

**RODRIGUEZ V. FORD MOTOR CO.**

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

**GABRIEL ARTURO RASCON RODRIGUEZ;  
RAYITO DEL CARMEN GUTIERREZ DE  
RASCON; JAVIER ORTIZ TARANGO,  
Deceased; LEE HUNT, Representative of the  
Estate of JAVIER ORTIZ TARANGO; BERTA  
EBILA RAMIREZ; LORENZA SUSANA  
ORTIZ; MARITZA BERENICE ORTIZ  
RAMIREZ; CARMEN TARANGO CASTRO;  
CRISTIAN ANTONIO ROMERO GARCIA,  
Deceased; LEE HUNT, Representative of the  
Estate of CRISTIAN ANTONIO ROMERO  
GARCIA; ROBERTO ROMERO and HILDA  
TELLEZ, Next Friends of C.D.R. and C.D.R.,  
Minors; ROBERTO ROMERO, Individually;  
LAURO CRUZ, Deceased; LEE HUNT,  
Representative of the Estate of LAURO CRUZ;  
ORALIA NAJERA; MARIA CONCEPTION  
CRUZ NAJERA, Individually and as Next Friend  
of L.M.A.C., a Minor; CARLOS CRUZ;  
OLGALIDIA CRUZ; EUFEMIO CRUZ;  
MIGUEL CRUZ; PERLA ALEJANDRA CRUZ;  
MAYRA PAMELA CRUZ; MARIA ESTHER CRUZ;  
AGUSTINA CRUZ; JAVIER ACOSTA RAMIREZ;  
BERENICE ACOSTA; JOSE JAVIER ACOSTA;  
JAVIER ACOSTA; ADRIAN RAMOS, Individually  
and as Next Friend of R.A.R.R., A.R.R., Y.A.R.R., and  
A.R.R., Minors; YADIRA RUVALCABA DE RAMOS;  
LUIS CANSECO VAZQUEZ, Individually and as Next  
Friend of G.C. and S.A.C., Minors; GUADALUPE  
LOPEZ; JULIA CANSECO; LUIS RAUL ORTEGA  
GABALDON; JESUS ALEJANDRO JIMENEZ  
ORTEGA; and ERNESTO VARGAS LOPEZ,  
Plaintiffs-Appellees,  
v.  
FORD MOTOR COMPANY and COOPER  
TIRE AND RUBBER COMPANY,  
Defendants-Appellants,**

**and**  
**FERNANDO GAYTAN BUSTOS,**  
**Defendant-Appellee,**  
**and**  
**FERNANDO GAYTAN BUSTOS,**  
**Cross-Plaintiff/Appellee,**  
**v.**  
**FORD MOTOR COMPANY and COOPER**  
**TIRE AND RUBBER COMPANY,**  
**Cross-Defendants/Appellants.**

NO. A-1-CA-35910

COURT OF APPEALS OF NEW MEXICO

December 21, 2018

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

**COUNSEL**

Francis J. Mathew, District Judge, Jaramillo Law Firm, PC, David J. Jaramillo, Albuquerque, NM, The Ammons Law Firm, John Gsanger, Corpus Christi, TX, Gary Scott Marshall, Houston, TX, Touchet Law Firm, PC, Maria E. Touchet, Albuquerque, NM, for Appellees Gabriel Rascon Rodriguez, et al.

Rodey, Dickason, Sloan, Akin & Robb, P.A., Jeffrey M. Croasdell, Albuquerque, NM, Snell & Wilmer LLP, Todd E. Rinner, Tucson, AZ, Hogan Lovells US LLP, Sean Marotta, Washington, D.C., for Appellant Ford Motor Company

Brownstein Hyatt Farber Schreck, LLP, Eric R. Burris, Albuquerque, NM, Norton Rose Fulbright US LLP, Troy L. Vancil, San Antonio, TX, for Appellant Cooper Tire and Rubber Company

Law Offices of James B. Ragan, James B. Ragan, Corpus Christi, TX, for Appellee Fernando Gaytan Bustos

**JUDGES**

LINDA M. VANZI, Chief Judge. WE CONCUR: J. MILES HANISEE, Judge, STEPHEN G. FRENCH, Judge Pro Tem

