No. 21-___

IN THE

Supreme Court of the United States

ROBERT MALLORY
Petitioner,

v.

NORFOLK SOUTHERN RAILWAY CO.,
Respondent.

On Petition for a Writ of Certiorari to the Pennsylvania Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

"Nearly 80 years removed from *International Shoe*, it seems corporations continue to receive special jurisdictional protections in the name of the Constitution. Less clear is why." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1038 (2021) (Gorsuch J., concurring). This petition seeks resolution of an issue that has divided courts around the country. More than a dozen state supreme courts and every federal court of appeals have weighed in on the question with conflicting results.

An unbroken line of this Court's cases holds that a court may exercise personal jurisdiction with a party's consent. Corporations enforce that precedent to the letter in their contracts of adhesion, requiring flesh and blood consumers to litigate disputes with businesses in often-distant tribunals. *E.g.*, *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). Turnabout should be fair play (and is, incidentally, consistent with substantial justice). Consistent with that rule, states have enacted laws requiring corporations operating within their boundaries to consent to personal jurisdiction when they register to do business in those states. The Pennsylvania Supreme Court found such a statute unconstitutional under this Court's decision in *International Shoe v. Washington*, 326 U.S. 310 (1945), and its progeny. That erroneous result is but the latest decision among dozens that are squarely divided on the question presented:

Whether the Due Process Clause of the Fourteenth Amendment prohibits a state from requiring a corporation to consent to personal jurisdiction to do business in the state.

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The opinion of the Pennsylvania Supreme Court (Pet. App. 1a-58a) is reported at 266 A.3d 542 (Pa. 2021). The order of the Superior Court of Pennsylvania (Pet. App. 59a-63a) is unreported. The order of the Court of Common Pleas of Pennsylvania, First Judicial District, Civil Trial Division of Philadelphia County (Pet. App. 64a-82a) is unreported.

JURISDICTION

The Pennsylvania Supreme Court entered its judgment on December 22, 2021. Jurisdiction in this Court is proper under 28 U.S.C. § 1257(a). *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975); *Shaffer v. Heitner*, 433 U.S. 186, 195 n.12 (1977). Because 28 U.S.C. § 2403(b) may apply to this case, this petition has been served on the Attorney General of Pennsylvania.

CONSTITUTIONAL PROVISIONS

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .

U.S. Const. amend. XIV, § 1, cl. 2. The relevant provisions of Pennsylvania's corporate registration statute, 42 Pa.C.S. §§ 411, 5301(a)(2), are set out in the appendix (Pet. App. 94a-97a).

INTRODUCTION

American courts have held since the Founding that a defendant may freely consent to a court's personal jurisdiction. The Pennsylvania Supreme Court's contrary ruling ignores that history on the ground that this Court's decision in *International Shoe v. Washington*, 326 U.S. 310 (1945), silently upended that unbroken line of cases. This despite the fact that *International Shoe* and every subsequent case that followed it expressly limited the scope of its analysis to cases in which "*no consent* to be sued or authorization to an agent to accept service of process has been given." 326 U.S. at 317 (emphasis added).

The Pennsylvania Supreme Court conflated a defendant's consent and its contacts with a state—two *distinct* grounds for personal jurisdiction. That erroneous judgment deepened a broad and entrenched split among both state and federal courts on this fundamental and recurring question of federal constitutional law. Over a dozen state supreme courts have addressed the question, as has every federal court of appeals. The results span a full spectrum, from finding statutes like Pennsylvania's to be constitutional, to holding them unconstitutional, to contorting their plain and ordinary meaning to avoid reaching the constitutional question. This Court should restore uniformity over this important federal question.

Corporate defendants agree. In a pending petition involving Georgia law, the corporate petitioner implored this Court to weigh in because "[t]his Court's resolution of the question presented is urgently necessary." Petition, at 3, *Cooper Tire & Rubber Co., v. Tyrance McCall,* No. 21-926 (U.S. Dec 20, 2021).

Numerous pro-business groups echoed that sentiment. *See Brief of Atlantic Legal Foundation* as Amici Curiae Supporting Petitioner; *Brief of Washington Legal Foundation* as Amici Curiae Supporting Petitioner; *Brief of the Chamber of Commerce of the United States of America and Product Liability Advisory Council, Inc.* as Amici Curiae in Support of Petitioner, No. 21-926 (U.S. Dec 20, 2021).

But *Cooper Tire* suffers from serious problems that render it an inferior vehicle to address the question presented. The Georgia statute at issue in that case "does not expressly notify out-of-state corporations that obtaining authorization to transact business . . . subjects them to general jurisdiction in our courts." *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422, 434 (2021) (citation omitted.). The ambiguity in the Georgia statute calls into question whether Cooper Tire's consent was knowing, and it could require this Court to review the Georgia court's interpretation of the state statute. And the Georgia Supreme Court expressly invited the state legislature to amend Georgia's registration statute to remedy its flaws. By contrast, the Pennsylvania registration statute clearly required Norfolk Southern's consent to personal jurisdiction in order to do business in the state.

This Court should therefore grant the petition in this case.

STATEMENT OF THE CASE

1. Norfolk Southern Railway Company is one of the nation's largest and most successful railroads. It "has extensive operations in Pennsylvania, including owning 2,278 miles of track and operating eleven rail yards and three locomotive repair shops." Pet. App. 32a. Robert Mallory, a citizen of Virginia, worked for

Norfolk Southern for almost 20 years in Ohio and Virginia. *Id.* While he worked for Norfolk Southern, its negligent and reckless conduct exposed him to asbestos and other toxic chemicals that caused him to develop colon cancer. *Id.*

2. Norfolk Southern, whose principal place of business is in Virginia, has registered to do business in Pennsylvania as a foreign corporation. Pet. App. 30a. Section 411(a) of Pennsylvania's corporate registration statute provides that a foreign corporation "may not do business in this Commonwealth until it registers with the department under this chapter." 15 Pa. Stat. § 411(a). Section 411(b) further provides that a foreign corporation "doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business." *Id.* § 411(b).

Section 5301(a) then provides:

> "(a) General Rule. The existence of any of the following relationships between a person and this Commonwealth *shall constitute a sufficient basis of jurisdiction* to enable the tribunals of this Commonwealth *to exercise general personal jurisdiction* over such person. . . .
>
> . . .
>
> (2)(i) Corporations [that are] *qualifi[ed] as a foreign corporation* under the laws of this Commonwealth.

42 Pa. Stat. § 5301(a) (emphases added).

By the plain text of the statute, Norfolk Southern's registration constituted consent to general personal jurisdiction in Pennsylvania's courts. No party or

Pennsylvania court has disagreed with that statutory interpretation.

3. Mallory sued Norfolk Southern in the Philadelphia County Court of Common Pleas for negligently and recklessly exposing him to the deadly carcinogens that caused his cancer. Pet. App. 60a. Norfolk Southern moved to dismiss for lack of personal jurisdiction. *Id.* The trial court granted the motion. *Id.*

The trial court properly recognized that "for Pennsylvania courts to acquire general personal jurisdiction over foreign corporations under the current state of the law, the foreign corporation must be incorporated in Pennsylvania, have its principal place of business in Pennsylvania, *or have consented to the exercise of jurisdiction*." Pet. App. 69a (citing *Daimler*, 134 S.Ct. at 755) (emphasis added). But it rejected Mallory's argument that Norfolk Southern "consented to general jurisdiction when [it] voluntarily register[ed] to do business in this Commonwealth, pursuant to § 5301." *Id.* at 62. In the trial court's view, Norfolk Southern's "consent to jurisdiction was not voluntary" because "a foreign corporation has two choices: 1) doing business in Pennsylvania while concomitantly consenting to general personal jurisdiction, or 2) not doing business in Pennsylvania." *Id.*

3. The Pennsylvania Supreme Court affirmed.[1] Like the trial court, it recognized that "consent to jurisdiction by waiving one's due process rights is an independent basis for jurisdiction, assuming that the consent is given voluntarily." Pet. App. 6a (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)). It further recognized that none of this Court's cases following *International Shoe* "involve[d] the exercise of general jurisdiction based upon grounds of consent, as manifested by the foreign corporation's registration to do business in the forum State." *Id.* And it "acknowledge[ed] that," since *International Shoe*, "the [Supreme] Court has not addressed the question of whether it violates due process when a state conditions the privilege of doing business in the forum State upon the foreign corporation's submission to general jurisdiction." *Id.*

The Pennsylvania Supreme Court nonetheless affirmed the trial court's dismissal, "declin[ing] to follow *Pennoyer*-era [Supreme] Court decisions that resolve questions of general jurisdiction because they do not hold significant precedential weight in federal jurisprudence on the issue." Pet. App. 49a. By disregarding Norfolk Southern's consent to personal jurisdiction, it flouted numerous of this Court's cases going back over a century that held that a corporation's consent to jurisdiction through a registration statute is constitutionally valid. Pet. App.

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[1] The Superior Court of Pennsylvania transferred the appeal to the Pennsylvania Supreme Court. Pet. App. 62a ("The present appeal is from a final order declaring the consent provision of Pennsylvania's general jurisdiction statute, Section 5301(a)(2)(ii), unconstitutional under the Fourteenth Amendment. The plain language of Section 722(7) mandates that the Supreme Court decide this appeal, not the Superior Court.").

19a (citing *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 95-96 (1917) (holding that an Arizona corporation consented to jurisdiction in Missouri when it complied with Missouri's foreign corporation law by appointing an agent to accept service of process as statutorily required); *Ex parte Schollenberger*, 96 U.S. 369, 376-77 (1877) (holding that a Pennsylvania federal court had personal jurisdiction over a foreign insurance corporation because a Pennsylvania law required the corporation to appoint an agent to receive process in the Commonwealth as a condition of doing business in the state)).

The court viewed these cases, never overruled by this Court, as "relics of the *Pennoyer* era during which courts were prohibited from exercising personal jurisdiction over persons or corporations outside the geographic boundary of the courts." Pet. App. 20a. It reached that conclusion even though every case on which it relied addressed only jurisdiction based on a defendant's contacts with the state and none called into question the validity of jurisdiction based on consent. Citing the most recent in the *International Shoe* line of cases, the Pennsylvania Supreme Court claimed that *Daimler AG v. Bauman*, 571 U.S. 117, 129 (2014) imposed a categorical rule that "a court cannot subject a foreign corporation to general all-purpose jurisdiction based exclusively on the fact that it conducts business in the forum state." Pet. App. 46a.

Casting aside this Court's cases to the contrary, the Pennsylvania Supreme Court then concluded that "a foreign corporation's registration to do business in the Commonwealth does not constitute *voluntary* consent to general jurisdiction but, rather, compelled submission to general jurisdiction by legislative

command." Pet. App. 53a (emphasis added). It accordingly "h[e]ld that [Pennsylvania's] statutory scheme is unconstitutional to the extent that it confers upon Pennsylvania courts general jurisdiction over foreign corporations that are not 'at home' in Pennsylvania." *Id.* at 43a.

This petition followed.

REASONS FOR GRANTING THE WRIT

I. State and Federal Courts are Deeply Divided on the Question Presented.

A. The Conflict Among State Supreme Courts is Entrenched and Intractable.

The Pennsylvania Supreme Court held that Pennsylvania's "statutory scheme fails to comport with the guarantees of the Fourteenth Amendment; thus, it clearly, palpably, and plainly violates the Constitution." Pet. App. 42a. All parties acknowledge that the Pennsylvania statute as written confers jurisdiction. The statute provides that "qualification as a foreign corporation under the laws of this Commonwealth" constitutes a sufficient basis to enable Pennsylvania courts to exercise general personal jurisdiction over the foreign corporation. *Id.* (quoting 42 Pa.C.S. § 5301(a)(2)(i)). But the Pennsylvania Supreme Court refused to apply the statute on federal constitutional grounds, concluding that "[t]he Legislature's grant of such broad jurisdictional authority is incompatible with the Fourteenth Amendment." *Id.*

That holding directly conflicts with the holding of the Georgia Supreme Court just three months earlier. In *Cooper Tire & Rubber Co. v. McCall,* 312 Ga. 422 (2021), Georgia's highest court upheld the

constitutionality of the state's registration statute. In contrast with Pennsylvania law, the Georgia Supreme Court conceded that its statute "does not expressly notify out-of-state corporations that obtaining authorization to transact business in this State and maintaining a registered office or registered agent in this State subjects them to general jurisdiction in our courts." *Id.* at 434. But the court nonetheless found personal jurisdiction proper because prior Georgia Supreme Court precedent had interpreted the statute more expansively than its text. The Court therefore held that, "because Cooper Tire is registered and authorized to do business in Georgia, Cooper Tire is currently subject to the general jurisdiction of our courts." *Id.* At 437. In direct conflict with the Pennsylvania Supreme Court, the Georgia Supreme Court concluded "that corporate registration in Georgia is consent to general jurisdiction in Georgia [and] does not violate federal due process under *Pennsylvania Fire*." *Id.*

The recent decisions of the Pennsylvania and Georgia Supreme Courts have further cemented a well-entrenched split on constitutional due process limits on personal jurisdiction by consent. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1037 n.3 (2021) (Gorsuch, J., concurring in the judgment) ("Some courts read *International Shoe* and the cases that follow as effectively foreclosing [the consent-by-registration basis of jurisdiction], while others insist it remains viable."); *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 52 (Mo. 2017) (recognizing "a split of authority as to whether a registration statute constitutionally can require consent to general jurisdiction in order to register to do business in a state").

Several additional state supreme courts have rejected the position adopted by the Pennsylvania Supreme Court and, like the Georgia Supreme Court, held that the Due Process Clause allows the exercise of personal jurisdiction based on consent by registration:

Kansas. Merriman v. Crompton Corp., 146 P.3d 162, 177 (Kan. 2006) ("We hold that the Due Process Clause is not violated when jurisdiction over a foreign corporation is based upon the corporation's express written consent to jurisdiction under" the Kansas registration statute).

Minnesota. Rykoff-Sexton, Inc. v. Am. Appraisal Assocs., Inc., 469 N.W.2d 88, 91 (Minn. 1991) ("[W]e find no constitutional defect in the assertion of jurisdiction based on consent to service of process.").

By contrast, the highest courts in three other states have held that the exercise of personal jurisdiction based on consent by registration violates the Due Process Clause:

Nebraska. Lanham v. BNSF Ry. Co., 939 N.W.2d 363, 371 (Neb. 2020) ("registration to do business in Nebraska as implied consent to personal jurisdiction would exceed the due process limits prescribed" in the Supreme Court's cases).

Alabama. Facebook, Inc. v. K.G.S., 294 So. 3d 122, 133 (Ala. 2019) (rejecting argument that "Facebook is subject to general jurisdiction in Alabama because it is registered to do business in Alabama" because "any precedent that supported the notion that the exercise of general jurisdiction could be based on a simple assertion that an out-of-state corporation does business in the forum state has become obsolete").

Montana. *DeLeon v. BNSF Ry. Co.*, 426 P.3d 1, 8 (Mont. 2018) ("[E]xtending general personal jurisdiction over all foreign corporations that registered to do business in Montana and subsequently conducted in-state business activities would extend our exercise of general personal jurisdiction beyond the narrow limits recently articulated by the Supreme Court.").

And the high courts of six additional states have taken a third approach, using the canon of constitutional avoidance to construe state law narrowly. These decisions strip state courts of jurisdiction under the guise of state law, but through analyses that turn on an important and deeply divided question of federal constitutional law:

Wisconsin. *Segregated Acct. of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 898 N.W.2d 70, 83 (Wis. 2017) (relying on constitutional avoidance to hold that "outmoded jurisdictional approaches [] should not be fused with modern statutes, particularly when such concepts are irreconcilable with the due process rights of corporate defendants" and "[a]bsent express statutory language asserting general jurisdiction over a foreign corporation based on its appointment of an agent for service of process, we will not depart from the plain meaning of [the registration statute], which serves merely as a registration statute, not a conferral of consent to general jurisdiction").

