

PENNSYLVANIA SUPERIOR COURT HOLDS THAT REGISTERING TO DO BUSINESS IN PENNSYLVANIA CONSTITUTES CONSENT TO PERSONAL JURISDICTION AFTER *DAIMLER*

Date: 13 August 2018

U.S. Mass Tort Alert

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Companies facing mass tort and product liability claims ranging from asbestos to pharmaceuticals have undoubtedly been monitoring developments related to personal jurisdiction in the wake of the U.S. Supreme Court's landmark decisions in *Daimler AG v. Bauman*, *BNSF Railway Co. v. Tyrell*, and *Bristol-Myers Squibb Co. v. Superior Court (Anderson)*. One particular question that has been faced by a number of courts in the wake of *Daimler* and its progeny is whether registration to do business in a particular state can constitute valid consent to general personal jurisdiction in that state. Although most courts around the country have rejected the argument that mere registration is sufficient to establish jurisdiction, no Pennsylvania state appellate court had addressed the issue under Pennsylvania's unique business registration statute. That changed on June 28, 2018, however, when the Superior Court held in *Webb-Benjamin, LLC v. Int'l Rug Grp., LLC* that a foreign company's registration to do business in Pennsylvania constitutes constitutionally valid consent to general personal jurisdiction in the state. [1]

I. THE PENNSYLVANIA JURISDICTION-BY-CONSENT STATUTE

According to 42 Pa. C.S.A. § 5301, enacted in 1978: "[i]ncorporation or qualification as a foreign corporation" and/or "[c]onsent" shall "constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person." [2] Although the validity of Pennsylvania's consent-by-registration statute remained relatively uncontested prior to 2014, [3] the statute's constitutionality has been challenged more extensively following the U.S. Supreme Court's decisions in *Daimler*, *Tyrell*, and *Bristol-Myers Squibb*. [4]

As any company facing mass tort, product liability, and other repetitive litigation claims is particularly aware, *Daimler* limited the reach of general personal jurisdiction to those companies that are "essentially at home" in the forum state. [5] Moreover, the U.S. Supreme Court explained that a corporation is typically "at home" only in the state of its place of incorporation and its principal place of business. [6] Subsequently, in *Tyrell* and *Bristol Myers Squibb Co.*, the U.S. Supreme Court rejected attempts to circumvent *Daimler* by asserting specific jurisdiction over defendants based on limited and/or unrelated contacts to the forum state, describing such arguments as resembling an impermissibly "loose and spurious form of general jurisdiction." [7] Following these decisions, many have argued that statutes purporting to assert any sort of personal jurisdiction over a corporation based *solely* on

the corporation's act of registering to do business would run afoul of *Daimler* and its progeny. [8] However, the Pennsylvania courts that have considered that question under Section 5301 have disagreed. [9]

II. AFFIRMING THE STATUTE POST-DAIMLER; THE FEDERAL COURTS

The issue was first directly addressed in 2016, when the U.S. District Court for the Eastern District of Pennsylvania made waves in *Bors v. Johnson & Johnson* by affirming the validity of Section 5310 after *Daimler* and holding that Pennsylvania courts have general jurisdiction over all corporations that register to do business in the state. [10] The court reasoned that Pennsylvania's statute provides companies with specific notice that business registration will subject them to general personal jurisdiction and, therefore, the act of registering to do business in Pennsylvania constituted valid consent to the jurisdiction of Pennsylvania courts. [11] Over the next year, this issue was addressed three more times by federal district courts in Pennsylvania, and each reached the same conclusion in a series of unpublished opinions. [12] Then, in March of this year, the U.S. District Court for the Middle District of Pennsylvania issued a published opinion in *Gorton v. Air & Liquid Systems Corp.* in which it held that it could properly assert general personal jurisdiction over various defendants that were not otherwise "at home" in Pennsylvania and adjudicate claims based on asbestos exposures alleged to have occurred in California, Nevada, and Ohio based on the defendants' registration as foreign corporations under Section 5301. [13] Rejecting the argument that this assertion of jurisdiction was unconstitutional in the wake of *Daimler*, the court determined that "while merely registering as a foreign corporation with a state—in the absence of specific statutory language providing otherwise—does not equate to the foreign corporation being 'at home,' in the state," and ruled that the specific (if constructive) notice provided by Pennsylvania's statute was sufficient to establish jurisdiction by consent. [14]

III. THE SUPERIOR COURT OF PENNSYLVANIA: REGISTERING TO DO BUSINESS IN PENNSYLVANIA AMOUNTS TO CONSENT TO GENERAL PERSONAL JURISDICTION