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

## **VANZI, Chief Judge.**

{1} Defendants Ford Motor Company (Ford) and Cooper Tire and Rubber Company (Cooper Tire) (collectively, Defendants) appeal the district court’s denial of their motions to dismiss for lack of personal jurisdiction. In the district court, Defendants argued that the district court had neither general nor specific jurisdiction over them because they were not “at home” in New Mexico and Plaintiffs’ claims did not arise from Defendants’ conduct in the state. The district court found that specific jurisdiction was proper and denied the motions to dismiss but certified the question to this Court. We consolidated and granted Defendants’ applications for interlocutory appeal, then issued a formal opinion on June 19, 2018, but withdrew that opinion for reconsideration. On reconsideration, we requested simultaneous supplemental briefing on the “viability and applicability” of *Werner v. Wal-Mart Stores, Inc.*, 1993-NMCA-112, 116 N.M. 229, 861 P.2d 270 and “whether, under *Werner*, [Defendants] consented to general jurisdiction in New Mexico courts by registering in compliance with Article 17 of the Business Corporation Act [(the Act)], NMSA 1978, §§ 53-11-1 to 53-18-12 (1967, as amended through 2003).” In their supplemental brief, Defendants argue that (1) this Court should not reach the issue of consent by registration because it was forfeited by Plaintiffs; (2) consent by registration does not “square” with the United States Supreme Court’s general jurisdiction jurisprudence and violates the unconstitutional conditions doctrine and the Commerce Clause; and (3) *Werner* was wrongly decided and out of step with other states.

{2} Defendants’ arguments are identical to those raised by the defendant in *Navarrete Rodriguez v. Ford Motor Co.*, \_\_\_-NMCA-\_\_\_, \_\_\_ P.3d \_\_\_ (No. A-1-CA-36402, Dec. 20, 2018). In that case, filed concurrently, we hold that (1) this Court may properly consider consent by registration in this appeal; and (2) the United States Supreme Court’s decision in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), and this Court’s decision in *Werner* remain binding precedent in spite of the evolution of general jurisdiction jurisprudence found in *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945), and *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). *Navarrete Rodriguez*, \_\_\_-NMCA-\_\_\_, ¶¶ 1, 17-18. Based on the reasoning in that opinion, we reject Defendants’ arguments in their supplemental briefing.

## **BACKGROUND**

{3} “Where, as here, the district court bases its ruling on the parties’ pleadings, attachments, and non-evidentiary hearings, . . . [w]e construe th[ose] pleadings and affidavits in the light most favorable to the complainant[.]” *Sproul v. Rob & Charlies, Inc.*, 2013-NMCA-072, ¶ 6, 304 P.3d 18 (internal quotation marks and citation omitted). In August 2012, Plaintiffs, all Mexican nationals, were passengers in a 1993 Ford E-350 Super Club Wagon that was en route to Colorado from Mexico. While traveling on U.S. Highway 54 in Guadalupe County, New Mexico, “the tread peeled off the right rear tire on the vehicle.” The vehicle left the road and rolled three times. Two of the occupants, Javier Ortiz Tarango and Cristian Antonio Romero, were fatally ejected from the vehicle,

while a third, Lauro Cruz, was rendered quadriplegic and eventually died from his injuries. Occupants Gabriel Arturo Rascon Rodriguez, Javier Acosta Ramirez, Adrian Ramos, Luis Canseco, Luis Raul Ortega Gabaldon, Jesus Alejandro Jimenez Ortega, and Ernesto Vargas Lopez all sustained injuries as a result of the crash. Plaintiffs filed a wrongful death and personal injury complaint against Defendants, as well as Fernando Gaytan Bustos, who installed the tire on the van.

**{4}** Defendants moved to dismiss the complaint for lack of personal jurisdiction. They argued that, because the van and tire were not purchased in New Mexico, New Mexico had no personal jurisdiction over them. Ford asserted that the Ford E-350 was not designed or manufactured in New Mexico and that it had been first sold by an independent dealer in Kentucky. It also asserted that the F-350 had not been “serviced by any Ford independent dealer . . . in New Mexico.” Further, Ford asserted that, at the time of the accident, the van was licensed in Mexico and was being driven by a citizen of Mexico. For its part, Cooper Tire argued that the tire was neither designed nor manufactured in New Mexico and that it was purchased in Oklahoma and installed on the van in Mexico.