Oregon. *Figueroa v. BNSF Ry. Co.*, 390 P.3d 1019, 1022 (Or. 2017) (relying on "due process limitations on exercising personal jurisdiction over foreign corporations" as basis for interpretation of

registration statute as not deeming registration to be consent to general personal jurisdiction).

New Mexico. Chavez v. Bridgestone Ams. Tire Operations, LLC, __ P.3d __, 2021 WL 5294978, at *13 (N.M. Nov. 15, 2021) ("Considering the constitutional constraints involved, we conclude that it would be particularly inappropriate to infer a foreign corporation's consent to general personal jurisdiction in the absence of clear statutory language expressing a requirement of this consent.").

Delaware. Genuine Parts Co. v. Cepec, 137 A.3d 123, 138 (Del. 2016) (rejecting "the principle that a state could exercise general jurisdiction over a foreign corporation that complied with a state registration statute without a separate minimum-contacts analysis under the Due Process Clause" in interpreting registration statute "narrowly").

California. Bristol-Myers Squibb Co. v. Superior Court, 377 P.3d 874, 884 (Cal. 2016) ("[A] corporation's appointment of an agent for service of process, when required by state law, cannot compel its surrender to general jurisdiction."), *rev'd on other grounds*, 137 S. Ct. 1773 (2017).

Ohio. Wainscott v. St. Louis-San Francisco Ry. Co., 351 N.E.2d 466, 468 (Ohio 1976) (compliance with state's registration statute "does not eliminate or abolish the due-process requirement that the necessary minimum contacts exist in order for Ohio courts to acquire in personam jurisdiction").

* * *

This conflict among state supreme courts is intractable. It will not be resolved without this Court's intervention. The Court should grant the petition to ensure the uniform interpretation of the federal Constitution in state courts around the country.

B. The Federal Courts of Appeals are Fractured on the Question Presented, Yielding a 6-5-2 Split.

Every federal court of appeals has considered the constitutionality of a statute requiring corporations to consent to personal jurisdiction in order to do business. The courts are sharply divided. Six circuits have found that such requirements comport with due process. Five circuits have held that corporate registration statutes violate due process. And two circuits have issued oblique rulings, narrowing the statutes to avoid the constitutional question.

The Third, Eighth, Ninth, Tenth, D.C., and Federal Circuits have all concluded that registration statutes requiring a corporation's consent to personal jurisdiction as a condition of doing business are constitutional. *See Bane v. Netlink, Inc.*, 925 F.2d 637 (3d Cir. 1991); *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196 (8th Cir. 1990); *King v. Am. Fam. Mut. Ins. Co.*, 632 F.3d 570 (9th Cir. 2011); *Budde v. Kentron Hawaii, Ltd.*, 565 F.2d 1145 (10th Cir. 1977); *In re Sealed Case*, 932 F.3d 915 (D.C. Cir. 2019); *Acorda Therapeutics Inc. v. Mylan Pharms. Inc.*, 817 F.3d 755 (Fed. Cir. 2016).

By contrast, the First, Fourth, Fifth, Sixth, and Eleventh Circuits have held that such statutes violate the Due Process Clause. *See Cossaboon v. Maine Med. Ctr.*, 600 F.3d 25 (1st Cir. 2010); *Ratliff v. Cooper*

Laboratories, Inc., 444 F.2d 745 (4th Cir. 1971); *Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179 (5th Cir. 1992); *Pittock v. Otis Elevator Co.*, 8 F.3d 325 (6th Cir. 1993); *Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286 (11th Cir. 2000).

And the Second and Seventh Circuits interpreted the relevant state statutes not to require consent to jurisdiction in order to avoid perceived constitutional concerns. *See Brown v. Lockheed-Martin Corp.*, 814 F.3d 619 (2d Cir. 2016); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239 (7th Cir. 1990).

First Circuit. In *Cossaboon v. Maine Med. Ctr.*, 600 F.3d 25 (1st Cir. 2010), the defendant hospital was "a not-for-profit corporation organized in the state of Maine with its principal place of business in Portland, Maine" but was also "registered to do business in New Hampshire as a foreign not-for-profit corporation." *Id.* at 29–30. In rejecting New Hampshire's personal jurisdiction over the hospital in a medical malpractice suit, the court explained that "[c]orporate registration in New Hampshire adds some weight to the jurisdictional analysis, but it is not alone sufficient to confer general jurisdiction." *Id.* at 37.

Second Circuit. In *Brown v. Lockheed-Martin Corp.*, 814 F.3d 619 (2d Cir. 2016), the Second Circuit relied on constitutional avoidance to conclude that Connecticut's registration statute did not constitute consent to general personal jurisdiction because to hold otherwise would mean that "every corporation would be subject to general jurisdiction in every state in which it registered, and *Daimler*'s ruling would be robbed of meaning by a back-door thief." *Id.* at 640. But the Second Circuit has also explained in *Spiegel v. Schulmann*, 604 F.3d 72 (2d Cir. 2010), that "the

company registering to do business in New York State . . . would have been sufficient to establish personal jurisdiction," but the issue had not been preserved for appeal. *Id.* at 77 n.1 (citing *Augsbury Corp. v. Petrokey Corp.*, 97 A.D.2d 173, 175–76 (N.Y. App. Div.3d Dep't 1983)).

Third Circuit. In *Bane v. Netlink, Inc.*, 925 F.2d 637 (3d Cir. 1991), the Third Circuit upheld the Pennsylvania registration statute at issue in this case. The court noted that the defendant's "application for a certificate of authority can be viewed as its consent to be sued in Pennsylvania under [the statute], which explicitly lists 'consent' as a basis for assertion of jurisdiction over corporations." *Id.* at 641. It then rejected the defendant's due process challenge, explaining that "[c]onsent is a traditional basis for assertion of jurisdiction long upheld as constitutional." *Id.* (citing *Hess v. Pawloski*, 274 U.S. 352, 356–57 (1927)).

Fourth Circuit. In *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745 (4th Cir. 1971), the Fourth Circuit rejected the claim that complying with a registration statute constitutes consent to personal jurisdiction consistent with due process. It gave "no special weight" to an "application to do business and the appointment of an agent for service to fulfill a state law requirement." *Id.* at 748. In its view, "[t]he principles of due process require a firmer foundation than mere compliance with state domestication statutes." *Id.*

Fifth Circuit. In *Wenche Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179 (5th Cir. 1992), the Fifth Circuit also rejected that argument. Relying on the Fourth Circuit's reasoning in *Ratliff*, it noted that

although "being qualified to do business, may on its face appear to be significant, it 'is of no special weight' in evaluating general personal jurisdiction." *Id.* at 181 (quoting *Ratliff*, 444 F.2d at 748). It accordingly "found no[] support[] [for] the proposition that the appointment of an agent for process and the registration to do business within the state, without more, suffices to satisfy the criteria for the exercise of general jurisdiction." *Id. at 182.*

Sixth Circuit. In *Pittock v. Otis Elevator Co.*, 8 F.3d 325 (6th Cir. 1993), the Sixth Circuit held that "the mere designation of an agent in compliance with the service-of-process statute does not automatically eliminate the requirement of minimum contacts to establish personal jurisdiction," and "[c]onsequently, the [plaintiffs] cannot assert personal jurisdiction over [the defendant] based on consent." *Id.* at 329.

Seventh Circuit. In *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239 (7th Cir. 1990), the Seventh Circuit rejected the plaintiffs' "argu[ment] that the Indiana registration act . . . is sufficient to support general jurisdiction." *Id.* at 1245. It recognized that "[r]egistering to do business is a necessary precursor to engaging in business activities in the forum state." *Id.* But the court held that the registration statute "cannot satisfy . . . standing alone . . . the demands of due process" because "[s]uch an interpretation of the Indiana registration statute would render it constitutionally suspect and, accordingly, [the court] decline[d] to give it such a reading." *Id.* (ellipses in original).

Eighth Circuit. In *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196 (8th Cir. 1990), the Eighth Circuit recognized that "[c]onsent is [a] traditional basis of

[personal] jurisdiction, existing independently of long-arm statutes." *Id.* at 1199. Recognizing that "[t]he whole purpose of requiring designation of an agent for service is to make a nonresident suable in the local courts," it concluded that "[o]ne of the most solidly established ways of giving such consent is to designate an agent for service of process within the State." *Id.* For that reason, it "h[e]ld, in short, that the United States District Court for the District of Minnesota did, by virtue of consent, have jurisdiction over" the defendant.

Ninth Circuit. In *King v. Am. Fam. Mut. Ins. Co.*, 632 F.3d 570 (9th Cir. 2011), the court recognized "that federal courts must, subject to federal constitutional restraints, look to state statutes and case law in order to determine whether a foreign corporation is subject to personal jurisdiction in a given case because the corporation has appointed an agent for service of process." *Id.* at 576. In reaching that conclusion, it relied on *Pennsylvania Fire* for the proposition that "the appointment of an agent for service of process will subject a foreign insurer to general personal jurisdiction in the forum *if* the governing state statute so provides" and noted that "[l]ater Supreme Court cases reinforce this rule." *Id.* at 574. But it found that "[t]he Montana law regarding appointment of an agent for service of process does not, standing alone, subject foreign corporations to jurisdiction in Montana for acts performed outside of Montana, at least when the corporations transact no business in the state." *Id.* at 578.

Tenth Circuit. In *Budde v. Kentron Hawaii, Ltd.*, 565 F.2d 1145 (10th Cir. 1977), the Tenth Circuit "[c]onclude[d] that Colorado state courts . . . have jurisdiction over a foreign corporation qualified to do

business in the state where personal service on the foreign corporation is effected within the state, regardless of the fact that the cause of action does not arise out of the foreign corporation's business activity within the state and to the contrary arises out of a transaction occurring in another state." *Id.* at 1149. As a precondition of reaching that holding, it noted that "the Supreme Court stated that federal due process did not prohibit [a state] from opening its courts to the proceeding against the foreign corporation" on the basis of serving its agent in the state. *Id.* at 1147.

Eleventh Circuit. In *Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, (11th Cir. 2000), the Eleventh Circuit rejected the argument that it had personal jurisdiction over a foreign defendant "because it appointed an agent for service of process in connection with the offerings of bonds and debentures. The casual presence of a corporate agent in the forum is not enough to subject the corporation to suit where the cause of action is unrelated to the agent's activities." *Id.* at 1293 (citing *International Shoe*, 326 U.S. at 317). *See also Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1322 n.5 (11th Cir. 2018) (conclusion that Florida law does not treat registration as consent to general jurisdiction "is reinforced by our concerns that an overly broad interpretation . . . might be inconsistent with the Supreme Court's decision in *Daimler*, which cautioned against 'exorbitant exercises' of general jurisdiction").

D.C. Circuit. In a closely related context, the D.C. Circuit held that a federal registration statute that confers jurisdiction by consent is consistent with due process. Congress requires any "foreign bank" to acquire "prior approval of the" Federal Reserve before it "may establish a branch or an agency" in the United

States. 12 U.S.C. § 3105(d)(1). The Federal Reserve may "impose such conditions on its approval" of a foreign bank's application "as it deems necessary." *Id.* § 3105(d)(5). Two foreign banks "executed agreements with the Federal Reserve to assure compliance with relevant provisions of American law. As part of that deal, they 'consent[ed] to the jurisdiction of the federal courts of the United States . . . for purposes of any and all . . . proceedings initiated by . . . the United States . . . in any matter arising under U.S. Banking Law.'" *In re Sealed Case*, 932 F.3d 915, 922–23 (D.C. Cir. 2019). The court rejected the banks' due process challenge to "personal jurisdiction given that the banks' consent agreements supply the basis for jurisdiction." *Id.* at 924. The source of authority for those consent agreements, "imposed" by the Federal Reserve "as a condition of its approval" of the banks doing business in the United States, was the federal registration statute.

Federal Circuit. In *Acorda Therapeutics Inc. v. Mylan Pharms. Inc.*, 817 F.3d 755 (Fed. Cir. 2016), the majority opinion found the court had personal jurisdiction over the defendant without expressly addressing the relevance of a state registration statute. The concurrence did so: "*Daimler* did not overrule the line of Supreme Court authority establishing that a corporation may consent to jurisdiction over its person by choosing to comply with a state's registration statute." *Id.* at 767 (O'Malley, J., concurring).

* * *

Neither *International Shoe* nor any of this Court's cases since even purports to address the question presented: whether a state registration statute that requires corporations to consent to state court jurisdiction comports with the Due Process Clause. Further percolation on a question every federal court of appeals and over a dozen state supreme courts have already addressed will do nothing to resolve the competing interpretations of the Constitution. And permitting the split in authority to persist will mean that the very same corporate conduct will or will not support personal jurisdiction depending on which line of conflicting authority controls. Only this Court's intervention can resolve the deep conflict.

C. State and Federal Courts Disagree on the Constitutionality of Pennsylvania's Registration Statute.

This Court's review is necessary to ensure consistency between state and federal courts within the same jurisdiction. The Pennsylvania Supreme Court held that the Commonwealth's statute *violates* due process. Pet. App. 3a. In *Bane v. Netlink, Inc.*, 925 F.2d 637 (3d Cir. 1991), the Third Circuit held that the Pennsylvania statute is *consistent* with due process. And in the past few years, district courts within the Third Circuit have themselves issued conflicting decisions, unsure whether this Court's holding in *Daimler* has abrogated the Third Circuit's decision in *Bane*. *Compare, e.g.*, *Kraus v. Alcatel-Lucent*, 441 F. Supp. 3d 68, 73–74 (E.D. Pa. 2020) (holding Pennsylvania statute constitutional), *and Bors v. Johnson & Johnson*, 208 F.Supp.3d 648, 651-54 (E.D. Pa. 2016) (same) *with In re Asbestos Prod. Liab. Litig.*

(No. VI), 384 F. Supp. 3d 532, 543 (E.D. Pa. 2019) ("The Pa. Statutory Scheme impermissibly re-opens the door to nation-wide general jurisdiction that *Daimler* firmly closed [and thus] violates the Due Process Clause and is unconstitutional.").

Federal courts do *not* defer to a state supreme court on a question of federal constitutional law. Litigants filing virtually identical actions in state and federal court *in Pennsylvania* against a foreign corporation such as Norfolk Southern could thus receive conflicting judgments depending on which sovereign's court adjudicates the dispute. A plaintiff suing a defendant that is a citizen of another state would be able to file in federal court based on diversity jurisdiction to take advantage of the Third Circuit's ruling that Pennsylvania's registration statute is constitutional. But a plaintiff suing a citizen of his own state in the Commonwealth's court would be bound by the Pennsylvania Supreme Court's contrary and incorrect holding. Pennsylvania's litigants deserve uniformity and should not face dismissal *vel non* depending on the citizenship of the parties.

II. The Decision Below is Incorrect on a Recurring Issue of Immense Constitutional Importance.

The Pennsylvania Supreme Court's decision rests on the manufactured proposition that the Due Process Clause prohibits a state court from exercising personal jurisdiction over a defendant that has consented to that jurisdiction. That holding flouts a long and unbroken line of this Court's cases. And it violates the original public meaning of the Constitution. This Court should grant review to correct a grave misunderstanding of the Constitution.

A. This Court's Cases Have Consistently Recognized the Validity of a Corporation's Consent to Jurisdiction Through a Registration Statute.

For over a century, this Court's cases have consistently recognized that a state may require a corporation to consent to its court's personal jurisdiction as a condition of doing business in the state. *See Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 95-96 (1917) (holding that an Arizona corporation consented to jurisdiction in Missouri when it complied with Missouri's foreign corporation law by appointing an agent to accept service of process as required by statute). *See also, e.g., Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 175 (1939) ("A statute calling for such a designation is constitutional, and the designation of the agent 'a voluntary act.'"). Nor has this Court ever overruled those cases recognizing the validity of jurisdiction by a corporation's consent through a registration statute, as even the Pennsylvania Supreme Court acknowledged below. Pet. App. 35a (since *International Shoe*, "the [Supreme] Court has not addressed the question of whether it violates due process when a state conditions the privilege of doing business in the forum State upon the foreign corporation's submission to general jurisdiction").

