



**MEMORANDUM IN OPPOSITION**

May 24, 2021

**A.7769 Weinstein (On Assembly Judiciary Committee Agenda – 5/26/21)**

***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.***

This memorandum in opposition is written on behalf of our client, the New York Bankers Association (NYBA). NYBA is comprised of the smaller community, mid-size regional, and large banks across every region of New York State. Together NYBA members employ nearly 200,000 New Yorkers, safeguard \$2 trillion in deposits, and extend nearly \$70 billion in home and small business loans. NYBA members also support their communities through an estimated \$200 million in community donations and 500,000 employee volunteer hours.

The bill has been introduced in response to the decision from the Supreme Court of the United States, *Daimler v. Bauman*, 134 S. Ct. 746 (2014). Until the decision in that case, a foreign corporation doing business in New York could be sued in this state under general jurisdiction principles if the corporation maintained a presence in the state through systematic and regular solicitation of business. In *Daimler*, the Supreme Court ruled that due process requires more than just the doing of business in the state. This bill would amend the CPLR and other laws to codify that when a foreign corporation files an application to do business in New York with the Secretary of State, the application constitutes consent to jurisdiction of New York courts for all actions against the corporation.

The *Daimler* decision has been continuously applied to numerous cases around the country and was further affirmed by the Supreme Court in subsequent decisions. See *BNSF Railway Co. v. Tyrrell*, 136 S. Ct. 1549 (2017); and *Bristol-Myers Squibb Co. v. Superior Court*, 37 S. Ct. 1773 (2017). In January 2019, the NYS Supreme Court Appellate Division, Second Department affirmed *Daimler*, finding that a foreign corporation's registration to do business in New York was not consent to general jurisdiction. See *Aybar v. Aybar*, 2019 NY Slip Op 00412 (2d Dep't 2019). Though this bill attempts to address the limitations presented in the *Daimler* decision, basing jurisdiction on the registration of a corporation with the Secretary of State would not overcome the limitations and would present constitutional issues. *Daimler* requires that, to achieve general jurisdiction, such corporations must be viewed as "essentially at home" in New York. Mere registration at the State level would most likely not pass the "essentially at home" test.

The bill could also be particularly harmful to foreign banking corporations doing business in New York. Though the sponsor's memo notes that the bill should not apply to such corporations, the bill language does not explicitly say so. The bill should make clear that this amendment would not alter existing jurisdictional rules applied to foreign banking corporations doing business in New York.

For these reasons, the New York Bankers Association ***opposes*** this legislation and urges that it be ***held***.

**Respectfully submitted,**

**SHENKER RUSSO & CLARK LLP**