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## Waiver Issue Sinks Dispute Over Whether Pa.'s Business Registration Law Establishes Jurisdiction

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An expanded Pennsylvania appeals court has punted on the high-profile issue of whether the state's business registration law is sufficient to establish jurisdiction over out-of-state companies.

A nine-judge panel of the Pennsylvania Superior Court determined Thursday that plaintiffs in the closely watched case *Murray v. American LaFrance* failed to properly raise the novel jurisdictional issue before the trial court.

The ruling affirms the lower court's May 2016 decision, which had tossed the case on preliminary objections because defendant Federal Signal's alleged contacts with Pennsylvania were not sufficient to satisfy due process standards the U.S. Supreme Court laid out in its 2014 decision in *Daimler v. Bauman*.

Thursday's decision, however, goes against a three-judge Superior Court panel's holding from 2018, which had determined that consenting to do business in Pennsylvania was sufficient to establish jurisdiction.

Judge Mary Jane Bowes, who wrote the en banc panel's 15-page opinion, said the court was not taking lightly its decision not to address the merits of the case.

"The argument that plaintiffs assert on appeal implicates an issue that has generated abundant scholarly commentary. Further, Pennsylvania's unique jurisdictional framework sets it apart from other jurisdictions that have confronted the related issue regarding whether corporate registration is tantamount to implied consent," she said in a footnote. "Although the parties and amici curiae all presented compelling arguments about this issue in their briefs to this court, regrettably we simply cannot address those competing perspectives without the benefit of the trial court's vetting of the issue in the first instance."

Judges Jacqueline Shogan, Anne Lazarus, Judith Olson, Victor Stabile, Alice Dubow, Deborah Kunselman and Mary Murray joined the opinion. Judge Carolyn Nichols dissented.

Over the past few years, courts in Pennsylvania have gone back and

forth on the issue, with a Superior Court panel, on a 2-1 vote, ruling that consenting to do business in the state was sufficient to establish jurisdiction, and a federal judge ruling months later that the statutory scheme violates due process in the wake of the *Daimler*.

A final decision on the question could impact a broad swath of cases, from contract suits and asbestos dockets, to products liability cases, including one stemming from the Grenfell Tower fire and another case that could be the first in the state to go to trial over claims that talcum powder caused a woman's ovarian cancer.

The issue, however, is set to come up again soon before the Superior Court, after a Philadelphia judge in June 2018 held in the case *Mallory v. Norfolk Southern Railway* that the Keystone State's business registration law is not enough to establish jurisdiction.

When it came to the recent decision in *Murray*, Bowes determined that the plaintiffs failed to bring up the registration issue until the case was being argued before the Superior Court. Although the

plaintiffs had contended that they did not need to raise the issue at the trial court because they had not been obligated to file any responses to the defendant's preliminary objections, Bowes disagreed with that argument and ultimately determined that failure was fatal to its broader argument about jurisdiction.

David Duffy of Thompson Coburn represented Federal Signal, and plaintiffs counsel Thomas Joyce of Marc J. Bern and Partners argued the waiver issue to the Superior Court. **Attorney Charles "Chip" Becker of Kline & Specter argued the jurisdictional issue to the en banc panel on behalf of the Pennsylvania Association for Justice. Neither Coburn nor Joyce returned a message seeking comment. Becker referred comment to plaintiffs counsel.**