**{5}** In response, Plaintiffs provided evidence of Defendants’ contacts with New Mexico, which we summarize here. Ford has fourteen official Ford dealerships in New Mexico; engages in marketing targeted at New Mexico, including sponsorships of New Mexico events such as the 2013 professional bull riding championship; and maintains an interactive website that allows New Mexico consumers to (1) obtain a quote for a Ford vehicle, (2) search inventory of Ford vehicles in stock in New Mexico, (3) apply for credits to purchase vehicles in New Mexico, (4) configure a Ford vehicle, and (5) obtain a purchase price. In addition, Ford has “in-forum advertising and defense and indemnity contracts with its dealerships,” and Ford has been a frequent party to litigation in New Mexico. Finally, Plaintiffs asserted that Ford has registered to do business in New Mexico and appointed an agent for service of process. See § 53-17-9 (setting forth requirements for foreign corporations registered to transact business in New Mexico); § 53-17-11 (requiring each foreign corporation authorized to do business to have a registered agent “upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served”).

**{6}** Cooper Tire has sixty-two official Cooper Tire dealers in New Mexico, and Cooper Tire personnel travel to Cooper Tire dealers “to assess the in-field performance of its tires.” Cooper Tire maintains a website with an interactive web page providing information to New Mexico consumers about services available through Cooper Tire dealers. Cooper Tire’s advertising targets New Mexico consumers, including through sponsorship of professional bull riding events in Albuquerque, New Mexico. Cooper Tire has appeared as a litigant in New Mexico courts. Plaintiffs also asserted that Cooper Tire has registered to do business in New Mexico and designated an agent for service of process.

**{7}** After a hearing on Defendants’ motions to dismiss, the district court denied the motions but certified the issue for interlocutory appeal, which we granted. On

interlocutory appeal, both parties provided supplemental briefing on the question of “whether, under *Werner*, [Defendants] consented to general jurisdiction in New Mexico courts by registering in compliance with [the Act].”

## DISCUSSION

{8} “In reviewing an appeal from an order granting or denying a motion to dismiss for lack of personal jurisdiction, the determination of whether personal jurisdiction exists is a question of law, which an appellate court reviews de novo when the relevant facts are undisputed.” *CABA Ltd. Liab. Co. v. Mustang Software, Inc.*, 1999-NMCA-089, ¶ 9, 127 N.M. 556, 984 P.2d 803. As we explain, we conclude that Defendants consented to general jurisdiction in New Mexico under *Werner*. We therefore affirm the district court’s denial of Defendants’ motion to dismiss, but for a different reason. See *State v. Vargas*, 2008-NMSC-019, ¶ 8, 143 N.M. 692, 181 P.3d 684 (“Under the right for any reason doctrine, we may affirm the district court’s order on grounds not relied upon by the district court if those grounds do not require us to look beyond the factual allegations that were raised and considered below.” (internal quotation marks and citation omitted)). Given our conclusion, we need not address Defendants’ arguments related to specific jurisdiction.

{9} Our legal analysis of whether consent by registration is a valid avenue to jurisdiction in light of United States Supreme Court cases is detailed in *Navarrete Rodriguez*. In short, in that opinion we note that consent to jurisdiction by compliance with a state’s registration statute was acknowledged in 1917 by the United States Supreme Court in *Pennsylvania Fire*, 243 U.S. at 95. *Navarrete Rodriguez*, \_\_\_-NMCA-\_\_\_, ¶ 12. Although the Supreme Court’s subsequent pronouncements in *International Shoe*, 326 U.S. at 319, and *Daimler*, 571 U.S. at 137, substantially limited “minimum contacts” based jurisdiction, neither of those cases addressed consent to jurisdiction in any manner, much less consent by registration. *Navarrete Rodriguez*, \_\_\_-NMCA-\_\_\_, ¶¶ 14-16. Hence, since *Pennsylvania Fire* has not been overruled by the Supreme Court, we are bound by it. *Navarrete Rodriguez*, \_\_\_-NMCA-\_\_\_, ¶ 18.