Those cases comport with the fundamental principle of American law that a defendant may consent to a court's exercise of personal jurisdiction over it. *See, e.g., Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n. 14 (1985) ("[B]ecause the personal jurisdiction requirement is a waivable right, there are a 'variety of legal arrangements' by which a litigant

may give 'express or implied consent to the personal jurisdiction of the court.'" (quoting *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982))); *Chicago Life Ins. Co. v. Cherry*, 244 U.S. 25, 29–30 (1917) ("[W]hat acts of the defendant shall be deemed a submission to [a court's] power is a matter upon which States may differ.").

The Pennsylvania Supreme Court made a simple mistake: it improperly imported principles of personal jurisdiction based on a *non*-consenting defendant's contacts with a forum state into the analysis of personal jurisdiction over a *consenting* defendant. Consent is as an *alternative* jurisdictional ground to contacts with the state. Indeed, a defendant need not have any contacts with the forum state at all for its consent to ground the court's jurisdiction. *See Nat'l Equip. Rental, Ltd. v. Szukhent,* 375 U.S. 311, 315–16 (1964) ("[I]t is settled . . . that parties to a contract may agree in advance to submit to the jurisdiction of a given court.").

The Pennsylvania Supreme Court thus fundamentally erred in construing *International Shoe* and its progeny, including *Daimler* and *Goodyear*, as altering that settled precedent. The Court in *International Shoe* was clear to limit its analysis to cases where "*no consent* to be sued or authorization to an agent to accept service of process has been given." 326 U.S. at 317 (emphasis added). The Court was similarly clear in *Daimler* and *Goodyear*. *See Daimler AG v. Bauman*, 571 U.S. 117, 129 (2014) (addressing the limits of "general jurisdiction appropriately exercised over a foreign corporation *that has not consented* to suit in the forum." (emphasis added)); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927–28 (2011) ("Our 1952 decision in *Perkins*

v. Benguet Consol. Mining Co. remains '[t]he textbook case of general jurisdiction appropriately exercised over a foreign corporation *that has not consented* to suit in the forum.'" (emphasis added)).

As Justice Scalia explained: "Nothing in *International Shoe* or the cases that have followed it" supports the notion "that a defendant's presence in the forum is . . . no longer sufficient to establish jurisdiction. That proposition is unfaithful to both elementary logic and the foundations of our due process jurisprudence. The distinction between what is needed to support *novel* procedures and what is needed to sustain *traditional* ones is fundamental." *Burnham v. Superior Ct. of California, Cty. of Marin*, 495 U.S. 604, 619 (1990) (plurality opinion) (emphases added). Just as *International Shoe* left undisturbed the validity of a court's jurisdiction over an individual physically present in the state, a corporation's consent to jurisdiction through a registration statute remains a "traditional" and valid basis of jurisdiction.

The Pennsylvania Supreme Court compounded its error by adopting an implausible *per se* rule that no corporation's consent could be voluntary under a registration statute. Pet. App. 53a ("[W]e hold that a foreign corporation's registration to do business in the Commonwealth does not constitute voluntary consent to general jurisdiction but, rather, compelled submission to general jurisdiction by legislative command."). That notion makes neither legal nor economic sense. Legally, the registration statute imposes a modest and sensible penalty for its violation: a corporation "doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business." 42 Pa. Stat. § 411(b). If it

does not consent to be sued, it may not sue in the Commonwealth's courts. That targeted sanction is hardly coercive. Economically, Norfolk Southern is a $64 billion corporation that wields immense commercial power. Even if equitable access to Pennsylvania's courts as both a plaintiff and a defendant was somehow a bargain it could not bear, Norfolk Southern can withstand the economic loss of the Pennsylvania market. That, too, is hardly coercive.

The Pennsylvania Supreme Court's errors are especially egregious in light of this Court's strident command that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower court] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 484 (1989). *See also Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("The Court neither acknowledges nor holds that other courts should *ever* conclude that its more recent cases have, by implication, overruled an earlier precedent.") (emphasis added).

This Court should grant the petition, reaffirm longstanding precedent, and reject the notion that corporations cannot consent to jurisdiction in the courts of a state in which it seeks to do business by registering to do so.

B. The Pennsylvania Supreme Court's Rejection of this Court's Longstanding Rule is Inconsistent with the Original Public Meaning of the Due Process Clause.

The longstanding precedent recognizing the validity of registration statutes comports with the original public meaning of the Due Process Clause. Since at least the middle of the 19th century, this Court has upheld state statutes that require corporations to consent to jurisdiction as a condition of doing business in the state. *See St. Clair v. Cox*, 106 U.S. 350, 356 (1882) ("The state may . . . impose as a condition upon which a foreign corporation shall be permitted to do business within her limits, that it shall stipulate that in any litigation arising out of its transactions in the state, it will accept as sufficient the service of process on its agents or persons specially designated."); *Ex parte Schollenberger*, 96 U.S. 369, 376 (1877) (foreign corporation "ha[s] in express terms, in consideration of a grant of the privilege of doing business within the State, agreed that they may be sued there. . . . This was a condition imposed by the State upon the privilege granted, and it was not unreasonable." (citing *Lafayette Ins. Co. v. French*, 59 U.S. (18 How.) 404, 407 (1855)). Those "contemporaneous or near-contemporaneous decisions" demonstrate that "one must conclude that . . . American courts at the crucial time[,] 1868, when the Fourteenth Amendment was adopted" upheld the validity of requiring corporations to consent to jurisdiction in order to do business in the state. *Burnham*, 495 U.S. at 612.

That original public meaning of the Due Process Clause charts a sound path forward: "Perhaps it was, is, and in the end always will be about trying to assess

fairly a corporate defendant's presence or *consent*. *International Shoe* may have sought to move past those questions. But maybe all we have done since is struggle for new words to express the old ideas." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1039 (2021) (Gorsuch, J., joined by Thomas, J., concurring in the judgment)) (emphasis added). *See also id.* at 1032 (Alito, J., concurring in the judgment) ("[F]or the reasons outlined in Justice Gorsuch's thoughtful opinion, there are grounds for questioning the standard that the Court adopted in *International Shoe*.").

This case presents an opportunity to "help [this Court] face these tangles and sort out a responsible way to address the challenges posed by our changing economy in light of the Constitution's text and the lessons of history." *Id.* at 1039 (Gorsuch, J., concurring). The Constitution has always permitted personal jurisdiction based on a defendant's consent, and this Court never said otherwise in *International Shoe* or any case since. The Court should not allow the proliferation of a rule overturning that original meaning of the Constitution. And to the extent any of those cases conflict with the original public meaning of the Due Process Clause, that original understanding must prevail.

III. This Case is a Better Vehicle than *Cooper Tire* to Resolve the Question Presented.

The petition presents an ideal case for this Court's review. The question presented was dispositive to the Pennsylvania Supreme Court's decision, which was resolved on a motion to dismiss. The relevant facts of the case are not disputed. And there are no

complications in Pennsylvania law that might impede this Court's resolution of the question presented.

Pennsylvania's corporate registration statute is absolutely clear that registration as a foreign corporation constitutes consent to general personal jurisdiction. Section 5301(a) provides:

> "(a) General Rule. The existence of any of the following relationships between a person and this Commonwealth *shall constitute a sufficient basis of jurisdiction* to enable the tribunals of this Commonwealth *to exercise general personal jurisdiction* over such person. . . .
>
> . . .
>
> (2)(i) Corporations [that are] *qualifi[ed] as a foreign corporation* under the laws of this Commonwealth.

42 Pa. Stat. § 5301(a) (emphases added).

As the Pennsylvania Supreme Court explained, Pennsylvania is unusual because "[w]hile all states require foreign corporations to register to do business within their boundaries, most state statutes do not provide expressly that the act of registering to do business constitutes a specific basis upon which a court may assert general jurisdiction over all claims against a foreign corporation." Pet. App. 40a.

The Second Circuit noted that clarity and contrasted it with Connecticut's more ambiguous statute. "Jurisdictions other than Connecticut have enacted registration statutes that more plainly advise the registrant that enrolling in the state as a foreign corporation and transacting business will vest the local courts with general jurisdiction over the corporation. *E.g., 42 Pa. Cons. Stat. § 5301(a)(2)(i)-*

(ii)." *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 640 (2d Cir. 2016) (emphasis added). The Pennsylvania statute, enacted in 1978, is both clear and longstanding. As a result, there can be no doubt that Norfolk Southern's consent to personal jurisdiction was knowing. The only question in this case is therefore the question presented: whether that consent is constitutionally adequate under the Due Process Clause.

By contrast, serious complications in Georgia law pose problems for this Court's review of *Cooper Tire*, in which a petition is currently pending. *First*, as the Georgia Supreme Court recognized, "Georgia's Business Corporation Code *does not expressly notify* out-of-state corporations that obtaining authorization to transact business in this State and maintaining a registered office or registered agent in this State subjects them to general jurisdiction in our courts." *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422, 434 (2021) (citing OCGA § 14-2-1501 (a), OCGA § 14-2-1507) (emphasis added). The Court went so far as to concede that its decades-old prior case holding that the statute provides such notice implicitly "may not have been well-explained" and the Court "ha[d] cited [that case] only once in the past 30 years for a different proposition." *Id.* at 435-36.

Indeed, prior to *Cooper Tire,* two recent academic reviews of state registration statutes both regarded Georgia's statute as *not* clearly constituting consent to personal jurisdiction. *See* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 CARDOZO L. REV. 1343, 1366 (2015) (stating that "[o]nly one state, Pennsylvania, actually purports to directly address the jurisdictional consequences of registering to do business"); Kevin D.

Benish, Pennoyer*'s Ghost: Consent, Registration Statutes, and General Jurisdiction after* Daimler AG v. Bauman, 90 N.Y.U. L. REV. 1609, 1650 (2015) (listing "consequence of registration" under Georgia's statute as "unclear").

Accordingly, this Court's review of the question presented under the Constitution would be obscured by the fact that Cooper Tire's consent—if such consent even existed—may not have been knowing. No one argues that a party may *un*knowingly consent to waiving a constitutional right, like the due process right at issue in this case. The lack of clarity in Georgia's registration statute yields a lack of certainty on that antecedent factual predicate of knowing waiver, which may prevent the Court from answering the question presented at all.

Second, because the question presented in *Cooper Tire* involves intertwined issues of state and federal law, this Court may be forced to wade into the merits of the Georgia Supreme Court's interpretation of Georgia's statute. This Court's review of a question of state law would ordinarily be improper. *See, e.g.*, *Hortonville Joint Sch. Dist. No. I v. Hortonville Educ. Ass'n*, 426 U.S. 482, 488 (1976) (this Court is generally "bound to accept the interpretation of [the State's] law by the highest court of the State"). That general principle yields, however, when the "existence, application or implementation of a federal right turns on the resolution of a logically antecedent issue of state law. Because of that relationship the state court does not speak the final word on the state question." Herbert Wechsler, *The Appellate Jurisdiction of the Supreme Court: Reflections on the Law and the Logistics of Direct Review*, 34 WASH. & LEE L. REV. 1043, 1054 (1977). *See generally* Henry Monaghan,

Supreme Court Review of State-Court Determinations of State Law in Constitutional Cases, 103 COLUM. L. REV. 1919 (2003) (cataloguing this Court's cases applying this exception).

The proper interpretation of Georgia's statute is logically antecedent to the federal question presented. That is to say, the Court cannot assess the constitutionality of its registration statute's consent requirement without first assessing whether the statute actually impels corporations to assent to general jurisdiction as a condition of doing business in the state.

Moreover, even if this Court deferred to the Georgia Supreme Court's interpretation of Georgia law (*i.e.* that the statute requires consent to jurisdiction), that still would not resolve the vehicle problem. This Court must separately assess whether the Georgia Supreme Court was correct that its thirty-year-old precedent was clear enough to put Cooper Tire on constitutionally sufficient notice of this statutory interpretation. While sophisticated parties are surely charged with knowledge of both statutes and judicial precedent construing them, not all judicial opinions are models of clarity. Yet clarity is at least arguably a *federally* imposed element of jurisdiction based on consent.

There is no need to grant review of a case that would require the Court to examine, and possibly overrule, a state supreme court's interpretation of a state statute, or worse still, to parse the language of a state judicial opinion to adjudicate whether it was sufficiently clear. There is no ambiguity in Pennsylvania's statute that could call into question the Pennsylvania Supreme Court's interpretation of

it. With principles of comity and state sovereignty firmly in view, the more prudent course is to grant this petition over *Cooper Tire*.

Third, the Georgia Supreme Court has called on Georgia's General Assembly to revisit the state's registration statute to clarify its meaning and to repair its illogical implications. The Court noted the bizarre structure of the statute that "out-of-state corporations that *are* authorized and registered to do business in Georgia are *not* subject to specific jurisdiction under the Long Arm Statute." So absent the Georgia Supreme Court's "general-jurisdiction holding, these corporations would not be subject to general jurisdiction in this State, either." *Cooper Tire*, 312 Ga. at 436. That would yield the intolerable "outcome [of] allow[ing] out-of-state corporations to insulate themselves from personal jurisdiction in Georgia simply by obtaining the requisite certificate of authority and registering to do business here, thereby effectively immunizing themselves from suit for *any cause whatsoever*." *Id.*

Faced with that nonsensical prospect, the Court explained that "the General Assembly could preemptively obviate that risk by modifying the governing statutes to enable Georgia courts to exercise specific personal jurisdiction over out-of-state corporations whether they are authorized to do business in this State or not, *provide for general jurisdiction where appropriate*, or otherwise tailor this State's jurisdictional scheme within constitutional limits." *Id.* at 437 (emphasis added). Justice Bethel "wr[o]te separately for the sole purpose of calling the General Assembly's attention to the peculiar and precarious position of the current law of Georgia." *Id.* at 437 (Bethel, J., concurring).

In light of that extraordinary judicial call for legislative action, granting the *Cooper Tire* petition risks this Court's wading into a controversy that will be addressed by Georgia's political branches. Granting the petition here poses no such risks. The people of Pennsylvania have spoken clearly and logically, and if the Pennsylvania Supreme Court's decision stands, no further legislative action can vindicate their will. Only this Court can clarify that the outcome of the democratic process in Pennsylvania did not offend the Constitution.

At a minimum, if the Court grants the petition in *Cooper Tire*, it should grant this petition as well. Pennsylvania's statute presents the strongest case for personal jurisdiction pursuant to a clear registration statute. If differences in state's statutory language might affect the resolution of the question presented, this Court should ensure that it has Pennsylvania's statute properly before it with the benefit of full merits briefing and argument.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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February 18, 2022

APPENDIX

APPENDIX A

[J-49-2021]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

ROBERT MALLORY, Appellant v. NORFOLK SOUTHERN RAILWAY CO. Appellee	No. 3 EAP 2021 Appeal from the Order Entered February 7, 2018 in the Court of Common Pleas of Philadelphia County, Civil Division at No: 170901961. Argued: September 21, 2021

OPINION

CHIEF JUSTICE BAER

DECIDED: DECEMBER 22, 2021

I. Introduction

Under Pennsylvania law, a foreign corporation "may not do business in this Commonwealth until it registers" with the Department of State of the

Commonwealth. 15 Pa.C.S. § 411(a). Further, "qualification as a foreign corporation under the laws of this Commonwealth" constitutes a sufficient basis to enable Pennsylvania courts to exercise general personal jurisdiction over a foreign corporation. 42 Pa.C.S. § 5301(a)(2)(i). Pursuant to these statutes, a Virginia resident filed an action in Pennsylvania against a Virginia corporation, alleging injuries in Virginia and Ohio. The plaintiff asserted that Pennsylvania courts have general personal jurisdiction over the case based exclusively upon the foreign corporation's registration to do business in the Commonwealth.

The trial court held that our statutory scheme, affording Pennsylvania courts general personal jurisdiction over foreign corporations that register to do business in the Commonwealth, regardless of the lack of continuous and systematic affiliations within the state that render the corporation essentially at home here, fails to comport with the Due Process Clause of the Fourteenth Amendment to the United States Constitution.[1]

The trial court further reasoned that it would violate due process to construe a foreign corporation's compliance with our mandatory registration statute as voluntary consent to Pennsylvania courts' exercise of general personal jurisdiction. In this direct appeal, we address the propriety of the trial court's ruling.

