

Expert Analysis

Pa. Court Extends Long Arms Toward Out-Of-State Cos.

By *Brian Rubenstein, Gregory Sturges and Kaitlyn Maxwell*

Law360 (February 13, 2019, 5:22 PM EST) -- Two recent Pennsylvania appellate court decisions held that any out-of-state company registered to do business in Pennsylvania is subject to suit in the commonwealth even where the suit has no connection to Pennsylvania: *Webb-Benjamin LLC v. International Rug Group LLC* and *Murray v. American LaFrance*.^[1]

On Dec. 7, 2018, the Superior Court, Pennsylvania's intermediate appellate court, granted reargument for the second case — *Murray* — and withdrew its Sept. 25, 2018 decision, allowing the parties the opportunity to rebrief the appeal. The first decision — *Webb-Benjamin* — remains binding on Pennsylvania trial courts. The Superior Court declined reargument in *Webb-Benjamin*, and the appellant chose not to appeal further.

In *Murray*, Judge Mary Jane Bowes penned a lengthy dissent questioning due process concerns inherent in Pennsylvania's current statutory scheme, which, in her view, "effectively snare[s] foreign corporations and draw[s] them into the Commonwealth's jurisdiction," even in cases with no relationship to Pennsylvania.^[2] *Murray* is an important case to watch in 2019.

In the first decision, *Webb-Benjamin*, the Superior Court held that foreign corporations registered to do business in Pennsylvania are subject to general personal jurisdiction in Pennsylvania because the commonwealth's long-arm statute states that "the tribunals of this Commonwealth [may] exercise general personal jurisdiction over" corporations that are "qualifi[ed] as a foreign corporation under the laws of this Commonwealth."^[3]

Pennsylvania's Associations Code requires that a foreign business entity "may not do business in this Commonwealth until it registers with the [Pennsylvania Department of State](#) under this chapter."^[4] The Associations Code does not contain the long-arm statute and makes no mention of the jurisdictional consequences of registration.

Although a 1990 Superior Court decision came to the same conclusion as *Webb-Benjamin*,^[5] recent [U.S. Supreme Court](#) precedents that corporations are subject to general personal jurisdiction only where they are incorporated or have their principal places of business have led observers to conclude that this part of Pennsylvania's long-arm statute may be unconstitutional under due process clause constraints, at least where the case otherwise lacks a connection to Pennsylvania.

The *Webb-Benjamin* court, however, distinguished those cases, finding they did not address whether a company might consent to personal jurisdiction in a forum by registering to do business there.



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Three short months later in *Murray*, the Superior Court, without reference to *Webb-Benjamin*, again came to the same conclusion, finding that a Pennsylvania court could exercise personal jurisdiction over a Delaware company with an Illinois principal place of business in a lawsuit brought by Massachusetts, New York and Florida plaintiffs seeking to recover for injuries suffered in New York.

Although the company argued that it had no corporate officers in Pennsylvania, did not own or lease property in Pennsylvania, did not have bank accounts in Pennsylvania, did not design or manufacture products in Pennsylvania and had only minimal contacts in Pennsylvania, the court sustained jurisdiction over the defendant solely because it had registered to do business in Pennsylvania. The Superior Court subsequently granted the application for reargument in *Murray* and withdrew the decision.

Webb-Benjamin was the first reported Pennsylvania appellate decision on this question since the U.S. Supreme Court addressed the scope of personal jurisdiction over a corporate defendant in [Daimler AG v. Bauman](#).^[6] The *Daimler* court held that a corporate defendant is subject to general personal jurisdiction only in those places where it is “at home,” which, in all but “exceptional” circumstances, means its state of incorporation and principal place of business.

To distinguish *Daimler*, the *Webb-Benjamin* court held that non-Pennsylvania companies subject themselves to personal jurisdiction in Pennsylvania by filing a form with the Pennsylvania Department of State, without which a company may not lawfully conduct business within the commonwealth. The Superior Court found that *Daimler* was no impediment because it made “a clear distinction between jurisdiction by consent, and the method of establishing personal jurisdiction that forms the basis of [*Daimler*’s] analysis and holding.”

Daimler uses the term “consent” (including all its iterations) a single time in a paragraph noting the U.S. Supreme Court’s sparse general personal jurisdiction precedent between 1945 and 2014. The U.S. Supreme Court used the word “consent” while discussing *Perkins v. Benguet Consol. Mining Co.*,^[7] a decision in which the court held that a Philippines mining corporation, which relocated its principal offices to Ohio during World War II, was subject to general personal jurisdiction in Ohio.

That passage does not appear to provide a “clear distinction” between “jurisdiction by consent” and the Supreme Court’s “at home” rule on general jurisdiction, and instead, potentially highlights that *Daimler*’s “at home” rule is nothing new; it is simply a better articulation of principles that have been the law since at least the 1950s. Further, the *Murray* dissent raises the question whether “consent that is coerced as a consequence of registration under a separate statute satisfies” due process.

Indeed, Pennsylvania’s corporate registration statute is not voluntary, because a company “may not do business in the Commonwealth until it registers.”^[8] Other states have a similar statute, and those statutes allow for punishment of companies that fail to register, as required, including monetary fines, denial of access to courts and tolling of statutes of limitation. As a result, as a matter of business practice, many corporations register in all states to avoid noncompliance.

The recent interpretation of the statutory scheme may be seen to present foreign corporations with a Hobson’s choice. If foreign corporations register, they submit to jurisdiction for all purposes; however, if they do not register, they violate the Associations Code unless they avoid

doing business in the commonwealth altogether.[9]

Conclusion

The law may develop further in light of the Superior Court's grant of reargument in Murray. The Webb-Benjamin decision suggests that registering to do business in Pennsylvania currently subjects foreign business entities to personal jurisdiction in Pennsylvania in any matter, regardless of its connection to the commonwealth.

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[1] Webb-Benjamin LLC v. Int'l Rug Group LLC, No. 1514 WDA 2017, 2018 Pa. Super. 187 (June 28, 2018) and Murray v. Am. LaFrance, No. 2105 EDA 2016, 2018 Pa. Super. 267 (Sept. 25, 2018).

[2] Murray v. Am. LaFrance (Bowes, J., dissenting).

[3] 42 Pa. C.S. § 5301(a)(2)(i).

[4] 15 Pa. C.S. § 411(a).

[5] See Simmers v. American Cyanamid Corp., 576 A.2d 376 (Pa. Super. Ct. 1990).

[6] Daimler AG v. Bauman, 571 U.S. 117 (2014).

[7] Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

[8] See 15 Pa. C.S. § 411(a).

[9] See Murray dissent at 23.