{10} Whether compliance with a state registration statute constitutes consent to jurisdiction in the state depends on the language of the statute itself or the construction of it by a state court. *Brieno v. Paccar, Inc.*, No. 17-cv-867 SCY/KMB, 2018 WL 3675234, at \*2 (D.N.M. Aug. 2, 2018); see *Robert Mitchell Furniture Co. v. Selden Breck Constr. Co.*, 257 U.S. 213, 215-16 (1921) (stating that the “purpose in requiring the appointment of such an agent is primarily to secure local jurisdiction in respect of business transacted within the State” and that jurisdiction under the statute may be extended to business conducted elsewhere only if the law “expressly or by local construction gives to the appointment [of an agent] a larger scope”). We therefore look to our cases constructing the Act. In *Werner*, this Court held “the [L]egislature intended to confer state-court jurisdiction over registered foreign corporations through Section 53-17-11 [of the Act].” 1993-NMCA-112, ¶ 11. It further held that the defendant there had consented to jurisdiction in New Mexico by registering pursuant to the Act. *Id.* ¶¶ 11, 14. In *Navarrete Rodriguez*, we note that the *Werner* decision gives companies notice that

registration under the Act, and continued compliance with its requirements, indicates consent to general jurisdiction. *Navarrete Rodriguez*, \_\_\_-NMCA-\_\_\_, ¶¶ 25-26; *cf. Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (stating that the Due Process Clause “requir[es] that individuals have fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign” (alteration, internal quotation marks, and citation omitted)).

{11} Consistent with *Pennsylvania Fire*, then, we apply *Werner* to the facts here. Defendants do not dispute on appeal that they registered to do business in New Mexico as required by the Act. Hence, under *Werner*, Defendants consented to jurisdiction and were on notice that they should “anticipate being haled into court” in New Mexico. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

{12} As to Defendants’ argument that the Act, as applied here, violates the dormant Commerce Clause, we disagree because, even if the Act imposes a burden on interstate commerce, New Mexico’s interest in adjudicating this matter justifies the burden. See *Navarrete Rodriguez*, \_\_\_-NMCA-\_\_\_, ¶¶ 20-22 (addressing the dormant Commerce Clause and limits on jurisdiction); John F. Preis, *The Dormant Commerce Clause As A Limit on Personal Jurisdiction*, 102 Iowa L. Rev. 121, 138, 142-43 (2016) (observing that “[a] state has a legitimate interest in the resolution of disputes that arise in its state” and that jurisdiction by registration “laws have the practical effect of discriminating against out-of-state companies” but that “[s]uch effects will nonetheless be tolerable when the plaintiff is a state resident (whether injured in or out of state) or a non-resident injured in state” (emphasis added) (internal quotation marks and citation omitted)). “[A] forum state has a significant interest in obtaining jurisdiction over a defendant who causes tortious injury within its borders[.]” *Zavala v. El Paso Cty. Hosp. Dist.*, 2007-NMCA-149, ¶ 31, 143 N.M. 36, 172 P.3d 173 (quoting *Harlow v. Children’s Hosp.*, 432 F.3d 50, 67 (1st Cir. 2005); *cf. Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cty.*, \_\_\_ U.S. \_\_\_, \_\_\_, 137 S. Ct. 1773, 1782 (2017) (holding there was no connection between the forum, the defendant, and the claims where “[t]he relevant plaintiffs are not California residents and do not claim to have suffered harm in that [s]tate” (emphasis added)); *AK Steel Corp. v. PAC Operating Ltd. P’ship*, No. 2:15-CV-09260-CM-GEB, 2017 WL 3314294, at \*5 (D. Kan. Aug. 3, 2017) (holding that consent by registration under Kansas’s statute did not violate the dormant Commerce Clause “where Kansas has an interest [in] deciding a local environmental response cost dispute and in providing nonresident plaintiffs injured within its borders a forum to resolve disputes related to the parties’ local activity” (emphasis added)). Here, although the decedents were not New Mexico residents, the accident at issue occurred in New Mexico. Hence, New Mexico has a substantial interest in adjudicating the matter.

## CONCLUSION

{13} For the reasons stated above and in *Navarrete Rodriguez*, we conclude that Defendants consented to general jurisdiction in New Mexico courts by registering to do business here and appointing an agent for service of process under the Act. We

therefore affirm the district court's denial of Defendants' motion to dismiss for lack of jurisdiction.

**{14} IT IS SO ORDERED.**

**LINDA M. VANZI, Chief Judge**

**WE CONCUR:**

**J. MILES HANISEE, Judge**

**STEPHEN G. FRENCH, Judge Pro Tem**