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[1] The Due Process Clause of the Fourteenth Amendment provides that "No State shall ... deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

Based on the United States Supreme Court's decision in *Daimler AG v. Bauman*, 571 U.S. 117, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014), and its predecessor *Goodyear Dunlop Tires Operations, S.A. v. Brown,* 564 U.S. 915, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011), we agree with the trial court that our statutory scheme violates due process to the extent that it allows for general jurisdiction over foreign corporations, absent affiliations within the state that are so continuous and systematic as to render the foreign corporation essentially at home in Pennsylvania. We further agree that compliance with Pennsylvania's mandatory registration requirement does not constitute voluntary consent to general personal jurisdiction. Accordingly, we affirm the trial court's order, which sustained the foreign corporation's preliminary objections and dismissed the action with prejudice for lack of personal jurisdiction.

II. Basic Principles of Personal Jurisdiction

To facilitate an understanding of the legal issue presented, we begin with a brief summary of the basic principles of personal jurisdiction. Personal jurisdiction is the authority of a court over the parties in a particular case. *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574, 577, 119 S.Ct. 1563, 143 L.Ed.2d 760 (1999). Personal jurisdiction was originally tied directly to a defendant's presence within the forum state. *Pennoyer v. Neff,* 95 U.S. 714, 722, 24 L.Ed. 565 (1877) (holding that "every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory"). Service of process on a defendant physically present in the forum State conferred personal jurisdiction over that defendant.

Id. at 724. This territorial approach limited personal jurisdiction over corporations which, pursuant to state statutes, were generally only "present" in their state of incorporation and, thus, could not be served in other states, regardless of whether they conducted significant business in other states. *Id.* at 720 (providing that the "authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum ... an illegitimate assumption of power..."). In an effort to subject foreign corporations to the jurisdiction of local courts in controversies arising from transactions in the forum State, states thereafter enacted registration statutes requiring foreign corporations to appoint in-state registered agents to receive service of process. *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 408-09, 49 S.Ct. 360, 73 L.Ed. 762 (1929).

In 1945, the United States Supreme Court decided *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), in which the Court shifted its personal jurisdiction analysis away from the territorial approach described in *Pennoyer* and towards the modern-day contacts-focused analysis. *International Shoe*, 326 U.S. at 316-17, 66 S.Ct. 154. In that seminal decision, the High Court clarified that the Fourteenth Amendment's Due Process Clause protects the defendant's liberty interest in not being subject to the binding judgments of a forum with which the defendant has no meaningful "contacts, ties, or relations." *Id.* at 319, 66 S.Ct. 154. The Court explained that a tribunal's authority depends upon the defendant's minimum contacts with the forum

State such that the maintenance of the suit "does not offend traditional notions of fair play and substantial justice." *Id.* at 316, 66 S.Ct. 154 (citing *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940)).

This focus on the nature and extent of a corporate defendant's relationship with the forum State led to the recognition of two categories of personal jurisdiction: specific (case-linked) jurisdiction and general (all-purpose) jurisdiction. *Ford Motor Co., v. Mont. Eighth Judicial Dist. Court*, —— U.S. ——, 141 S.Ct. 1017, 1024, 209 L.Ed.2d 225 (2021). For a state court to exercise specific jurisdiction, there must be an affiliation between the forum State and the underlying case or controversy, such as an activity or occurrence that takes place in the forum State and is, therefore, subject to the state's regulation. *Id.* at 1025.

Conversely, general jurisdiction extends to all claims brought against a foreign corporation; the claims "need not relate to the forum State or the defendant's activity there." *Id.* at 1024. A state may exercise general jurisdiction where the "continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *International Shoe*, 326 U.S. at 318, 66 S.Ct. 154. Thus, historically, a court could exercise general jurisdiction over all claims against a corporate defendant if the defendant had "continuous and systematic" business contacts in the forum state. *Id.* at 318, 66 S.Ct. 154. As discussed in detail, *infra*, the High Court's decisions in *Goodyear* and *Daimler,* however, have narrowed the concept of

a state court's constitutionally permissible exercise of general personal jurisdiction over a foreign corporation, thereby altering the governing analysis.

Additionally, while not at issue in *Goodyear* and *Daimler*, it is well established that the requirement of personal jurisdiction "recognizes and protects an individual liberty interest," which, like other individual rights, may be waived in a variety of ways, including consenting to the personal jurisdiction of the court by appearance, contractually agreeing to personal jurisdiction, or stipulating to personal jurisdiction. *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982). Thus, consent to jurisdiction by waiving one's due process rights is an independent basis for jurisdiction, assuming that the consent is given voluntarily. *See Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) (observing that waivers of constitutional rights must be voluntary, knowing, and intelligent).

III.Goodyear and Daimler Decisions

As the High Court's decisions in *Goodyear* and *Daimler* serve as the crux of this appeal, we review them at this juncture. In *Goodyear*, North Carolina plaintiffs whose sons died in a bus accident in France filed a wrongful death action in North Carolina against Goodyear USA, an Ohio corporation, and three Goodyear subsidiaries organized and operated in Luxembourg, Turkey, and France. The action alleged that the accident was caused by a defective tire manufactured at the plant of the foreign subsidiary in Turkey. Goodyear's foreign subsidiaries

challenged North Carolina's exercise of general jurisdiction. The state courts found that general jurisdiction over the foreign subsidiaries was proper because some of the tires made abroad by the foreign subsidiaries had reached North Carolina through the stream of commerce. The issue on appeal was whether that exercise of general jurisdiction was consistent with due process. *Goodyear*, 564 U.S. at 923, 131 S.Ct. 2846. The Court concluded that it was not.

Preliminarily, the High Court, in an opinion by Justice Ginsburg, observed that there was no specific (case-linked) jurisdiction in North Carolina because the accident occurred in France and the allegedly defective tire was manufactured and sold abroad. *Id.* at 919, 131 S.Ct. 2846. Notably, regarding general (all-purpose) jurisdiction, the Court explained that "[a] court may assert general jurisdiction over foreign (sister-state or foreign country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Id.* at 919, 131 S.Ct. 2846 (citing *International Shoe*, 326 U.S. at 317, 66 S.Ct. 154). The Court emphasized that only a limited set of affiliations with a forum State satisfy this requisite for general jurisdiction. The Court held that for an individual, general jurisdiction is appropriate in the individual's domicile; for a corporation, general jurisdiction attaches in an equivalent place where the corporation is regarded as at home, such as the place of incorporation or the principal place of business. *Id.* at 924, 131 S.Ct. 2846.

The High Court rejected the contention that there was general jurisdiction in North Carolina because some of the tires made abroad by Goodyear's foreign subsidiaries had reached that state through the stream of commerce. The Court opined that such attenuated connections with North Carolina were inadequate to support the exercise of general jurisdiction, as they did not establish the "continuous and systematic general business contacts" required under *International Shoe* to justify suit against Goodyear on causes of action entirely distinct from those connections. *Id.* at 929, 131 S.Ct. 2846. Rather, the Court found, affiliations relating to the "stream of commerce" or the flow of a manufacturer's products into the forum State bolsters an affiliation germane to specific jurisdiction, and not general jurisdiction. Otherwise, the Court opined, any substantial manufacturer or seller of goods would be amenable to suit on any claim for relief, wherever its products are distributed. *Id.* at 929, 131 S.Ct. 2846. Accordingly, the Court concluded that because Goodyear's foreign subsidiaries were not in any sense "at home" in North Carolina, those subsidiaries could not be required to submit to the general jurisdiction of that state's courts. *Id.* at 929, 131 S.Ct. 2846.

A few years later, the High Court again addressed general jurisdiction in *Daimler*, also written by Justice Ginsburg. *Daimler* examined whether due process permitted California courts to exercise general (all-purpose) jurisdiction over DaimlerChrysler Aktiengesellschaft ("Daimler"), a German corporation, for claims filed in California by Argentina residents based on alleged human rights violations committed abroad by one of Daimler's

subsidiaries. The plaintiffs asserted that the court had general jurisdiction over Daimler under California's long-arm statute, based on the contacts that the subsidiary had with California. *Daimler*, 571 U.S. at 121, 134 S.Ct. 746. Employing an agency theory, the lower court determined that the subsidiary acted as Daimler's agent for jurisdictional purposes, and imputed the subsidiary's contacts to Daimler, thereby deeming proper the exercise of general jurisdiction over Daimler.

The Supreme Court reversed, finding that the lower court's agency theory would subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate. This outcome, the Court opined, would "sweep beyond even the 'sprawling view of general jurisdiction' " rejected by the Court in *Goodyear*. *Daimler*, 571 U.S. at 136, 134 S.Ct. 746 (citing *Goodyear*, 564 U.S. at 929, 131 S.Ct. 2846). Even assuming the subsidiary's contacts were imputable to *Daimler*, the Court concluded that there would be no basis to subject Daimler to general jurisdiction in California because its slim contacts with the forum State did not render it "at home" there. *Id.*

Reiterating *Goodyear's* sentiment that only a limited set of affiliations with a forum State will subject a defendant corporation to a state's general jurisdiction, such as the place of incorporation or principal place of business, the Court asserted that "these bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate

defendant may be sued on any and all claims."[2] *Id.* at 137, 134 S.Ct. 746. Germane to this appeal, the High Court viewed as "unacceptably grasping" the notion that general jurisdiction lies in any forum where a corporation engages in a substantial, continuous, and systematic course of business. *Id.* at 138, 134 S.Ct. 746. The Court found that the terms "continuous and systematic" as set forth in *International Shoe* described instances in which the exercise of specific, and not general, jurisdiction would be appropriate. *Id.* at 138, 134 S.Ct. 746.

The general jurisdiction inquiry under *Goodyear*, the Court opined, "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic;" rather, it is whether that corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Id.* at 139, 134 S.Ct. 746 (citing *Goodyear*, 564 U.S. at 919, 131 S.Ct. 2846). The Court explained that such inquiry does not focus exclusively on the magnitude of the defendant's in-state contacts; "[g]eneral jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide." *Id.* at 139, 134 S.Ct. 746 n.20. Notably, the Court posited, "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* Otherwise, the Court reasoned, " 'at home' would be synonymous with

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[2] The Court did not "foreclose the possibility that in an exceptional case[,] a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 139, 134 S.Ct. 746 n.19 (citations omitted).

'doing business' tests framed before specific jurisdiction evolved in the United States." *Id.*

The High Court emphasized that neither Daimler nor its subsidiary was incorporated in California or had its principal place of business there. The Court opined that if the plaintiffs' broad notion of general jurisdiction were to be adopted, "[s]uch exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants 'to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.' " *Id.* at 139, 134 S.Ct. 746 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). Thus, the Court held that it was error for the lower court to hold that Daimler, even with its subsidiary's contacts attributed to it, was at home in California and subject to suit there on claims brought by foreign plaintiffs that alleged no connection with California. *Id.* at 139, 134 S.Ct. 746. In sum, the Court viewed subjecting Daimler to the general jurisdiction of California to be wholly inconsistent with the "fair play and substantial justice" due process demands. *Id.* at 142, 134 S.Ct. 746 (citing *International Shoe*, 326 U.S. at 316, 66 S.Ct. 154).

As noted, neither *Goodyear* nor *Daimler* involved the exercise of general jurisdiction based upon grounds of consent, as manifested by the foreign corporation's registration to do business in the forum State.

IV. Factual Background

The record in the instant case establishes that on September 18, 2017, Appellant Robert Mallory ("Plaintiff"), a resident of Virginia, filed an action pursuant to the Federal Employer's Liability Act ("FELA"), 45 U.S.C. §§ 51-60, in the Philadelphia County Court of Common Pleas ("trial court") against Appellee Norfolk Southern Railway ("Defendant").[3] In his complaint, Plaintiff alleged that Defendant was a Virginia railway corporation with its principal place of business in Norfolk, Virginia. Complaint, 9/18/2017, at ¶ 2. The complaint asserted that while employed by Defendant in Ohio and Virginia from 1988 through 2005, he was exposed to harmful carcinogens. *Id.* at ¶¶ 7, 9-11. The complaint further alleged that Defendant's negligence, carelessness, and recklessness in failing to provide a safe workplace free from asbestos and other toxic chemicals caused him to develop colon cancer. *Id.* at ¶ 14-15. Plaintiff did not allege that he suffered any harmful occupational exposures in Pennsylvania.

Defendant filed preliminary objections, seeking dismissal of the complaint due to the lack of both specific and general personal jurisdiction. Defendant contended that the case did not arise in Pennsylvania, it was not otherwise "at home" in Pennsylvania, and it did not consent to jurisdiction by registering to do business in Pennsylvania. Preliminary Objection to Plaintiff's Complaint, 10/10/2017, at ¶ 5. Thus, Defendant alleged, it would

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[3] FELA establishes a compensation structure for railroad workplace injuries which preempts state tort remedies and workers' compensation statutes. *Norfolk Southern Railway v. Sorrell*, 549 U.S. 158, 165, 127 S.Ct. 799, 166 L.Ed.2d 638 (2007).

violate due process for the court to assert jurisdiction over Plaintiff's action. *Id.* at ¶ 25 (asserting that the "right not to be called into courts without a legal or constitutional basis is an important one; it is the core of due process").

In response, Plaintiff argued that Defendant consented to personal jurisdiction by registering to do business in Pennsylvania pursuant to 42 Pa.C.S. § 5301(a)(2), which provides as follows:

> (a) General rule. — The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:
>
> * * *
>
> (2) Corporations.
>
> (i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.

> (ii) Consent, to the extent authorized by the consent.
>
> (iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

42 Pa.C.S. § 5301(a)(2).

Following oral argument and by order dated February 6, 2018, the trial court sustained Defendant's preliminary objections and dismissed Plaintiff's complaint with prejudice for lack of personal jurisdiction. Plaintiff thereafter timely filed a notice of appeal to the Superior Court.

In the trial court's subsequently filed Pa.R.A.P. 1925(a) opinion, the Honorable Arnold New observed that the Due Process Clause of the Fourteenth Amendment to the United States Constitution limits the authority of a state court to exercise personal jurisdiction over non-resident defendants. Trial Court Opinion, 5/30/2018, at 3. The court observed that specific jurisdiction is linked to the case in controversy and depends upon an affiliation between the forum State and the underlying case, such as an occurrence that takes place in the forum State and is, therefore, subject to the state's regulation under the long arm statute.[4] The trial court concluded that it lacked

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[4] Pennsylvania's long-arm statute provides as follows:

> (a) General rule. — A tribunal of this Commonwealth may exercise personal jurisdiction over a person ... who acts directly or by an agent, as to a cause of action or other matter arising from such person:

specific jurisdiction over Defendant because Plaintiff's action alleged a FELA violation arising from exposure to harmful carcinogens in Ohio and Virginia, and there was no allegation that Plaintiff was exposed to carcinogens in Pennsylvania. Trial Court Opinion, 5/30/2018, at 13.

The trial court next examined whether it had general jurisdiction over Defendant pursuant to *International Shoe*, which, as noted, permits a court to exercise general personal jurisdiction over a foreign corporation in "instances in which the continuous corporate operations within a state [are] so

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(1) Transacting any business in this Commonwealth. Without excluding other acts which may constitute transacting business in this Commonwealth, any of the following shall constitute transacting business for the purpose of this paragraph:

(i) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object.

* * *

(iv) The engaging in any business or profession within this Commonwealth, whether or not such business requires license or approval by any government unit of this Commonwealth.

(b) Exercise of full constitutional power over nonresidents. — In addition to the provisions of subsection (a) the jurisdiction of the tribunals of this Commonwealth shall extend to all persons who are not within the scope of section 5301 (relating to persons) to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States.

