PENNSYLVANIA SUPERIOR COURT DEFERS RESOLUTION OF JURISDICTION-BY-REGISTRATION DEBATE

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U.S. Mass Tort, Appellate Litigation, and Complex Commercial Litigation and Disputes Alert

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On June 25, an *en banc* panel of the Pennsylvania Superior Court (the Court) issued its long-awaited decision in *Murray v. American LaFrance LLC*.[1] At stake was the question of whether, under Pennsylvania's unique statutory framework, companies that register to do business in Pennsylvania are subject to general personal jurisdiction in the Commonwealth.[2] This is an issue that stakeholders have been monitoring closely, but, despite recognizing the importance of the jurisdictional issue and the unsettled questions regarding the constitutionality of Pennsylvania's consent-by-registration statute, the Court sidestepped the issue and affirmed on waiver grounds. Specifically, the Court held that plaintiffs failed to oppose defendant Federal Signal's preliminary objection to jurisdiction in the trial court with the argument that jurisdiction existed as a result of registration and, therefore, the issue was waived on appeal.[3] The result is a reminder both that out of state defendants may still be subject to general personal jurisdiction in the Commonwealth based solely on having registered to business in the state and also that litigants must be diligent in preserving jurisdictional arguments for appeal.

As we have discussed at length in prior alerts,[4] the Court first addressed the issue of consent by registration in *Webb-Benjamin, LLC v. International Rug Group, LLC*, where it held that registration under Pennsylvania's statute constitutes consent to general personal jurisdiction.[5] A separate panel later reached the same conclusion in *Murray* prior to the decision being vacated when the Court ordered an *en banc* rehearing. Importantly, *Webb-Benjamin* remains good law following the Court's decision to affirm *Murray* on waiver grounds. The constitutionality of the statute, however, has been called into question by other courts, most notably in *Sullivan v. A.W. Chesterton, Inc*., where Judge Eduardo Robreno of the Eastern District of Pennsylvania found that Pennsylvania's statutory scheme is inconsistent with due process requirements as it imposes an unconstitutional condition on out-of-state companies.[6] Following *Sullivan*, however, at least one federal court has continued to hold that Pennsylvania's consent-by-registration statute is in fact constitutional.[7]

Consequently, the debate as to whether the unique combination of Pennsylvania's business registration and long-arm statutes amount to valid consent to general personal jurisdiction remains alive and well. Although it is difficult to reconcile such consent with the United States Supreme Court's decision in *Daimler* and its progeny,[8] at least certain courts remain willing to accept that the statutory framework is constitutional and that mere registration to do business in the Commonwealth of Pennsylvania is sufficient for state courts to exercise general personal jurisdiction over claims unrelated to conduct in the state. Although the Court stated that it “regrettably” could not address the “compelling” and “competing” perspectives on the issue in *Murray*, it is likely only a matter of time before the Court will be forced to reconsider the issue given its importance to litigants registered to business in the state.[9]

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Although perhaps a missed opportunity to resolve an important issue for litigation in Pennsylvania, the *Murray* decision is a stark reminder of the risk of waiver on appeal. Indeed, even though legal issues like those at the heart of *Murray* are typically reviewed *de novo*, the Court's decision underscores the importance of making sure all issues are properly preserved for appeal.

FOOTNOTES

[1] *Murray, et al. v. American LaFrance, LLC, et al.,* No. 2105 EDA 2016, 2020 PA Super 149 (Pa. Super. Ct. June 25, 2020).

[2] *Id.* at 5–6.

[3] Plaintiffs instead opposed defendant Federal Signal's objection to jurisdiction on the grounds that it had sufficient contacts with the state to establish general personal jurisdiction, which was rejected by the trial court pursuant to the United States Supreme Court's decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). *Murray*, 2020 PA Super at 6–7.

[4] *See* 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* (Oct. 25, 2019); David R. Fine, Registration to Do Business in Pennsylvania as Implied Consent to General Personal Jurisdiction: An Unsettled Question in Pennsylvania (Feb. 28, 2019); David A. Fusco, et al., *Pennsylvania Superior Court Holds That Registration to Do Business in Pennsylvania Constitutes Consent to Personal Jurisdiction After Daimler* (Aug. 13, 2018).

[5] *Webb-Benjamin LLC v. International Rug Group*, LLC, 192 A.2d 1133, 1139 (Pa. Super. Ct. 2018).

[6] *Sullivan v. A.W. Chesterton*, 384 F. Supp.3d 532, 542 (E.D. Pa. 2019).

[7] *See Murray*, 2020 PA Super at 14, n. 6 (citing *Kraus v. Alcatel-Lucent*, 2020 WL 951082, at *1 (E.D. Pa. Feb. 27, 2020)).

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

[9] *See Murray*, 2020 PA Super at 14, n. 6.

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