Notwithstanding the recent string of federal court decisions, however, no Pennsylvania *state* appellate court had offered an interpretation of Section 5301 and its constitutionality after *Daimler* until the Pennsylvania Superior Court issued its decision in *Webb-Benjamin* on June 28, 2018. [15] *Webb-Benjamin* involved a dispute between two limited liability companies ("LLCs")—one from Pennsylvania and one from Connecticut—concerning the Connecticut LLC's alleged failure to pay for services rendered by the Pennsylvania LLC in connection with a furniture sale in Calgary, Canada. [16] None of the events giving rise to the case occurred in Pennsylvania, and the Connecticut LLC's sole connection to Pennsylvania was seemingly its registration to do business in February 2017, after all but a few of the alleged breaches of contract had already occurred. [17]

Faced with these facts, the trial court sustained the Connecticut LLC's preliminary objection as to lack of jurisdiction and dismissed the case. [18] On appeal, however, the Superior Court held that a Pennsylvania court could properly assert general jurisdiction over the Connecticut LLC—and adjudicate claims arising from events occurring in Canada—based on the Connecticut LLC's registration to do business. In doing so, the Superior Court analyzed *Daimler* and ultimately adopted the reasoning of *Bors and Gorton*. [19] Specifically, the court reasoned that "*Daimler* does not eliminate consent as a method of obtaining personal jurisdiction," and that the act of registering to do business under Section 5301 thus constitutes valid consent to the jurisdiction of Pennsylvania

courts. [20] The Superior Court further held that registration under Section 5301 could confer retroactive consent to general jurisdiction over claims arising *prior to the company's registration date*. [21]

Accordingly, in the absence of any future intervention by the Pennsylvania General Assembly, the Supreme Court of Pennsylvania, or the U.S. Supreme Court, all companies registered (or registering) to do business in Pennsylvania should be aware of the Superior Court's decision in *Webb-Benjamin*. This is particularly true for any company facing mass tort, product liability, and/or other repetitive litigation claims that are frequently brought in jurisdictions where the company is not otherwise "at home." Furthermore, given the emphasis that *Webb-Benjamin*, *Bors*, and *Gorton* have placed on the particular statutory language of Section 5301, companies in other states should pay close attention to state legislative efforts to pass jurisdiction-by-consent statutes similar to the statute in Pennsylvania. [22]

[1] *Webb-Benjamin, LLC v. Int'l Rug Grp., LLC*, ___ A.3d ___, 2018 PA Super 187, 2018 WL 3153602 (Pa. Super. 2018).

[2] 42 Pa. C.S.A. § 5301(a)(2). An identical provision of Section 5301 applies to limited partnerships and other unincorporated business entities. *Id.* at § 5301(a)(3).

[3] *See Bane v. Netlink, Inc.*, 925 F.2d 637 (3d Cir. 1991) (registration under Section 5301 constituted valid consent to the general jurisdiction of Pennsylvania's courts).

[4] *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *BNSF Railway Co. v. Tyrell*, 581 U.S. ___, 137 S. Ct. 1549 (2017); *Bristol Myers Squibb Co. v. Superior Court of California*, 582 U.S. ___, 137 S. Ct. 1773 (2017).

[5] *Daimler*, 134 S. Ct. at 751.

[6] *Id.* at 760 ("With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] ... bases for general jurisdiction.'").

[7] *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781.

[8] *See, e.g., Brown v. Lockheed-Martin Corp.*, 814 F.3d 619, 640 (2d Cir. 2016) (holding that "mere registration" to do business in the forum state is not sufficient to establish consent to jurisdiction); *but see id.* at 640 (citing Pennsylvania's Section 5301 as an example of "[j]urisdictions other than Connecticut" that "have enacted registration statutes that more plainly advise the registrant" of the jurisdictional impact of registration).

[9] In general terms, these courts have found that Pennsylvania's registration statute is unique, in that it provides sufficiently specific notice to support the exercise of general jurisdiction over any Pennsylvania registrant based on a theory of "consent." *Webb-Benjamin, LLC*, ___ A.3d ___, 2018 PA Super 187, 2018 WL 3153602; *Gorton v. Air & Liquid Sys. Corp.*, 303 F. Supp. 3d 278 (M.D. Pa 2018); *Bors v. Johnson & Johnson*, 208 F. Supp. 3d 648 (2016); *Plumbers' Local Union No. 690 Health Plan v. Actavis, Inc.*, No. CV 16-665, 2017 WL 3129147; *Pager v. Metro. Edison*, No. 3:17-CV-00934, 2018 WL 491014; *Lindsay Morgan Hegna v. Smitty's Supply Co.*, No. CV 16-3613, 2017 WL 2563231.; *but see Robert Mallory v. Norfolk Southern Railway Co.*, No. 1961, (Philadelphia Court of Common Pleas, May 30, 2018) (rejecting "consent by registration" argument under Section 5301 prior to the Superior Court's decision in *Webb-Benjamin*).