42 Pa.C.S. § 5322.

substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." Trial Court Opinion, 5/30/2018, at 4 (citing *International Shoe*, 326 U.S. at 318, 66 S.Ct. 154). The trial court noted that, for decades, courts interpreted this language as permitting a court to exercise general personal jurisdiction over a foreign corporate defendant so long as the foreign corporation's business activities within the forum State were continuous and substantial.

The trial court, however, opined that the general jurisdiction analysis was "dramatically altered" by the High Court's decisions in *Goodyear* and *Daimler*. Trial Court Opinion, 5/30/2018, at 4. When examined together, the trial court explained, *Goodyear* and *Daimler* hold that a court may only exercise general jurisdiction over a foreign corporation if its affiliations within the state are so continuous and systematic as to render the corporation essentially at home in the forum State; the place of incorporation and the principal place of business are the paradigmatic bases for general jurisdiction. *Id.* Thus, the trial court concluded, "for Pennsylvania courts to acquire general personal jurisdiction over foreign corporations under the current state of the law, the foreign corporation must be incorporated in Pennsylvania, have its principal place of business in Pennsylvania, or have consented to the exercise of jurisdiction." *Id.*

As Defendant was not incorporated in Pennsylvania and does not have its principal place of business in the Commonwealth, the trial court examined whether Defendant consented to

jurisdiction. Acknowledging that foreign corporations may consent to the jurisdiction of a court by voluntarily appearing before the court, contractually agreeing to submit to a court's jurisdiction, or stipulating that a court has jurisdiction, the court found that none of those circumstances were present here. *Id.* at 5. The court then examined the specific claim of registration-based consent to general jurisdiction pursuant to Section 5301, set forth *supra* at 10.

The trial court concluded that Defendant's purported consent to jurisdiction by registering to do business in the Commonwealth was involuntary and, thus, invalid because the Associations Code requires foreign corporations to register with the Commonwealth before conducting business within Pennsylvania. Trial Court Opinion, 5/30/2018, at 6 (citing 15 Pa.C.S. § 411(a) (providing that "a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department [of state] under this chapter"); 15 Pa.C.S. § 102(a) (defining "association" as a "corporation for profit or not-for-profit..."); and 15 Pa.C.S. § 411(b) (providing that the penalty for a foreign corporation's failure to register is that it may not maintain an action in this Commonwealth)).

The trial court held that, "[c]ontrary to Plaintiff's argument, foreign corporations do not submit to general jurisdiction by choosing to register as [a] foreign business corporation in this Commonwealth." *Id.* at 7. Instead, the trial court held that Section 5301 of the Judiciary Act, 42 Pa.C.S. §

5301, when read in conjunction with Section 411 of the Associations Code, 15 Pa.C.S. § 411, "mandate[s] foreign corporations to submit to general jurisdiction as a condition of being permitted to conduct business within the Commonwealth." Trial Court Opinion, 5/30/2018, at 7. Thus, the court posited, a foreign corporation has only two choices: either do business in the Commonwealth while consenting to general personal jurisdiction, or not do business in Pennsylvania at all.

The trial court opined that this Hobson's choice violates Defendant's right to due process. It recognized that the Due Process Clause acts "as an instrument of interstate federalism" and divests the State of its power to render a valid judgment to avoid a territorial encroachment on the sovereignty of sister states. *Id.* at 8-9 (citing *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, ––– U.S. ––––, 137 S.Ct. 1773, 1780-81, 198 L.Ed.2d 395 (2017) (*"Bristol-Myers"*) (providing that "[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of federalism, may sometimes act to divest the State of its power to render a valid judgment")[5] and *United Farm Bureau*

[5] As explained *infra*, the High Court in *Bristol-Myers* recognized that when determining whether personal jurisdiction is present, courts should consider the effect of the defendant's "submission to the coercive power of a State that may have little legitimate interest in the claims in question," as the

Mut. Ins. Co. v. Fidelity & Guaranty Co., 501 Pa. 646, 462 A.2d 1300 (1983) (recognizing the federal limits placed on Pennsylvania courts' ability to regulate a foreign corporation's actions in our sister states)).

The trial court concluded that "[i]n light of the Supreme Court's repeated admonishment that the Due Process Clause prohibits a state from claiming general jurisdiction over every corporation doing business within its borders, it logically follows [that] the Due Process Clause also prohibits a state from forcing every corporation doing business within its borders to consent to general jurisdiction." Trial Court Opinion, 5/30/2018, at 11 (citations omitted).[6]

The trial court acknowledged Supreme Court precedent predating *International Shoe*, which permitted state courts to obtain personal jurisdiction over a foreign corporation through mandatory registration statutes or the requisite appointment of an in-state agent to accept service of process. *Id.* at 12 (citing *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 37 S.Ct.

"sovereignty of each state implies a limitation of the sovereignty of all its sister states." *Bristol-Myers*, 137 S.Ct. at 1780 (citations omitted).

[6] In addition to relying upon the High Court's decisions in *Daimler* and *Goodyear,* the trial court also relied upon that Court's decision in *BNSF Railway Co. v. Tyrrell*, —— U.S. ——, 137 S.Ct. 1549, 198 L.Ed.2d 36 (2017), discussed *infra*, which held that a state civil procedural rule providing for general jurisdiction over all persons found within the state did not comport with due process. It explained that *Daimler's* holding "applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued." *Id.* at 1559.

344, 61 L.Ed. 610 (1917)) (holding that an Arizona corporation consented to jurisdiction in Missouri when it complied with Missouri's foreign corporation law by appointing an agent to accept service of process as statutorily required); and *Ex parte Schollenberger*, 96 U.S. 369, 24 L.Ed. 853 (1877) (holding that a Pennsylvania federal court had personal jurisdiction over foreign insurance corporations because a Pennsylvania law required the corporations to appoint an agent to receive process there in consideration of granting the privilege of doing business). Categorizing these cases as relics of the *Pennoyer* era during which courts were prohibited from exercising personal jurisdiction over persons or corporations outside the geographic boundary of the courts, the trial court opined that the High Court implicitly overruled those cases in *International Shoe* and its progeny. *Id.* at 13.

The trial court concluded that "[b]y requiring foreign corporations to submit to general jurisdiction as a condition of doing business here, Pennsylvania's statutory scheme infringes upon our sister state's ability to try cases against their corporate citizens." *Id.* at 13. The court held that this "infringement runs counter to the concept of federalism and should not be tolerated." *Id.* at 13 (citing *Bristol-Myers*, 137 S.Ct. at 1780 (providing that "the states retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts ... at times, this federalism interest must be decisive")). Accordingly, the trial court opined that its order dismissing the action for lack of personal jurisdiction over Defendant should be affirmed.

On June 28, 2018, nearly one month after the trial court issued its opinion, the Superior Court decided *Webb-Benjamin, LLC v. Int'l Rug Grp., LLC*, 192 A.3d 1133 (Pa. Super. 2018) ("*Webb*"), which is relevant to the instant matter. In *Webb*, a foreign corporation argued that the Pennsylvania trial court's exercise of general jurisdiction based on its registration as a foreign association in Pennsylvania violated due process under the High Court's decision in *Daimler* because mere registration is insufficient to "render [it] essentially at home" in the Commonwealth. *Id.* at 1138.

Contrary to the trial court's interpretation of *Daimler* below, the Superior Court in *Webb* held that *Daimler* does not eliminate consent to jurisdiction by registering to do business in the Commonwealth pursuant to Section 5301, as *Daimler* "makes a clear distinction between jurisdiction by consent and the method of establishing personal jurisdiction that forms the basis of its analysis and holding." *Id.* (citing *Daimler*, 571 U.S. at 129, 134 S.Ct. 746). The *Webb* court further cited Pennsylvania federal district court decisions that reached the same conclusion. *Id.* (citing *Bors v. Johnson & Johnson,* 208 F.Supp. 3d 648 (E.D. Pa. 2016)) (holding that consent remains a valid form of establishing personal jurisdiction under Section 5301 after *Daimler*); *Gorton v. Air & Liquid Sys. Corp.*, 303 F.Supp. 3d 278 (M.D. Pa. 2018) (rejecting claim that, pursuant to *Daimler*, consent by registration was no longer a valid method of obtaining personal jurisdiction).

Following the issuance of the *Webb* decision, the trial court in the instant case issued a

supplemental opinion dated September 5, 2018. Therein, the court noted that the Superior Court's ruling in *Webb* was distinguishable because the *Webb* court did not address the federalism concerns underlying the trial court's decision here.

By memorandum dated October 30, 2020, the Superior Court, upon application of Defendant, transferred the instant appeal to this Court pursuant to 42 Pa.C.S. § 722(7) (providing that the Supreme Court shall have exclusive jurisdiction over appeals from final common pleas court orders that declare a Pennsylvania statute invalid as repugnant to the Constitution). Superior Court Memorandum, 10/30/2020, at 3-4 (citing 42 Pa.C.S. § 5103 (providing that if an appeal is taken to a court that does not have jurisdiction of the appeal, the court shall transfer the record thereof to the proper tribunal of this Commonwealth where the appeal shall be treated as if originally filed there)). This appeal is now ready for disposition.

V. The Parties' Arguments

Plaintiff, as Appellant, contends that the trial court erred by holding that Pennsylvania's statutory scheme requiring foreign corporations to register to do business in the Commonwealth and conferring general jurisdiction over the foreign corporation based upon that registration, violates due process. He contends that, rather than coercing involuntary consent to jurisdiction, the language of Section 5301 gives express notice that a foreign corporation that voluntarily registers to do business in Pennsylvania has consented to the general jurisdiction of

Pennsylvania courts. *See* 42 Pa.C.S. § 5301(a)(2)(i) (setting forth as a sufficient basis for asserting general jurisdiction the "qualification as a foreign corporation under the laws of this Commonwealth"). According to Plaintiff, corporations that decide to operate in Pennsylvania are given a clear choice, *i.e.*, avail themselves of the privilege of doing business and profiting from their operations in the Commonwealth by submitting to the jurisdiction of Pennsylvania courts, or do not conduct business in Pennsylvania.

Plaintiff contends that none of the High Court decisions relied upon by the trial court stand for the proposition that a foreign corporation may not validly consent to general jurisdiction by registering to do business in a state. He posits that neither *Goodyear, Daimler*, *Tyrrell,* nor *Bristol Myers* addressed the validity of a foreign corporation's consent to general jurisdiction. Instead, Plaintiff submits, those cases focused on whether the foreign corporate defendant's contacts with the forum State were so systematic and continuous as to render them essentially at home in the forum State, and, thus, subject to general jurisdiction on that basis. *See, e.g.,* Brief for Appellant at 17 (citing *Tyrrell,* 137 S.Ct. at 1559 (declining expressly to examine whether the defendant consented to personal jurisdiction as that issue was not addressed by the lower court)).

Plaintiff maintains that the High Court has not, in fact, addressed the viability of consent to jurisdiction post-*Daimler,* and federal district courts in the Third Circuit have held, consistent with his position, that registration to do business in Pennsylvania continues to constitute valid consent to

jurisdiction after *Daimler*. Brief for Appellant at 13-14 (citing, *inter alia*, *Gorton v. Air and Liquid Systems Corp.*, 303 F.Supp. 3d 278, 296-97 (M.D. Pa. 2018) (rejecting claim that, pursuant to *Daimler*, consent by registration is no longer a valid method of obtaining personal jurisdiction; a corporation that applies for and receives a certificate of authority to do business in Pennsylvania consents to the general jurisdiction of state and federal courts in Pennsylvania); *Bors v. Johnson & Johnson*, 208 F.Supp. 3d. 648, 655 (E.D. Pa. 2016) (holding that, post-*Daimler*, parties can agree to waive challenges to personal jurisdiction by registering to do business under a statute which specifically advises the registrant of its consent by registration)).[7]

Plaintiff submits that district courts from outside Pennsylvania also have held that compliance with a registration statute constitutes valid consent to jurisdiction. *See* Brief for Appellant at 15-16 (collecting cases). He argues that courts have so held because personal jurisdiction, unlike subject matter jurisdiction, is an individual right that a party may waive. Plaintiff concludes that the act of registering to do business, after being specifically advised by Section 5301's plain language that registration subjects the

[7] Plaintiff also cites several cases that were decided prior to *Daimler* to support his position that the trial court's ruling is erroneous. *See, e.g.,* Brief for Appellant at 13-14 (citing, *inter alia*, *Bane v. Netlink, Inc.*, 925 F.2d 637, 640 (3d Cir. 1991) (holding that "Pennsylvania law explicitly states that the qualification of a foreign corporation to do business is sufficient contact to serve as the basis for the assertion of personal jurisdiction")).

foreign corporation to personal jurisdiction, amounts to valid consent.

Finally, Plaintiff argues that his position is supported by century-old case law from the United States Supreme Court authorizing consent to jurisdiction through mandatory registration statutes or the requisite appointment of an in-state agent to accept service of process, such as *Pennsylvania Fire Ins. Co. of Philadelphia* and *Ex parte Schollenberger*, *supra*. Plaintiff contends that the trial court erred by holding that these cases were implicitly overruled by subsequent High Court decisions.

Accordingly, Plaintiff requests that we reverse the order of the trial court, and adopt the Superior's Court's decision in *Webb*, *supra*, that "*Daimler* does not eliminate consent as a method of obtaining personal jurisdiction," and that "pursuant to 42 Pa.C.S. § 5301, Pennsylvania may exercise general personal jurisdiction" over a plaintiff's claims against a foreign defendant.[8] *Webb*, 192 A.3d at 1139.

In response, Defendant contends that it has not consented to general jurisdiction in Pennsylvania by complying with mandatory registration laws, and any finding to the contrary violates due process. Defendant observes that pursuant to 15 Pa.C.S. § 411(a), all foreign corporations doing business in Pennsylvania are required to register. Thus, the ability to do business in the Commonwealth hinges upon compliance with mandatory registration provisions and cannot serve as a voluntary

[8] The Pennsylvania Association for Justice and the Locks Law Firm have filed *amicus* briefs in support of Plaintiff.

relinquishment of due process rights. Indeed, Defendant maintains, every state has a mandatory corporate registration statute. If compliance with registration statutes served as voluntary consent to general jurisdiction, Defendant submits, many large corporations that deal in goods and services nationwide could theoretically be subject to general jurisdiction in all fifty states, a premise that is wholly inconsistent with *Daimler*. Brief for Appellee at 15 (citing *Daimler,* 571 U.S. at 139 n. 20, 134 S.Ct. 746 (providing that "[a] corporation that operates in many places can scarcely be deemed at home in all of them")).

Rather than a voluntary choice, Defendant agrees with the trial court that Pennsylvania's statutory scheme creates an impermissible Hobson's choice between relinquishing its right to due process by registering to do business in the Commonwealth and thereby submitting to the general jurisdiction of Pennsylvania courts, or foregoing the privilege of doing business in Pennsylvania. According to Defendant, this violates the doctrine of "unconstitutional conditions," which provides that "the government may not deny a benefit to a person because he exercises a constitutional right." Brief for Appellee at 24 (citing *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604, 133 S.Ct. 2586, 186 L.Ed.2d 697 (2013)). The impossibility of the "choice" is particularly true, it asserts, considering that common carriers have no realistic opportunity to decide not to conduct business in the Commonwealth.

To conclude that registering as a foreign corporation invokes all-purpose general jurisdiction,

Defendant submits, eviscerates the Supreme Court's general jurisdiction framework set forth in *Goodyear* and *Daimler*, and violates federal due process by failing to comport with *International Shoe*'s "traditional conception of fair play and substantial justice." Brief for Appellee at 21 (citing *International Shoe*, 326 U.S. at 320, 66 S.Ct. 154). Pursuant to *Goodyear*, Defendant maintains, a court may exercise general jurisdiction over a foreign corporation if the corporation's contacts with the forum State are so continuous and systematic as to render the defendant "essentially at home in the forum State." *Id.* (citing *Goodyear*, 564 U.S. at 919, 131 S.Ct. 2846). Other than the exceptional case, Defendant maintains, *Daimler* expressly held that a corporate defendant is "essentially at home" only where it incorporates or maintains its principal place of business. As it is a Virginia corporation with its principal place of business in Virginia, Defendant contends that it is not at home in Pennsylvania under *Daimler* merely because it registered to do business here, and thus, general jurisdiction cannot lie in this Commonwealth's courts.

