, which have never been subject to general consent jurisdiction in New York), and to provide for the withdrawal of such consent upon the cessation of authorization to do business. It is properly drafted, and will assure some certainty of jurisdiction over such entities.

For the foregoing reasons, the Committee on Civil Practice Law and Rules **SUPPORTS** this legislation.

The Person Who Prepared this Memorandum: Sharon Stern Gerstman, Esq.

Chair of the Committee: Robert P. Knapp, III, Esq.