

Conflicting Opinions on Personal Injury Jurisdiction Over Foreign Corporations Linger

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Recent developments may radically alter the landscape of personal jurisdiction for foreign corporations that register to do business in Pennsylvania. The implications for personal injury lawsuits in the commonwealth are clear, though this issue is especially relevant for products liability actions, where foreign corporations are often named as defendants. Pennsylvania state courts currently interpret this statutory scheme to establish general personal jurisdiction over foreign corporations, but a constitutional review of the potentially involuntary nature of the statute may mean a sea change is coming.

Under 15 Pa. C.S.A. Section 411, a foreign corporation “may not do business in this Commonwealth until it registers with the [Pennsylvania Department of State] under this chapter.” Yet, when a foreign corporation does so, it may subject itself to general personal jurisdiction. This is because under 42 Pa. C.S.A. Section 5301(a)(2), registering to do business “constitute[s] a sufficient basis of jurisdiction to enable the tribunals of this commonwealth to exercise general personal jurisdiction” over a foreign corporation. When these statutes are read together, Pennsylvania will only permit foreign corporations to do business in the

commonwealth if they register, thereby subjecting themselves to general personal jurisdiction.

Pennsylvania state and federal courts are split relative to Pennsylvania’s Registration Statute, 42 Pa. C.S.A. Section 5301, and whether it violates the due process clause of the Fourteenth Amendment following the U.S. Supreme Court’s decisions in Daimler AG v. Bauman, 134 S.Ct. 746 (2014) and Goodyear Dunlop Tires Operations v. Brown, 131 S.Ct. 2846 (2011). As many courts have since recognized, Daimler and Goodyear transformed general jurisdiction analysis.

In Goodyear, the Supreme Court found that “the paradigm forum for the exercise of general jurisdiction” over a corporation to be where “the corporation is fairly regarded as at home[,]” i.e., its place of incorporation and principal place of business. Goodyear, 131 S.Ct. at 2853–54. Furthering the analysis in Goodyear, the Supreme Court in Daimler expressly disavowed the prior prevailing standard that a mere “substantial, continuous, and systematic course of business” is sufficient for general jurisdiction. Daimler, 134 S.Ct. at 760–761. To do so would be “unacceptably grasping.” Stated otherwise, “a corporation that operates in

many places can scarcely be deemed at home in all of them.”

The Superior Court’s decision in Webb-Benjamin v. Internationally Rug Group, 192 A.3d 1133 (Pa. Super. 2018) held that Daimler does not eliminate consent as a method of obtaining personal jurisdiction and, therefore, 42 Pa. C.S.A. Section 5301 does not violate due process.

At least for now, Webb-Benjamin remains the governing law in state court actions; registration to do business in the commonwealth by a foreign corporation confers general personal jurisdiction in Pennsylvania state court actions under 42 Pa. C.S.A. Section 5301(a)(2). However, the Webb-Benjamin Court largely based its decision upon two federal cases that have since been called into question, Bors v. Johnson & Johnson, 208 F.Supp.3d 648 (E.D. Pa. 2016) and Gorton v. Air & Liquid Systems, 303 F.Supp.3d 278 (M.D. Pa. 2018). In both Bors and Gorton, federal courts found that 42 Pa. C.S.A. Section 5301 was still a valid manner of conferring personal jurisdiction following Daimler, as Daimler did not examine registration by consent.

Significantly, the Eastern District of Pennsylvania has since disagreed with Bors and Gorton. It found that “the mandatory nature of the statutory consent extracted by the P[ennsylvania] Statutory Scheme is, in fact, functionally involuntary.” In re Asbestos Products Liability Litigation (No. VI), 384 F.Supp.3d 532, 542 (E.D. Pa. 2019). That is, “consent is only valid if it is given both knowingly and voluntarily,” and 42 Pa. C.S.A. Section 5301 is not voluntary.

Since In re Asbestos, various opinions from the Eastern District of Pennsylvania have

alternately agreed and disagreed with this reasoning. See, e.g., Reynolds v. Turning Point Holding, No. 2:19-CV-01935-JDW (E.D. Pa. 2020) (“The Pennsylvania statutory scheme requiring foreign corporations to consent to general personal jurisdiction in Pennsylvania by virtue of registering to do business here violates the due process clause.”). Contra Winters v. Akzo Nobel Surface Chemistry, No. CV 19-5398 (E.D. Pa. 2020) (finding Section 5301 constitutional under the pre-Daimler case of Bane v. Netlink, 925 F.2d 637 (3d Cir. 1991));

Kraus v. Alcatel-Lucent, 441 F.Supp.3d 68, 75 (E.D. Pa. 2020) (finding “Daimler did not address ‘the interplay between consent to jurisdiction and the due process limits of general jurisdiction.’”).

Whether an action is filed in state or federal court clearly matters, as foreign corporations in federal court may have a better chance of having the action dismissed for lack of jurisdiction if it is premised upon Section 5301. This issue is especially relevant for product liability actions, where foreign corporations are often named as defendants.

Changes may be coming. This issue was *almost* reviewed by the Pennsylvania Superior Court in Murray v. American Lafrance, 234 A.3d 782 (Pa. Super. 2020). Murray did not result in a new decision on the matter, as the Superior Court determined the issue of whether Section 5301 is unconstitutional was not before the court on the merits. The issue was deemed to have been waived because it was not raised before the trial court.

The issue is again before the Superior Court in Mallory v. Norfolk Southern Railway, 802 EDA 2018. In Mallory, the plaintiff-appellant

filed suit in the Philadelphia Court of Common Pleas under the Federal Employers' Liability Act (FELA), alleging exposure to toxic and carcinogenic chemicals while working for Norfolk Southern Railway Company in Ohio and Virginia. Although Mallory spent his last year of work with Norfolk Southern in Pennsylvania, there was no alleged toxic/chemical exposure in Pennsylvania. Norfolk Southern, a Virginia corporation, registered to do business in Pennsylvania, as required to carry out its business activities in the Commonwealth. Norfolk Southern filed preliminary objections to Mallory's claim, arguing 42 Pa. C.S.A. Section 5301 is unconstitutional because the due process clause of the Fourteenth Amendment prohibits the exercise of general jurisdiction based upon compliance with Pennsylvania's mandatory business registration requirements.

The Philadelphia Court of Common Pleas sustained Norfolk Southern's preliminary objections, ruling this portion of Section 5301 to be unconstitutional under Goodyear and Daimler, two Supreme Court cases that the court noted to have "dramatically altered general jurisdiction analysis." See Mallory v. Norfolk Southern Railway, No. 1961 (Pa.Com.Pl. 2018).

The plaintiff-appellant recently attempted to discontinue the matter, which would have removed the issue from the Superior Court's docket. Interestingly, the Superior Court

rejected the discontinuance. An impending decision in the Mallory case may alter the landscape of personal jurisdiction over foreign corporations.

It is possible the Superior Court, recognizing its prior decision was based upon federal court decisions that have since been called into question, could reverse course and find the involuntary nature of Section 5301 to be unconstitutional, as in In re Asbestos. It is possible the Superior Court could eventually review the matter en banc. It is also possible that, regardless of the Superior Court's decision, the Pennsylvania Supreme Court could take up the issue.

The Superior Court's decision in Webb-Benjamin remains the status quo in state court actions—at least until a decision is made in Mallory. It remains to be seen what will occur in Mallory, but the implications are clearly significant.

**Since the writing of this article, Mallory was transferred to the Pennsylvania Supreme Court.*



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