Defendant interprets *Daimler* as further holding that a court cannot subject a foreign corporation to general all-purpose jurisdiction based exclusively on the fact that it conducts business in the forum State. *See Daimler*, 571 U.S. at 138, 134 S.Ct. 746 (holding that pursuant to the Due Process Clause, subjecting a foreign corporation to general jurisdiction in every state in which it "engages in a substantial, continuous, and systematic course of business" is "unacceptably grasping"). Acknowledging the case law relied upon by Plaintiff for the contrary position,

Defendant asserts that other courts have resolved the issue consistent with its view. *See* Supplemental Brief for Appellee at 3-5 (citing *In re Asbestos Products Liability Litigation (No. VI)*, 384 F.Supp. 3d 532, 540-41 (E.D. Pa. 2019) (holding that "mandatory statutory regime purporting to confer consent to 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"); *Reynolds v. Turning Point Holding Co. LLC*, 2020 WL 953279 (E.D. Pa. Feb. 26, 2020) (adopting the analysis in *In re Asbestos Products Liability Litigation (No. VI)*); *Fend v. Allen-Bradley Co.,* 2019 WL 6242119 (E.D. Pa. Nov. 20, 2019) (same)).

Defendant also agrees with the trial court that Plaintiff's position infringes upon the doctrine of federalism, as discussed in *Bristol-Myers*, *supra,* where the Court considered sovereignty concerns in its personal jurisdiction analysis. It observes that personal jurisdiction "[e]nsure[s] that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." Brief for Appellee at 23 (citing *World-Wide Volkswagen Corp., v. Woodson*, 444 U.S. 286, 292-93, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980)). As clarified in *Bristol-Myers*, Defendant avers, the Due Process Clause acts as an instrument of interstate federalism, which may divest the State of the power to render a valid judgment. Defendant asserts that Pennsylvania should not reach beyond its limits by adjudicating the instant action involving a Virginia plaintiff, a Virginia defendant, and a cause of action based on events that occurred in Virginia. As noted by the trial court, Defendant submits, "the

Pennsylvania Long-Arm Statute cannot override the sovereignty of the individual states, nor can it alter the Constitution's deliberate framework of interstate federalism." Brief for Appellee at 24.

Defendant further asserts that the Superior Court's 2018 decision in *Webb*, which held to the contrary, should be rejected on due process grounds, a basis that the *Webb* court did not explore in its opinion. Brief for Appellee at 14 (citing Trial Court Supplemental Opinion, 9/5/2018 (distinguishing *Webb* from the instant case on grounds that the *Webb* court "did not address the federalism concerns" underlying the trial court's decision)).

Finally, Defendant agrees with the trial court that High Court decisions rendered prior to *International Shoe*, which permitted courts to obtain personal jurisdiction over foreign corporations *via* mandatory registration statutes, are relics that have subsequently been implicitly overruled.[9] Accordingly, Defendant requests that we affirm the order of the trial court declaring unconstitutional Pennsylvania's general jurisdiction statute.[10]

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[9] Defendant offers additional grounds to affirm the trial court's decision based on, *inter alia*, the Dormant Commerce Clause because states may not impose burdens on interstate commerce that exceed any local state interest. *Id.* at 26. Defendant further alleges that Plaintiff waived the central argument in its appeal because his complaint does not contain an averment that Defendant was a foreign corporation registered to do business in the Commonwealth. *Id.* at 30.

[10] An *amicus* brief in support of Defendant has been filed jointly by the Pennsylvania Defense Institute, the Philadelphia Association of Defense Counsel, and the Washington Legal

In his reply brief, Plaintiff contends that the High Court's discussion of the requisite contacts necessary to demonstrate that a defendant is "at home" in the forum state is inapplicable because he is not seeking jurisdiction based on Defendant's contacts with the Commonwealth. Rather, Plaintiff asserts, he is seeking jurisdiction based exclusively upon Defendant's consent to jurisdiction as manifested by its registration to do business in Pennsylvania, the constitutional validity of which has never been addressed by the High Court.

Additionally, although Plaintiff litigated this matter on the premise that Defendant was required to register as it conducted business in Pennsylvania, and that such registration served as voluntary consent to general jurisdiction, for the first time in this litigation, Plaintiff asserts in his reply brief that Defendant was not required to register to do business in Pennsylvania because, as a railroad engaged in interstate commerce, the registration requirement does not apply. *See* 15 Pa.C.S. § 403(a)(11) (describing eleven activities that are not considered "doing business in this Commonwealth" for registration purposes, one of which is "[d]oing business in interstate or foreign commerce"). Plaintiff posits that because Defendant was not required to register to do business at all, its registration cannot be viewed as coercive in violation of due process.

Plaintiff posits that Defendant registered to do business in Pennsylvania not because it was required

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Foundation. Additionally, CSX Transportation, Inc., has filed an *amicus* brief in favor of Defendant.

to do so, but to obtain the statutory benefits attendant therewith, such as gaining all of the same benefits and privileges of Pennsylvania corporations. Reply Brief for Appellant at 8 (citing 15 Pa.C.S. § 402(d) (providing that a registered foreign association, except as otherwise provided by law, shall enjoy the same rights and privileges as a domestic entity)); *id.* at 9 (citing 15 Pa.C.S. § 1502(a) (setting forth general powers of business corporations)). Plaintiff submits that the only penalty arising from the failure to register is that the foreign corporation may not "maintain an action or proceeding" in Pennsylvania. Reply Brief for Appellant at 10 (citing 15 Pa.C.S. § 411(b)). While conceding that the statutory scheme encourages foreign corporations to register, Plaintiff concludes that such encouragement does not constitute coercion in violation of due process.[11][12]

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[11] Responding to Defendant's contentions, Plaintiff also submits that Pennsylvania's registration statute does not violate the Commerce Clause because it regulates purely intrastate commerce. He further submits that the registration statute does not violate the unconstitutional conditions doctrine because the statute affords foreign corporations a clear choice to either register to obtain the benefits of a Pennsylvania corporation and consent to general jurisdiction or decline to register and forego the benefits of Pennsylvania corporations. Finally, Plaintiff maintains that he did not waive the assertion that Defendant registered as a foreign corporation in Pennsylvania because Defendant concedes this fact. Reply Brief for Appellant at 15 n.11 (citing R.19).

[12] We summarily dispose of an additional claim in Plaintiff's reply brief. Plaintiff contends that Defendant failed to present to the trial court a facial or as-applied challenge to Section 5301(a)(2); thus, the constitutional issue was waived, and the trial court should not have entertained the issue. This claim is unpersuasive. In its preliminary objections to Plaintiff's

Defendant refutes Plaintiff's reliance on Section 403(a)(11) of the Associations Code. While it concedes that, as a railroad, most of its activities in Pennsylvania involve interstate commerce, which would not, by itself, constitute "doing business," Defendant asserts that it is only when a foreign corporation engages exclusively in interstate commerce that a state is precluded from requiring the corporation to register, as to do so would violate the Commerce Clause. Defendant asserts that it unquestionably also engages in some intrastate activities, as Plaintiff has readily conceded in the trial court and on appeal to this Court. Supplemental Brief for Appellee, at 2 n.6 (citing Plaintiff's Memorandum of Law in Support of Plaintiff's Response to Defendant's Preliminary Objections, 10/27/2017, at 11 (asserting that Defendant and its predecessors "have been doing business in this State for over 100 years"); and Brief for Appellant [Plaintiff] at 8-9 (outlining Defendant's extensive operations in Pennsylvania, including owning 2,278 miles of track and operating eleven rail yards and three locomotive repair shops)).

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complaint, Defendant contended that the court lacked both specific and general jurisdiction because the case did not arise in Pennsylvania, Defendant is not "at home" in Pennsylvania pursuant to *Goodyear* and *Daimler*, and it did not consent to jurisdiction by registering to do business pursuant to Section 5301(a)(2). Preliminary Objections to Plaintiff's Complaint, 10/10/2017, at ¶¶ 5, 9. Indeed, an entire section of Defendant's preliminary objections, captioned "Norfolk Southern Did Not Consent To Jurisdiction In Pennsylvania, And The Due Process Clause of the Fourteenth Amendment Prohibits The Exercise of General Jurisdiction Based on Compliance with Mandatory Business Registration Requirements," was dedicated to the issue. *Id.* at Section A.4; ¶¶ 24-32. Accordingly, the trial court did not err in addressing the issue, and there is no impediment to this Court's appellate review.

Thus, Defendant maintains, it is clear that it conducts business in Pennsylvania and is subject to the registration requirement. Defendant posits that Plaintiff's effort to distract from the issue at hand should be rejected.[13]

VI. Standards of Review

The important constitutional issue before this Court presents a question of law over which our standard of review is *de novo*, and our scope of review is plenary. *Commonwealth v. Torsilieri*, —— Pa. ——, 232 A.3d 567, 575 (2020). This case is before the Court upon the trial court's sustaining of Defendant's preliminary objections. The standard for reviewing preliminary objections in the nature of a demurrer is limited. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. *Excavation Techs., Inc. v. Columbia Gas Co.*, 604 Pa. 50, 985 A.2d 840, 842 (2009). Where a doubt exists as to whether a

[13] This Court subsequently granted Plaintiff's application to file a post-submission communication, informing the Court of the Georgia Supreme Court's decision in *Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81 (Ga. 2021). There, notwithstanding *Goodyear* and *Daimler*, the Georgia Supreme Court declined to overrule its previous holding that its state courts may exercise general personal jurisdiction over a foreign corporation that is authorized to transact business in Georgia. While recognizing tension between its decision and the High Court's recent decisions on the issue, the Georgia Court found itself constrained by the High Court's pre-*International Shoe* decision in *Pennsylvania Fire Insurance Co., supra,* which sanctioned the concept of general corporate jurisdiction by consent. Respectfully, for the reasons set forth *infra*, we are unpersuaded by this position.

demurrer should be sustained, that doubt should be resolved in favor of overruling it. *Id.*

There is a strong presumption that a statutory scheme is constitutional; the presumption may be rebutted only by proof that the law clearly, palpably, and plainly violates the constitution. *Ladd v. Real Estate Comm'n*, —— Pa. ——, 230 A.3d 1096, 1109-10 (2020); 1 Pa.C.S. § 1922(3) (providing that the "General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth").

Further, it is well settled that in resolving a defendant's challenge to personal jurisdiction, the burden is on the defendant, as the moving party, to object to jurisdiction; once raised by a defendant, the burden of establishing personal jurisdiction under Pennsylvania's long arm statute is placed on the plaintiff asserting jurisdiction. *Hammons v. Ethicon, Inc.*, —— Pa. ——, 240 A.3d 537, 561 (2020) (citing *Biel v. Herman Lowenstein, Inc.*, 411 Pa. 559, 192 A.2d 391, 393 (1963)).

VII. Section 403(a)(11)

Preliminarily, we address Plaintiff's claim, set forth in his reply brief, that Defendant, as a railway corporation, is exempt from the registration requirement pursuant to Section 403(a)(11) of the Associations Code because it engages in interstate commerce. As noted, Plaintiff's claim is inconsistent with the position he has taken throughout this litigation, *i.e.*, that Defendant conducts business in Pennsylvania, is subject to the registration

requirement set forth in Section 411(a) of the Associations Code, and voluntarily consented to general jurisdiction pursuant to 42 Pa.C.S. § 5301(a)(2)(i), which provides that qualification as a foreign corporation under the laws of this Commonwealth serves as a sufficient basis for Pennsylvania courts to exercise general personal jurisdiction.

We further observe that issues presented to this Court for the first time in a reply brief are waived. *See* Pa.R.A.P. 2113 (providing that the scope of the reply brief is limited to matters raised by appellee's brief); *Commonwealth v. Fahy*, 558 Pa. 313, 737 A.2d 214, 218 n.8 (1999) (holding that an appellant is prohibited from raising new issues in a reply brief). Nevertheless, because the mandatory nature of the registration requirement lies at the center of our due process analysis, we examine the issue and, respectfully, find it unpersuasive.[14]

To determine whether Section 403(a)(11) exempts Defendant from the registration requirement, we must review the governing statutory provisions. We keep in mind that the Statutory Construction Act directs that the object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa.C.S. § 1921(a). When interpreting statutory text, a court gives significant weight to the plain language of the statute because it is the best indicator of legislative intent. *Terra Firma Builders,*

[14] Following oral argument, pursuant to this Court's directive, the parties filed supplemental briefs regarding the effect of Section 403(a)(11) on this appeal.

LLC v. King, —— Pa. ——, 249 A.3d 976, 983 (2021). Courts presume that the General Assembly did not intend a result that is absurd, impossible of execution, or unreasonable. 1 Pa.C.S. § 1922(1). As noted, courts likewise assume that the General Assembly does not intend to violate the Constitution. *Id.* § 1922(3). Furthermore, the words of a statute shall be construed according to rules of grammar and according to their common and approved usage. *Id.* at § 1903(a).

As referenced throughout, Section 411 of the Associations Code provides that, except in circumstances inapplicable here, "a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter."[15] 15 Pa.C.S. § 411(a). Regarding the penalty for failing to register, Section 411 further states that a foreign corporation "doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business under this chapter."[16] *Id.* at 411(b). Additionally, Section 411 requires registered corporations to "have and continuously maintain, in this Commonwealth, a registered office." *Id.* at § 411(f).

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[15] "Foreign filing association" is defined as a "foreign association, the formation of which requires the filing of a public organic record," and the definition of "association" includes, *inter alia*, a "corporation for profit or not for profit." *Id.* at § 102.

[16] The failure to register does not preclude the foreign corporation from defending an action filed in this Commonwealth. *Id.* at § 411(c).

Germane to this discussion, the Associations Code does not define the phrase "doing business;" instead, Section 403 enumerates a non-exhaustive list of "[a]ctivities not constituting doing business." Section 403 states, in relevant part:

> (a) General rule. – Activities of a foreign filing association or a foreign limited liability partnership that do not constitute doing business in this Commonwealth under this chapter shall include the following:
>
> * * *
>
> (11) Doing business in interstate commerce.

15 Pa.C.S. § 403(a)(11).

Contrary to Plaintiff's contention, this provision does not create a blanket exemption from the registration requirement for all foreign corporations who engage in interstate commerce. The plain text provides simply that the activity of engaging in interstate commerce, in and of itself, is not an activity that affords a sufficient basis to confer upon Pennsylvania courts general jurisdiction over a foreign corporation. When interpreting statutory language, we must listen attentively not only to what the statute says, but also to what the statute does not say. *Woodford v. Commonwealth Ins. Department*, — – Pa. ——, 243 A.3d 60, 74-75 (2020). Section 403 does not indicate that a foreign corporation that conducts intrastate business in Pennsylvania is somehow

immunized from the registration statute if it also engages in interstate commerce.

The *Commentary* to Section 403 supports our plain language interpretation, explaining that Section 403 is set forth in a negative fashion by enumerating the certain activities that do not constitute doing business, thereby indicating that "any conduct more regular, systematic, or extensive than that described in subsection (a) constitutes doing business and requires the foreign association to register to do business." 15 Pa.C.S. § 403 cmt. The *Commentary* further provides examples of typical conduct requiring registration including, "maintaining an office to conduct local intrastate business, selling personal property not in interstate commerce, entering into contracts relating to the local business or sales, and owning or using real estate for general purposes." *Id.* Defendant maintains that it engages in these types of intrastate activities in Pennsylvania in addition to engaging in interstate commerce as a railroad.

