

PENNSYLVANIA SUPREME COURT REJECTS BUSINESS REGISTRATION AS MEANS FOR CONSENT TO PERSONAL JURISDICTION

Date: 26 January 2022

U.S. Litigation and Dispute Resolution Alert

By: David A. Fusco, David R. Fine, Hudson M. Stoner

In a highly anticipated decision, the Pennsylvania Supreme Court closed out 2021 by striking down Pennsylvania's consent-by-registration statutory scheme that held that an out-of-state business consented to general personal jurisdiction in Pennsylvania simply by registering to do business in the state.¹ The question of the constitutionality of the consent-by-registration scheme has percolated among the lower courts since the U.S. Supreme Court's 2014 *Daimler AG v. Bauman* decision, with those decisions resulting in Pennsylvania being an outlier in permitting the practice under its unique statutory framework.²

Briefly, that framework is as follows: foreign corporations may not do business in Pennsylvania until registering with the Commonwealth.³ Under Pennsylvania's long-arm statute, personal jurisdiction is extended to the fullest extent allowed by the U.S. Constitution, and Pennsylvania courts may exercise general personal jurisdiction over corporations registered as foreign corporations in the Commonwealth.⁴ As we have previously discussed,⁵ the Pennsylvania Superior Court's 2018 *Webb-Benjamin, LLC v. International Rug Group, LLC* decision, in which the statutory scheme was upheld under the rationale that registration amounted to consent to personal jurisdiction, remained the most recent Pennsylvania appellate authority on the issue.⁶

The facts of *Mallory* are well suited for the resolution of this issue. In *Mallory*, the plaintiff, a Virginia resident, sued his Virginia-based employer for a violation of the Federal Employers' Liability Act, alleging that his on-the-job exposure to harmful carcinogens caused his colon cancer. The plaintiff worked in Virginia and Ohio, and he did not allege any exposure to the carcinogens in Pennsylvania. In sum, there was no relationship between the case and Pennsylvania at all. The trial court held the consent-by-registration statute was unconstitutional under the Fourteenth Amendment's Due Process Clause. On appeal, the Superior Court transferred the case to the Pennsylvania Supreme Court pursuant to the Supreme Court's exclusive jurisdiction over trial court orders declaring a Pennsylvania statute invalid or repugnant to the Constitution.

In the long-awaited opinion authored by Chief Justice Baer,⁷ the court conclusively held that the consent-by-registration scheme "clearly, palpably, and plainly violates the [United States] Constitution."⁸ The court began with a thorough analysis of the history of the U.S. Supreme Court's personal-jurisdiction jurisprudence. It observed that, in *International Shoe*,⁹ the U.S. Supreme Court moved away from the "territorial approach" emphasized in *Pennoyer v. Neff*¹⁰ to one requiring "minimum contacts" with a forum state such that maintenance of a suit "does not offend traditional notions of fair play and substantial justice."¹¹ The Pennsylvania court recognized that the U.S. Supreme Court's decisions in *Goodyear Dunlop Tires Operations, S.A. v. Brown*¹² and *Daimler* further circumscribed this approach, narrowing general personal jurisdiction to situations where the corporation's

affiliations with the forum state were so “continuous and systematic” that the corporation was essentially at home there.¹³ The court highlighted that the “paradigm” forums in which a corporate defendant is essentially at home are the corporation's place of incorporation and principal place of business, though a corporate defendant's operations in another forum may also confer general jurisdiction in an “exceptional case.”¹⁴

With this background in mind, the court expressly overruled *Webb*, concluding that Pennsylvania's statutory scheme was unconstitutional “to the extent that it confers upon Pennsylvania courts general jurisdiction over foreign corporations that are not ‘at home’ in Pennsylvania pursuant to *Goodyear* and *Daimler*.”¹⁵ The court then proceeded to analyze the constitutional validity of consenting to jurisdiction by waiving due process rights by registration. Observing that waiver of a due-process liberty interest requires waiver to be given “voluntarily, knowingly, and intelligently,” the court held that the fact that the statute provided notice that registration confers general personal jurisdiction was not tantamount to the registering party providing voluntary consent.¹⁶

