

Pa. Jurisdiction Ruling's Takeaways For Out-Of-State Cos.

By **Brian Rubenstein, Gregory Sturges and Kaitlyn Maxwell**

On June 25, an en banc panel of the Pennsylvania Superior Court issued its long-awaited decision in *Murray v. American LaFrance LLC*. But the Superior Court did not reach the merits of the important personal jurisdictional question many anticipated it would address — whether a foreign corporation's registration to do business in Pennsylvania subjects it to personal jurisdiction in Pennsylvania for all matters, regardless of the suit's Pennsylvania connections.

Instead, the court found the plaintiffs had waived the key constitutional question. In the wake of this decision, the only certainty is more litigation.

Following *Murray*, out-of-state corporations sued in Pennsylvania for conduct outside Pennsylvania may continue to challenge personal jurisdiction on the grounds that the legal framework left in place by this en banc decision — the Superior Court's 2018 decision in *Webb-Benjamin LLC v. International Rug Group*^[1] — violates defendants' constitutional rights, as set forth by the U.S. Supreme Court in *Daimler AG v. Bauman*^[2] and its progeny.

The plaintiffs/appellants in *Murray* may seek a discretionary appeal to the Pennsylvania Supreme Court, although it seems unlikely that the Supreme Court would take the case, since the Superior Court did not reach the merits. Consequently, this personal jurisdiction question may return to the Pennsylvania appellate courts in future cases. Indeed, the same issue is currently pending before the Superior Court in *Mallory v. Norfolk Southern Railway*.^[3]

As discussed in our February 2019 **Law360 guest article**, *Webb-Benjamin's* interpretation of the Pennsylvania corporate registration statute presents foreign corporations with a Hobson's choice. By registering to do business in Pennsylvania, a foreign corporation risks submitting to jurisdiction in Pennsylvania for all matters — but by failing to register, that corporation cannot do business in the commonwealth at all without violating Pennsylvania statute.

Background

In Pennsylvania, unlike nearly all other states in the union, a non-Pennsylvania corporation registered to do business in the commonwealth becomes automatically subject to general personal jurisdiction in Pennsylvania for all matters under Title 42 Pennsylvania Consolidated Statutes Section 5301(a)(2)(i). Many observers believe this



Brian Rubenstein



Gregory Sturges



Kaitlyn Maxwell

statute runs afoul of the due process clause in the 14th Amendment to the U.S. Constitution.

A recent line of U.S. Supreme Court precedent, holding that a corporate defendant is subject to general personal jurisdiction only where it is at home — generally, the state where it is incorporated or has its principal place of business — supports this view.[4]

Plaintiffs who invoke the registration statute to subject out-of-state corporations to suit in Pennsylvania typically argue that voluntary registration amounts to jurisdiction by consent. But this consent by registration theory requires a company to choose between registering and agreeing to suit in Pennsylvania for all cases, or not registering and therefore excluding itself from lawfully conducting business in Pennsylvania.

This Catch-22 arguably coerces consent to personal jurisdiction, and does not represent a genuine consent to personal jurisdiction that the law requires. For these reasons, out-of-state defendants sued in Pennsylvania in actions arising elsewhere had successfully challenged the constitutionality of Pennsylvania's corporate registration statute in state and federal courts.

Webb-Benjamin and Murray

In 2018, however, the Superior Court held, in *Webb-Benjamin* and in its companion opinion *Murray*, that Pennsylvania's statutory scheme was constitutional because defendants consented to jurisdiction by dint of registration. Superior Court Judge Mary Bowes dissented from the original *Murray* opinion, finding Pennsylvania's statutory scheme "effectively snare[s] foreign corporations and draw[s] them into the Commonwealth's jurisdiction," thereby providing out-of-state defendants with further support to attack the plaintiffs' novel jurisdictional theory.

In December 2018, the Superior Court granted reargument en banc in *Murray*, vacating the original decision and lightening the step of observers who hoped an en banc panel of the Superior Court would place Pennsylvania in line with the rest of the country. The case garnered intense interest from amici and the legal community.

On Halloween 2019, the parties argued the case to nine Superior Court judges. This June, almost 18 months after reargument was granted, the en banc court finally ruled. In the June 25 opinion authored by Judge Bowes and joined by seven of her colleagues — Judge Carolyn Nichols noted dissent but did not offer an opinion — the court declined to rule substantively on the constitutional question, and instead found that the *Murray* plaintiff had waived the consent-by-registration issue by not raising it before the trial court.

For readers interested in Pennsylvania waiver law, the bottom line is this: If a defendant prevails on a personal jurisdiction challenge in the trial court, the plaintiffs waive any argument not raised in the trial court on the issue. Although this may seem a commonsense proposition to appellate practitioners, a long line of Pennsylvania case law holds that when the trial court disposes of a case on preliminary objections — the Pennsylvania equivalent of a motion to dismiss — a plaintiff does not waive on appeal arguments he did not raise in the trial court.

This rule stems from the Pennsylvania procedural rules, which do not require plaintiffs to respond to preliminary objections in the form of a demurrer, i.e., a defendant's claim that a plaintiff's complaint fails to state a claim. The *Murray* court, however, distinguished that line of case law based on the text of the civil rules, and held that a plaintiff responding to a

defendant's personal jurisdiction challenge in a trial court must raise all arguments he might make on appeal or risk waiver of those he leaves out.

Conclusion

Although the court's ruling explores an interesting wrinkle in Pennsylvania waiver law, it provides litigants with no clarity on the important constitutional question, and leaves Pennsylvania courts to continue to wrestle with the tension between Webb-Benjamin's jurisdictional rule and the U.S. Supreme Court's due process jurisprudence.

Brian Rubenstein is a shareholder, Gregory T. Sturges is of counsel and Kaitlyn R. Maxwell is a shareholder at Greenberg Traurig LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Webb-Benjamin LLC v. Int'l Rug Group, 192 A.3d 1133.

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

[3] Mallory v. Norfolk Southern Railway, 802 EDA 2018.

[4] See, e.g., Daimler, 571 U.S. 117; In re Asbestos Products Liability Litigation (No. VI), 384 F. Supp. 3d 532, 540–41 (E.D. Pa. 2019) ("mandatory statutory regime purporting to confer consent to general jurisdiction in exchange for the ability to legally do business in a state is contrary to the rule in Daimler and, therefore, can no longer stand").