Defendant asserts that Plaintiff had conceded this fact in the litigation below, only to change his position in his reply brief filed in this Court. *See* Supplemental Brief for Appellee at 2 n.6 (citing Plaintiff's Memorandum of Law in Support of Plaintiff's Response to Defendant's Preliminary Objections, 10/27/2017, at 11 (asserting that Defendant and its predecessors "have been doing business in this State for over 100 years")); Brief for Appellant [Plaintiff] at 8-9 (outlining Defendant's extensive operations in Pennsylvania, including owning 2,278 miles of track and operating eleven rail yards and three locomotive repair shops). Plaintiff

never argued in response to Defendant's preliminary objections that Defendant was not "doing business" for registration purposes, or that factual development was necessary to determine that issue. Instead, Plaintiff accepted that Defendant was doing business in the Commonwealth for purposes of the registration statute and contended that Pennsylvania could condition the privilege of doing business on a foreign corporation's submission to general jurisdiction in the Commonwealth's courts.

We are aligned not only with Defendant's interpretation of the governing statute, but also with its recitation of the record. Pursuant to Section 403(a)(11), a foreign corporation that conducts intrastate business in Pennsylvania is not excused from the registration requirement merely because it also engages in interstate commerce. This conclusion also is made clear in the *Commentary* to Section 403(a)(11), which indicates that the limitation set forth therein "reflect[s] the provisions of the United States Constitution that grant to the United States Congress exclusive power over interstate commerce, and preclude[s] states from imposing restrictions or conditions upon this commerce." 15 Pa.C.S. § 403 cmt. It additionally advises that this section should be interpreted "in a manner consistent with judicial decisions under the United States Constitution." *Id.* Federal jurisprudence supports our construction of Section 403(a). *See Eli Lilly & Co. v. Sav-On-Drugs, Inc.*, 366 U.S. 276, 278-79, 81 S.Ct. 1316, 6 L.Ed.2d 288 (1961) (deeming it well established that, pursuant to the federal Commerce Clause, a state may not require a foreign corporation to get a certificate of authority to do business if its activities in the state are

limited to "wholly interstate" business; however, a foreign corporation "could not escape state regulation merely because it is also engaged in intrastate commerce").

Accordingly, we hold that Section 403(a)(11) does not, as a matter of law, exempt Defendant from the registration requirement; thus, that provision has no impact on this appeal. As Defendant was required to register to do business in this Commonwealth, we next examine whether that registration served as voluntary consent to general jurisdiction in Pennsylvania courts.

VIII. Merits Analysis

Proceeding to examine the merits of the issue presented, we begin by acknowledging that the High Court has not addressed the question of whether it violates due process when a state conditions the privilege of doing business in the forum State upon the foreign corporation's submission to general jurisdiction. As the parties have demonstrated cogently, since the Court's pronouncement in *Daimler*, courts across the nation, both state and federal, have grappled with issues concerning whether compliance with a particular registration statute constitutes valid consent to general jurisdiction, and have reached disparate results.

In fact, the precise issue presented in this appeal may be peculiar to Pennsylvania. While all states require foreign corporations to register to do business within their boundaries, most state statutes do not provide expressly that the act of registering to

do business constitutes a specific basis upon which a court may assert general jurisdiction over all claims against a foreign corporation. *See Tanya J. Monestier, Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1363 (2015) (providing that "[e]very state has a registration statute that requires corporations doing business in the state to register with the state and appoint an agent for service of process") (footnote omitted); *id.* at 1366 (stating that "[o]nly one state, Pennsylvania, actually purports to directly address the jurisdictional consequences of registering to do business").[17] Thus, until the High Court speaks on the interplay between consent to jurisdiction by registration and the due process limits on general jurisdiction, it is our role to interpret that Court's governing case law on the topic and apply it to the facts presented.

As articulated fully *supra*, the parties disagree regarding the impact that *Daimler* and *Goodyear* have on the present inquiry. Plaintiff argues that the High

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[17] It is for this reason that we do not rely extensively on case law of our sister states which have held that registering to do business does not constitute valid consent to general jurisdiction. *See e.g. Genuine Parts Co. v. Cepec*, 137 A.3d 123 (Del. 2016); *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 418 Ill.Dec. 282, 90 N.E.3d 440 (2017); *State ex rel. Norfolk Southern Ry. v. Dolan*, 512 S.W.3d 41 (Mo. 2017); *DeLeon v. BNSF Ry. Co.*, 392 Mont. 446, 426 P.3d 1 (2018); *Figueroa v. BNSF Ry. Co.*, 361 Or. 142, 390 P.3d 1019 (2017); *Segregated Account of Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 376 Wis.2d 528, 898 N.W.2d 70 (2017). While we find these decisions persuasive and well-reasoned, we recognize that the constitutional rulings therein did not involve statutes, like our own, that provide expressly that qualification as a foreign corporation constitutes a sufficient basis to allow a court to exercise general jurisdiction over a foreign corporation.

Court's rulings in those cases shed little, if any, light on this appeal because they are silent regarding whether a foreign corporation voluntarily consents to general jurisdiction by registering to do business in a state, particularly where the state statute places the corporation on notice that registration results in submission to general jurisdiction. Plaintiff views the general jurisdiction analysis in *Goodyear* and *Daimler,* examining whether the foreign corporation's contacts with the forum State were so systematic and continuous as to render them essentially at home in the forum State, as inapplicable to the issue of whether such foreign corporation's consent to general jurisdiction is voluntary.

Defendant, on the other hand, interprets *Goodyear* and *Daimler* as setting forth the minimum due process requirements for general jurisdiction, which apply in every case where general jurisdiction is asserted. It maintains that because all foreign corporations that conduct business in Pennsylvania must register, the ability to do business in the Commonwealth hinges upon compliance with mandatory registration provisions and cannot serve as a voluntary relinquishment of due process rights.

Upon a close examination of the High Court's most recent directives, we are persuaded that our statutory scheme fails to comport with the guarantees of the Fourteenth Amendment; thus, it clearly, palpably, and plainly violates the Constitution. It is beyond cavil that a "state court's assertion of jurisdiction exposes defendants to the State's coercive power, and is therefore subject to review for compatibility with the Fourteenth Amendment's Due

Process Clause." *Goodyear*, 564 U.S. at 918, 131 S.Ct. 2846. The Due Process Clause protects the defendant's liberty interest in not being subject to the binding judgments of a forum with which the defendant has no meaningful "contacts, ties, or relations." *International Shoe*, 326 U.S. at 319, 66 S.Ct. 154.

It bears repeating that personal jurisdiction originally was tied directly to a defendant's presence within the forum State, and service of process on a defendant physically present in the forum State conferred personal jurisdiction over that defendant. *Pennoyer*, 95 U.S. at 722. Thus, states enacted registration statutes that required foreign corporations to appoint in-state registered agents to receive service of process, thereby rendering them "present" in the forum State for purposes of subjecting them to the jurisdiction of local courts in cases arising from transactions within the forum State. *Morris & Co. v. Skandinavia Ins. Co.,* 279 U.S. at 408-09, 49 S.Ct. 360.

As noted, in 1945, the seminal decision in *International Shoe* transformed the personal jurisdiction analysis from the territorial approach applied in *Pennoyer* to a contacts-focused methodology. *International Shoe*, 326 U.S. at 316-17, 66 S.Ct. 154. The Court explained that a tribunal's authority depends upon the defendant's minimum contacts with the forum State such that the maintenance of the suit "does not offend traditional notions of fair play and substantial justice." *Id.* at 316, 66 S.Ct. 154 (citing *Milliken v. Meyer*, 311 U.S. at 463, 61 S.Ct. 339). Distinguishing general (all-purpose)

jurisdiction, at issue here, from specific (case-linked) jurisdiction, the Court in *International Shoe* described general jurisdiction as encompassing "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Id*. at 318, 66 S.Ct. 154. Accordingly, general jurisdiction could be exercised within the confines of due process where a foreign corporation conducted substantial and continuous activities in the forum State.

As recognized astutely by the trial court, the High Court's decisions decades later in *Goodyear* and *Daimler* "dramatically altered" the general jurisdiction analysis by narrowing significantly the constitutional bases upon which a state court could exercise general personal jurisdiction over a foreign corporation. Trial Court Opinion, 5/30/2018, at 4. *Goodyear* and *Daimler* held expressly that "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler*, 571 U.S. at 127, 134 S.Ct. 746 (quoting *Goodyear*, 564 U. S. at 919, 131 S.Ct. 2846). The "paradigm" forums in which a corporate defendant is "at home," the High Court explained, are the corporation's place of incorporation and its principal place of business. *Daimler*, 571 U.S. at 137, 134 S.Ct. 746; *Goodyear*, 564 U.S. at 924, 131 S.Ct. 2846.

The Court observed that in an "exceptional case," a corporate defendant's operations in another

forum "may be so substantial and of such a nature as to render the corporation at home in that State." *Daimler*, 571 U.S. at 139 n.19, 134 S.Ct. 746. As the textbook example of an "exceptional case," the Court cited *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448, 72 S.Ct. 413, 96 L.Ed. 485 (1952), which held that where war had forced the foreign corporation's owner to relocate the enterprise temporarily from the Philippines to Ohio, Ohio then became the center of the corporation's activities, which was sufficient to confer Ohio courts with general jurisdiction over the foreign corporation. *Id.* at 448, 72 S.Ct. 413.

The exercise of jurisdiction over Defendant in this case does not satisfy due process as required by *Goodyear* and *Daimler*. Here, a Virginia plaintiff filed the FELA action against Defendant, a foreign railway company, which is incorporated in Virginia and has its principal place of business there, alleging injuries in Virginia and Ohio. It is obvious that no specific jurisdiction lies in Pennsylvania as there is no connection whatsoever between the case and the forum State. It is equally clear that Defendant did not incorporate in Pennsylvania and does not have its principal place of business here. Further, there is no indication that this is an otherwise "exceptional case," as arose in *Perkins*, *supra*, where the circumstances demonstrated that Defendant is essentially "at home" in Pennsylvania so as to afford our courts general jurisdiction.

Instead, Plaintiff alleges jurisdiction based exclusively on Defendant's compliance with a mandatory registration statute. While not set forth in the registration statute itself, Pennsylvania's long-

arm statute provides in Section 5301(a)(2)(i) that "qualification as a foreign corporation under the laws of this Commonwealth" constitutes a sufficient basis to enable Pennsylvania courts to exercise general personal jurisdiction over the foreign corporation. 42 Pa.C.S. § 5301(a)(2)(i). This provision affords Pennsylvania courts general personal jurisdiction over foreign corporations, regardless of whether the foreign corporation has incorporated in the Commonwealth, established its principal place of business here, or is otherwise "at home" in Pennsylvania. Indeed, the foreign corporation need not even engage in business in the Commonwealth; the mere completion of the act of registering to do so affords Pennsylvania judicial tribunals general jurisdiction over the foreign corporation. *Id.* The Legislature's grant of such broad jurisdictional authority is incompatible with the Fourteenth Amendment. Simply stated, a statute may not require what the Constitution prohibits.

As Defendant posits, to conclude that registering as a foreign corporation invokes all-purpose general jurisdiction eviscerates the Supreme Court's general jurisdiction framework set forth in *Goodyear* and *Daimler* and violates federal due process by failing to comport with *International Shoe*'s "traditional conception of fair play and substantial justice." *International Shoe*, 326 U.S. at 320, 66 S.Ct. 154. It would also be contrary to *Daimler's* directive that a court cannot subject a foreign corporation to general all-purpose jurisdiction based exclusively on the fact that it conducts business in the forum state. *See Daimler*, 571 U.S. at 138, 134 S.Ct. 746 (holding that pursuant to the Due Process Clause, subjecting a

foreign corporation to general jurisdiction in every state in which it "engages in a substantial, continuous, and systematic course of business" is "unacceptably grasping").

Moreover, we concur with the trial court that Pennsylvania's statutory scheme of requiring foreign corporations to submit to general jurisdiction as a condition of doing business here is contrary to the concept of federalism, as set forth by the High Court in *Bristol-Myers, supra*. *See* Trial Court Opinion, 5/30/2018, at 13 (opining that "[b]y requiring foreign corporations to submit to general jurisdiction as a condition of doing business here, Pennsylvania's statutory scheme infringes upon our sister state's ability to try cases against their corporate citizens").

In *Bristol-Myers*, the Court recognized that when determining whether personal jurisdiction is present, courts should consider the effect of the defendant's "[submission] to the coercive power of a State that may have little legitimate interest in the claims in question," as the "sovereignty of each state implies a limitation of the sovereignty of all its sister states." *Id.*, 137 S.Ct. at 1780 (citations omitted). The Court held that this federalism may be determinative, as "the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Id.* at 1781 (citing *World-Wide Volkswagen Corp., v. Woodson*, 444 U.S. at 294, 100 S.Ct. 559). The factual predicate underlying the instant appeal illustrates the textbook example of infringement upon the sovereignty of sister states, as Pennsylvania has no legitimate interest in a controversy with no

connection to the Commonwealth that was filed by a non-resident against a foreign corporation that is not at home here.

Additionally, we are unpersuaded by Plaintiff's reliance upon Supreme Court cases decided during the *Pennoyer* era, when courts applied a territorial approach to general jurisdiction, as opposed to analyzing the foreign corporation's affiliations with the forum State as mandated by *International Shoe*. *See, e.g., Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. at 95-96, 37 S.Ct. 344 (holding that an Arizona corporation consented to jurisdiction in Missouri when it complied with Missouri's foreign corporation law by appointing an agent to accept service of process as statutorily required); and *Ex parte Schollenberger*, 96 U.S. at 376-77 (holding that a Pennsylvania federal court had personal jurisdiction over foreign insurance corporations because a Pennsylvania law required the corporations to appoint an agent to receive process in the Commonwealth in consideration of granting the privilege of doing business).

The High Court has cautioned against relying upon cases decided before *International Shoe* due to concerns that these cases were adjudicated in an era when territorial analysis governed jurisdictional questions. *See Daimler*, 571 U.S. at 138 n.18, 134 S.Ct. 746 (discounting a party's reliance upon pre-*International Shoe* cases "decided in the era dominated by *Pennoyer's* territorial thinking" because such cases "should not attract heavy reliance today"); *see also Shaffer v. Heitner*, 433 U.S. 186, 212 & n.39, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977) (*superceded by*

statute) (providing that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny" and that "[t]o the extent that prior decisions are inconsistent with this standard, they are overruled"). Thus, we decline to follow *Pennoyer*-era High Court decisions that resolve questions of general jurisdiction because they do not hold significant precedential weight in federal jurisprudence on the issue.

Accordingly, we hold that our statutory scheme is unconstitutional to the extent that it confers upon Pennsylvania courts general jurisdiction over foreign corporations that are not "at home" in Pennsylvania pursuant to *Goodyear* and *Daimler*. Respectfully, we reject the Superior Court's decision in *Webb*, which held to the contrary.

The High Court's decision in *BSNF Railway Co. v. Tyrrell*, *supra*, decided after *Goodyear* and *Daimler*, supports our conclusion. In that case, two non-residents of Montana commenced a FELA action against a railway company ("BNSF") in a Montana state court, alleging injuries incurred while working for the company outside of Montana. The state court rejected the railway company's contention that it was not "at home" in Montana pursuant to *Daimler*, holding that Montana could exercise general personal jurisdiction over the railway company under, *inter alia,* Montana Rule of Civil Procedure 4(b)(1), which provided for the exercise of general jurisdiction over "persons found within" the State. *Tyrrell*, 137 S.Ct. at 1554. The state court further rejected BSNF's claim that the state rule violated due process.

The High Court reversed, finding that the state rule providing for general jurisdiction over all persons found within the state did not comport with due process. Rejecting the plaintiff's contention that *Daimler* was distinguishable because it did not involve a FELA claim or a railroad defendant, the High Court explained that *Daimler's* holding "applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued." *Id.* at 1559. The Court noted that BNSF was not incorporated in Montana and did not maintain its principal place of business there.

