

# PENNSYLVANIA SUPREME COURT TO CONSIDER WHETHER BUSINESS REGISTRATION SUBJECTS AN OUT-OF-STATE COMPANY TO GENERAL PERSONAL JURISDICTION

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## Litigation and Dispute Resolution Alert

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The debate as to whether companies registered to do business in Pennsylvania have consented to general personal jurisdiction continues, and the issue is finally before the Pennsylvania Supreme Court. As we have discussed in prior alerts, the constitutionality of Pennsylvania's consent-by-registration statutory framework<sup>1</sup> has been a hot-button issue since the U.S. Supreme Court's landmark 2014 decision in *Daimler AG v. Bauman*, which circumscribed general personal jurisdiction to companies "essentially at home" in the forum state.<sup>2</sup>

Although the issue was recently considered by the Pennsylvania Superior Court en banc in *Murray v. American LaFrance, LLC*, the court ultimately sidestepped the issue and held that the jurisdictional question had not been properly preserved on appeal.<sup>3</sup> As the result, the Superior Court's prior decision in *Webb-Benjamin, LLC v. International Rug Group, LLC*, in which a panel held that Pennsylvania's statute constitutes consent to general personal jurisdiction, remains the only state court appellate decision addressing the issue.<sup>4</sup>

Against this backdrop, the Pennsylvania Supreme Court is poised to address this issue following the Superior Court's recent transfer of the appeal in *Mallory v. Norfolk Southern Railway Company*, which was previously stayed pending the outcome of *Murray*.<sup>5</sup> In *Mallory*, the plaintiff sued his former employer alleging that he developed colon cancer as a result of exposure to harmful carcinogens in violation of the Federal Employers' Liability Act.<sup>6</sup> The defendant sought dismissal of the complaint for lack of personal jurisdiction, and the plaintiff countered with the argument that the defendant consented to personal jurisdiction by registering in Pennsylvania as a foreign corporation.<sup>7</sup> The trial court, holding that the consent-by-registration statute was unconstitutional under the Due Process Clause of the 14th Amendment, sustained the challenge and dismissed the complaint.<sup>8</sup>

The plaintiff appealed on the single issue of whether Pennsylvania courts had personal jurisdiction over the defendant as a result of its registration in the Commonwealth.<sup>9</sup> Recognizing that the Judiciary Code provided the Pennsylvania Supreme Court with exclusive jurisdiction over appeals from final orders holding that any Pennsylvania statute is "repugnant" to the Constitution of the United States, the Superior Court transferred the case to the Pennsylvania Supreme Court for consideration.<sup>10</sup>

The Pennsylvania Supreme Court's handling of cases transferred for erroneous filing is not discretionary.<sup>11</sup> Accordingly, this transfer potentially signifies that the "compelling" and "competing" perspectives that went unaddressed in *Murray* may finally get some resolution.<sup>12</sup> Regardless of the outcome, however, if the

Pennsylvania Supreme Court decides the issue on the merits, the debate very well may continue to the U.S. Supreme Court for a final determination.

## FOOTNOTES

<sup>1</sup> 15 Pa. CONS. STAT. § 411 (requiring foreign businesses to register to do business in the Commonwealth); 42 Pa. CONS. STAT. § 5322 (long-arm statute extending personal jurisdiction to the fullest extent allowed by the U.S. Constitution); *id.* § 5301(a)(2)(i) (extending general personal jurisdiction to corporations qualified as foreign corporations in the Commonwealth). Courts finding this framework constitutional hold that these statutes provide sufficient notice of the jurisdictional impact of registering so as to constitute consent to personal jurisdiction.

<sup>2</sup> *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Prior to *Daimler*, the validity of the consent-by-registration statute remained relatively uncontested. For a more fulsome review of the recent developments concerning this issue, see David R. Fine & David A. Fusco, [\*Pennsylvania Superior Court Defers Resolution of Jurisdiction-By-Registration Debate\*](#) (June 30, 2020); David A. Fusco, [\*En Banc Panel of the Pennsylvania Superior Court Gets Set for Reargument Regarding Business Registration as Consent to General Personal Jurisdiction\*](#) (Oct. 25, 2019); David R. Fine, [\*Registration to Do Business in Pennsylvania as Implied Consent to General Personal Jurisdiction: An Unsettled Question in Pennsylvania\*](#) (Feb. 28, 2019); David A. Fusco & Sarah M. Czipinski, [\*Pennsylvania Superior Court Holds That Registration to Do Business in Pennsylvania Constitutes Consent to Personal Jurisdiction After Daimler\*](#) (Aug. 13, 2018).

<sup>3</sup> *Murray v. Am. LaFrance, LLC*, 234 A.3d 782 (Pa. Super. Ct. 2020).

<sup>4</sup> *Webb-Benjamin LLC v. Int'l Rug Grp., LLC*, 192 A.3d 1133 (Pa. Super. Ct. 2018).

<sup>5</sup> *Mallory v. Norfolk S. Ry. Co.*, No. 802 EDA 2018, 2020 Pa. Super. Unpub. LEXIS 3425 (Pa. Super. Ct. Oct. 30, 2020). The case is docketed at the Pennsylvania Supreme Court as No. 3 EAP 2021.

<sup>6</sup> *Id.* at \*1–2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at \*2–3.

<sup>9</sup> *Id.* at \*3.

<sup>10</sup> *Id.* at \*4.

<sup>11</sup> See generally 42 Pa. CONS. STAT. §§ 722, 5103.

<sup>12</sup> See *Murray*, 234 A.3d at 789, n.6.

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