[10] *Bors*, 208 F. Supp. 3d at 651 (E.D. Pa. 2016); 42 Pa. C.S.A. § 5301 ("Bors admits Imerys' only connection with Pennsylvania arises from its 2007 decision to register to do business as a foreign corporation in Pennsylvania.").

[11] *Compare id.* at 655 ("Consent remains a valid form of establishing personal jurisdiction under the Pennsylvania registration statute after *Daimler*.") with *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 90 N.E.3d 440 (Ill. 2017) (where the Illinois Supreme Court held that it could not properly exercise jurisdiction over a corporation that had no contacts with Illinois aside from its registration to do business and its regularly conducted business and noting that the Illinois Business Corporation Act did not require the corporation to consent to general jurisdiction).

[12] *Plumbers' Local Union*, No. CV 16-665, 2017 WL 3129147 at *11 ("I will deny Registration Defendants' motions to dismiss for lack of personal jurisdiction because as foreign corporations registered to do business in Pennsylvania they have consented to jurisdiction."); *Pager*, No. 3:17-CV-00934, 2018 WL 491014 at *2 ("[...]Pennsylvania law explicitly states that the qualification of a foreign corporation to do business is sufficient contact to serve as the basis for the assertion of personal jurisdiction."); *Hegna*, No. CV 16-3613, 2017 WL 2563231 at *4 ("[W]e conclude that, by registering to do business under § 5301, Smitty's consented to general personal jurisdiction in Pennsylvania and that its consent is still valid under *Goodyear* and *Daimler*").

[13] *Gorton*, 303 F. Supp. 3d at 297 ("The pertinent issue in this case is whether Ford or the telephone defendants consented to general jurisdiction via registration as a foreign corporation and not whether their contacts with Pennsylvania were so continuous and systematic that they are viewed as 'at home' in the state.").

[14] *Id.* at 297–98 ("Neither Ford nor the telephone defendants persuasively argued that *Daimler* somehow altered or abdicated general jurisdiction via consent.").

[15] *Webb-Benjamin*, ___ A.3d ___, 2018 PA Super 187, 2018 WL 3153602 (Pa. Super. 2018).

[16] *Id.* at *1.

[17] *See generally id.* at *1–5.

[18] *Id.* at *1.

[19] *Id.* at *4–5.

[20] *Id.* at *5 ("Guided by the reasoning in *Bors* and *Gorton*, we conclude that *Daimler* does not eliminate consent as a method of obtaining personal jurisdiction. Accordingly, pursuant to 42 Pa.C.S.A. § 5301, Pennsylvania may exercise general personal jurisdiction over WB's claims against IRG.5.").

[21] *Id.* at *3 ("[S]ection 5301(a) does not preclude jurisdiction for acts committed prior to registration.").

[22] These cases have reasoned that Pennsylvania's more explicit statutory language distinguishes it from other states where courts have attempted to merely *interpret* compliance with registration requirements to constitute consent to general jurisdiction as they did prior to *Daimler*. *See, e.g., Gorton*, 303 F. Supp. 3d at 296 ("Since 1978, Pennsylvania has been the only state that 'spells out the jurisdictional consequences associated with registering to do business.'). Post-*Daimler* decisions from jurisdictions *without* similar statutes have largely agreed that business registration alone does not constitute consent to general jurisdiction. *Id.*; *see also* *Genuine Parts Co. v. Cepec*, 137 A.3d 123 (Del. 2016) (noting that "the majority of federal courts" have held that "consent

by registration...[is not] a constitutional basis for general jurisdiction after Daimler...."); *Brown*, 814 F.3d at 640 (holding that "mere registration" to do business in the forum state is not sufficient to establish consent to jurisdiction); *Aspen Am. Ins.*, 90 N.E.3d at 440 (the Illinois Supreme Court held that it could not properly exercise jurisdiction over a corporation based on a theory of consent by registration where the Illinois Business Corporation Act did not specifically address the issue).

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