Instead, the Pennsylvania court held that, in accordance with the “unconstitutional conditions doctrine,” under which the government cannot deny a benefit because a constitutional right is exercised, a foreign corporation's registration to do business in the Commonwealth was “compelled submission to general jurisdiction by legislative command.”¹⁷ The court explained that Pennsylvania's statutory framework was a “Hobson's choice,” forcing a corporation seeking to do business in Pennsylvania to either register and submit to general personal jurisdiction “or not do business in Pennsylvania at all.”¹⁸ Chief Justice Baer wrote that this “broad exercise of general jurisdiction” was foreclosed by *Daimler*, and, with “no avenue for relief to address challenges to the court's exercise of jurisdiction,” consent by registration stood in contrast to the “constitutionally sanctioned” methods for consenting to general personal jurisdiction by appearance, contract, or stipulation.¹⁹

In sum, the Pennsylvania Supreme Court has finally resolved a long-simmering issue and brought Pennsylvania in line with other jurisdictions. Absent a change in U.S. Supreme Court personal jurisdiction precedent, out-of-state corporations can no longer be hauled into Pennsylvania courts based solely on being registered to business in the Commonwealth.

FOOTNOTES

¹ See *Mallory v. Norfolk S. Ry. Co.*, --- A.3d ---, No. 3 EAP 2021, 2021 WL 6067172 (Pa. Dec. 22, 2021).

² *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

³ See 15 Pa. C.S. § 411(a).

⁴ See 42 Pa. C.S. §§ 5322, 5301(a)(2)(i).

⁵ See David R. Fine, David A. Fusco & Hudson M. Stoner, [Pennsylvania Supreme Court To Consider Whether Business Registration Subjects An Out-Of-State Company To General Personal Jurisdiction](#), K&L GATES HUB (Jan. 14, 2021), David R. Fine, David A. Fusco & Hugh T. McKeegan, [Pennsylvania Superior Court Defers Resolution of Jurisdiction-By-Registration Debate](#), K&L GATES HUB (June 30, 2020), David A. Fusco & Hugh T. McKeegan, [En Banc Panel of the Pennsylvania Superior Court Gets Set for Reargument Regarding Business Registration as Consent to General Personal Jurisdiction](#), K&L GATES HUB (Oct. 25, 2019), David R. Fine [Registration to Do Business in Pennsylvania as Implied Consent to General Personal Jurisdiction: An](#)

[Unsettled Question in Pennsylvania](#), K&L GATES HUB (Feb. 28, 2019), David A. Fusco, Sarah M. Czypinski, & Jake Morrison, [Pennsylvania Superior Court Holds That Registration to Do Business in Pennsylvania Constitutes Consent to Personal Jurisdiction After Daimler](#), K&L GATES HUB (Aug. 13, 2018).

⁶ Webb-Benjamin LLC v. Int'l Rug Grp., LLC, 192 A.3d 1133 (Pa. Super. Ct. 2018).

⁷ Justices Saylor, Todd, Donohue, Dougherty, Wecht, and Mundy joined the opinion, with a brief concurrence by Justice Mundy relating specifically to the Federal Employers' Liability Act's "unique jurisdictional expanse." Mallory, 2021 WL 6067172 at *21–22.

⁸ *Id.* at *13.

⁹ Int'l Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945).

¹⁰ Pennoyer v. Neff, 95 U.S. 714, 722, 24 L. Ed. 565 (1877).

¹¹ Mallory, 2021 WL 6067172 at *1–2.

¹² Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 131 S. Ct. 2846, 180 L. Ed. 2d 796 (2011).

¹³ Mallory, 2021 WL 6067172 at *4.

¹⁴ *Id.*

¹⁵ *Id.* at *18.

¹⁶ *Id.* at *19. Specifically, the statute provides that "qualification as a foreign corporation under the laws of this Commonwealth . . . constitute[s] a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction." 42 Pa. C.S. § 5301(a)(2)(i).

¹⁷ Mallory, 2021 WL 6067172 at *20.

¹⁸ *Id.*

¹⁹ *Id.* at *21.

KEY CONTACTS



DAVID A. FUSCO
PARTNER

PITTSBURGH
+1.412.355.6361
DAVID.FUSCO@KLGATES.COM



DAVID R. FINE
PARTNER

HARRISBURG
+1.717.231.5820
DAVID.FINE@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.