Acknowledging that BNSF had over 2,000 miles of railroad track and employed more than 2,000 workers in Montana, the High Court reiterated that "the general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts." *Id.* (citing *Daimler*, 571 U.S. at 139 n.20, 134 S.Ct. 746). Instead, the Court asserted that the inquiry "calls for an appraisal of a corporation's activities in their entirety;" "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* The Court concluded that the business BNSF conducted in Montana was sufficient to subject it to specific jurisdiction over claims relating to such affiliations, but insufficient pursuant to *Goodyear* and *Daimler* to subject BNSF to general jurisdiction over the claims alleged therein, which were unrelated to any activity occurring in the forum State. *Id.*

We would be remiss to omit that the High Court in *Tyrrell* expressly declined to address the plaintiff's

argument that BSNF consented to personal jurisdiction in Montana, as the state court had not entertained that contention. *Tyrrell,* 137 S.Ct. at 1559. Nonetheless, armed with the guidance of the Court's decisions in *Goodyear*, *Daimler*, *Bristol-Myer*s, and *Tyrrell* and in consideration of jurisprudence governing consent to jurisdiction, we proceed to that next step and analyze the constitutional validity of consent to jurisdiction by registration.

As referenced, the requirement of personal jurisdiction "recognizes and protects an individual liberty interest," which, like other individual rights, may be waived in a variety of ways, including consenting to the personal jurisdiction of the court by appearance, contractually agreeing to personal jurisdiction, or stipulating to personal jurisdiction. *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. at 702-03, 102 S.Ct. 2099. Accordingly, consent to jurisdiction by waiving one's due process rights is an independent basis for jurisdiction, assuming that the consent is given voluntarily. *See Brady v. United States*, 397 U.S. at 748, 90 S.Ct. 1463 (observing that waivers of constitutional rights must be voluntary, knowing, and intelligent).

Thus, to find that Defendant consented to the general jurisdiction of Pennsylvania courts when it registered to do business here, we must conclude that it voluntarily, knowingly, and intelligently waived its due process liberty interest in not being subject to the binding judgments of a forum with which it has no meaningful "contacts, ties, or relations." *International*

Shoe, 326 U.S. at 319, 66 S.Ct. 154. Unlike other states, whose statutes do not expressly condition the privilege to do business upon submission to general jurisdiction, foreign corporations are given reasonable notice that "qualification as a foreign corporation under the laws of this Commonwealth" constitutes "a sufficient basis" to "enable the tribunals of the Commonwealth to exercise general personal jurisdiction" over a foreign corporation.[18] 42 Pa.C.S. § 5301(a)(2)(i). That notice, however, does not render the consent voluntary.

Pursuant to the unconstitutional conditions doctrine, the government may not deny a benefit to a person because that person exercised a constitutional right. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. at 604, 133 S.Ct. 2586 (explaining that the unconstitutional conditions doctrine prevents the government from coercing people into relinquishing constitutional rights); *see also Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972) (holding that the state "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests"). Nearly a century ago, the United States Supreme Court clarified that "the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which

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[18] We further observe that Section 5301(a)(2)(ii) provides notice that a foreign corporation's consent affords a separate basis upon which Pennsylvania courts may assert general jurisdiction over a foreign corporation. 42 Pa.C.S. § 5301(a)(2)(ii).

require the relinquishment of constitutional rights." *Frost v. R.R. Comm'n*, 271 U.S. 583, 593-94, 46 S.Ct. 605, 70 L.Ed. 1101 (1926). The Court cautioned that if the state could compel the surrender of one constitutional right as a condition of the grant of a privilege, it could compel a surrender of all constitutional rights, thereby manipulating them out of existence. *Id.* at 594, 46 S.Ct. 605.

In accord with this jurisprudence, we hold that a foreign corporation's registration to do business in the Commonwealth does not constitute voluntary consent to general jurisdiction but, rather, compelled submission to general jurisdiction by legislative command. In enacting Section 5301(a)(2)(i), the General Assembly impermissibly conditioned the privilege of doing business in Pennsylvania upon a foreign corporation's surrender of its constitutional right to due process in violation of the protections delineated in *Goodyear* and *Daimler*, which subject foreign corporations to general jurisdiction over all claims against them only in a state where the corporation is essentially at home. The compelled submission to general jurisdiction further violates the doctrine of federalism, as the "sovereignty of each state implies a limitation on the sovereignty of all its sister states." *Bristol-Myers*, 137 S.Ct. at 1780.[19]

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[19] We further note that a contrary result would render application of specific jurisdiction superfluous as applied to foreign corporations registered to do business in Pennsylvania, as there would be no need to examine the affiliations between the forum State and the underlying case to establish specific jurisdiction over a particular controversy because general

As observed cogently by the trial court, a foreign corporation desiring to do business in Pennsylvania can either lawfully register to do business and submit to the general jurisdiction of Pennsylvania courts or not do business in Pennsylvania at all.[20]Trial Court Opinion, 5/30/2018, at 11. We agree that "[f]aced with this Hobson's choice, a foreign corporation's consent to general jurisdiction in Pennsylvania can hardly be characterized as voluntary," and instead is coerced. *Id.* It cannot be ignored that if Pennsylvania's legislative mandate of consent by registration satisfied due process by constituting voluntary consent to general jurisdiction, all states could enact it, rendering every national corporation subject to the general jurisdiction of every state. This reality flies in the face of *Goodyear* and *Daimler* and cannot be condoned. The High Court made clear that a state cannot claim, consistent with due process, general jurisdiction over every corporation doing business within its borders. Trial Court Opinion, 5/30/2018, at 14 (citing *Tyrrell*, 137 S.Ct. at 1558; *Daimler*, 571 U.S.

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jurisdiction would always lie based merely upon the foreign corporation's registration.

[20] Of course, a corporation could conduct business in Pennsylvania unlawfully without registering to do business, but in doing so, it would be forced to relinquish its right to "maintain an action or proceeding in this Commonwealth." 15 Pa.C.S. § 411(b). Thus, the foreign corporation would be compelled to surrender its constitutional guarantee to access to the courts. *See* Pa. Const. art. I, § 11 (providing that "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law..."). This scenario would equally amount to coercion, as opposed to voluntary consent to the general jurisdiction of Pennsylvania courts.

at 126-127, 134 S.Ct. 746; and *Goodyear*, 564 U.S. at 923, 131 S.Ct. 2846). Likewise, a "corporation that operates in many places can scarcely be deemed at home in all of them." *Daimler*, 571 U.S. at 139 n.20, 134 S.Ct. 746.

Our holding does not conflict with federal jurisprudence acknowledging that the liberty interest involved in personal jurisdiction may be waived by consenting to the personal jurisdiction of a tribunal by appearance, contractually agreeing to personal jurisdiction, or stipulating to personal jurisdiction. These constitutionally sanctioned methods of consent to jurisdiction involve the foreign corporation's voluntary consent to submit to the jurisdiction of the court with regards to a particular claim brought by a particular plaintiff, which the High Court's analysis in *Daimler* did not foreclose. Conversely, consent by registration requires the foreign corporation to consent to general jurisdiction over all claims filed by any plaintiff against the foreign corporation in the forum State, thereby relinquishing its due process liberty right to be free from suits in a forum within which it has no meaningful contacts, in exchange for the privilege of conducting business in the forum state. *Daimler* expressly prohibits such broad exercise of general jurisdiction. Further, unlike consent by registration, contractual forms of consent to jurisdiction are subject to reformation if they are the product of economic duress or contracts of adhesion. Consent by registration compelled by statute affords no avenue for relief to address challenges to the court's exercise of jurisdiction.

IX. Conclusion

The Supreme Court has afforded substantial protection to foreign corporations' Fourteenth Amendment due process rights, guaranteeing that they will not be subject to judgments on any and all claims filed against them in a forum state in which they are not at home. The Court has delineated expressly that foreign corporations are at home in their state of incorporation and the state in which they have established their principal place of business. Further, the Court has made clear that foreign corporations cannot be subject to general jurisdiction in every state in which they conduct business, as they could not possibly be at home in all of them.

Based on these principles, the Supreme Court of Delaware, in rejecting the contention that a foreign corporation's registration to do business constituted implied consent to general jurisdiction in Delaware's courts, noted cogently, "Our citizens benefit from having foreign corporations offer their goods and services here. If the cost of doing so is that those foreign corporations will be subject to general jurisdiction in Delaware, they rightly may choose not to do so." *Genuine Parts Co. v. Cepec*, 137 A.3d at 142. The Delaware Court further observed that "It is one thing for every state to be able to exercise personal jurisdiction in situations when corporations face causes of action arising out of specific contacts in those states; it is another for every major corporation to be subject to the general jurisdiction of all fifty states." *Id.* at 143.

These sentiments ring true in Pennsylvania. Our statutory scheme of conditioning the privilege of

doing business in the Commonwealth on the submission of the foreign corporation to general jurisdiction in Pennsylvania courts strips foreign corporations of the due process safeguards guaranteed in *Goodyear* and *Daimler*. Legislatively coerced consent to general jurisdiction is not voluntary consent and cannot be constitutionally sanctioned. Accordingly, our statutory scheme is unconstitutional to the extent that it affords Pennsylvania courts general jurisdiction over foreign corporations that are not at home in the Commonwealth.

Accordingly, we affirm the order of the trial court, which sustained Defendant's preliminary objections and dismissed the action with prejudice for lack of personal jurisdiction.

Justices Saylor, Todd, Donohue, Dougherty, Wecht and Mundy join the opinion. Justice Mundy files a concurring opinion.

JUSTICE MUNDY, concurring

I join the Majority Opinion in full. I write separately to note the unique jurisdictional expanse under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 et seq. The FELA provides that "[e]very common carrier by railroad ... shall be liable in damages to any person suffering injury while he is employed by such carrier ... for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier." 45 U.S.C. § 51. Section 56 of the FELA states, in part:

> Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several states.

45 U.S.C. § 56. A reasonable interpretation of this language is that Congress conferred to the several states personal-jurisdiction over railroads doing business within their borders, providing employees an avenue to pursue FELA claims. The Supreme Court addressed this issue in BNSF Railway Co. v. Tyrell, – — U.S. ——, 137 S.Ct. 1549, 198 L.Ed.2d 36 (2017), and determined otherwise. According to the High Court, the first quoted sentence of Section 56 does not address jurisdiction at all, but, rather, is a venue provision setting out the proper locations for FELA suits filed in federal court. Id. at 1553. The Court further determined the term "concurrent jurisdiction" in the second sentence refers to subject-matter rather than personal-jurisdiction and simply clarifies that state courts can hear FELA claims. Id. Therefore, a state must still satisfy the due process requirements set out in Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011) and Daimler AG v. Bauman, 571 U.S. 117, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014) to exercise personal-jurisdiction over a defendant in an FELA action, notwithstanding Section 56.

APPENDIX B

NON-PRECEDENTIAL DECISION-SEE SUPERIOR COURT I.O.P 65.37

In The
SUPERIOR COURT OF PENNSYLVANIA

Robert MALLORY, Appellant	No. 802 EDA 2018
v.	Filed October 30, 2020
NORFOLK SOUTHERN RAILWAY COMPANY, Appellee	

Appeal from the Order Entered February 7, 2018, In the Court of Common Pleas of Philadelphia County Civil Division at No: 170901961

BEFORE: STABILE, J., NICHOLS, J., and COLINS, J.

MEMORANDUM BY STABILE, J.:

Appellant, Robert Mallory, appeals from an order sustaining the preliminary objections of Appellee, Norfolk Southern Railway Company, and dismissing this action for lack of personal jurisdiction. Appellant argues that the trial court has jurisdiction over Appellee, a foreign corporation, pursuant to 42

Pa.C.S.A. § 5301(a)(2)(ii), because Appellee consented to the general jurisdiction of Pennsylvania courts by registering to do business in Pennsylvania. [1] The trial court held that Section 5301(a)(2)(ii) is unconstitutional and does not serve as a basis for exercising jurisdiction over Appellee. For the reasons that follow, we transfer this appeal to the Pennsylvania Supreme Court.

On September 18, 2017, Appellant commenced this action against Appellee alleging a violation of the Federal Employers' Liability Act, 45 U.S.C. §§ 51-60. The complaint alleged that Appellant worked for Appellee as a carman in Ohio and Virginia from 1988 through 2005, but that his employment with Appellee exposed him to harmful carcinogens which caused him to develop colon cancer. Appellee filed preliminary objections seeking dismissal of the complaint due to lack of personal jurisdiction. Appellant countered that Appellee consented to jurisdiction by registering in Pennsylvania as a foreign corporation. On February 6, 2018, the court sustained Appellee's preliminary objections and dismissed the complaint. Appellant filed a timely appeal to this Court. Subsequently, Appellant filed a timely statement of matters complained of on appeal raising a single issue: the court erred in finding it lacked personal jurisdiction over Appellee because Section 5301(a)(2)(ii) confers

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[1] Section 5301(a)(2)(ii) provides that "consent, to the extent authorized by the consent," constitutes a sufficient bases for Pennsylvania courts to exercise general jurisdiction over a corporation.

general jurisdiction by consent over any corporation who registers to do business in Pennsylvania.

The court filed a Pa.R.A.P 1925 opinion in which it concluded that Section 5301(a)(2)(ii) was unconstitutional. The court noted that Pennsylvania law requires foreign corporations to register with the Commonwealth before doing business in Pennsylvania. Opinion, 5/30/18, at 6 (citing 15 Pa.C.S.A. §§ 102, 411). Construed together with Section 5301, these statutes mandate foreign corporations to submit to the court's general jurisdiction as a condition of doing business in Pennsylvania. ***Id.*** at 7. The court held that this statutory regime of "forcing foreign corporations to choose between consenting to general jurisdiction in Pennsylvania or foregoing the opportunity to conduct business in Pennsylvania" violates the Due Process Clause of the Fourteenth Amendment. ***Id.*** at 7-8.

In this Court, Appellant contends that the trial court erred by finding Section 5301(a)(2)(ii) unconstitutional. Before proceeding further, we find it necessary to inquire whether we have subject matter jurisdiction to decide this question. ***Commonwealth v. Beatty,*** 207 A.3d 957, 961 (Pa. Super. 2019) (court may raise question of subject matter jurisdiction *sua sponte* at any stage of the proceeding).

The Judiciary Code prescribes that our Supreme Court "shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas" that hold any Pennsylvania statue "repugnant to the Constitution…of the United States." 42 Pa.C.S.A. §

722(7). The present appeal is from a final order declaring the consent provision of Pennsylvania's general jurisdiction statute, Section 5301(a)(2)(ii), unconstitutional under the Fourteenth Amendment. The plain language of Section 722(7) mandates that the Supreme Court decide this appeal, not the Superior Court.

42 Pa.C.S.A § 5103 provides the mechanism for transferring this appeal to the Supreme Court. It states:

> If an appeal…is taken to…a court…of this Commonwealth which does not have jurisdiction of the appeal…,the court…shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal…shall be treated as if originally filed in the transferee tribunal on the date when the appeal…was first filed in a court…of this Commonwealth.

42 Pa.C.S.A. § 5103(a). Pursuant to Section 5103(a), we direct the prothonotary to transfer the record in this case to the Supreme Court.

Case transferred to the Pennsylvania Supreme Court. Prothonotary directed to transfer record of this case to the Supreme Court of Pennsylvania, Eastern District.[2]

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[2] In light of our disposition, Appellants' Application for Relief Seeking Oral Argument is denied as moot.

Judge Nichols did not participate in the consideration or decision of this case.

APPENDIX C

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ROBERT MALLORY v. NORFOLK SOUTHERN RAILWAY CO.	SEPTEMBER TERM 2017 NO. 1961 802 EDA 2018

OPINION

NEW, J. May 30th, 2018

For the reasons set forth below, this Court respectfully requests the Superior Court affirm this Court's Order dated February 6, 2018, and docketed February, 7, 2018.

FACTUAL AND PROCEDURAL HISTORY

Plaintiff Robert Mallory, a Virginia resident, commenced this action by filing a Complaint on September 18, 2017. The Complaint's single claim sounds in violation of the Federal Employers' Liability Act (FELA), 45 U.S.C § 51, *et seq*. According to the Complaint, Plaintiff worked for Defendant Norfolk

Southern[1] as a carman in Ohio and Virginia from 1988 through 2005. Complaint at ¶¶ 9-11. Plaintiff alleged his employment with Defendant exposed him to harmful carcinogens, Id. at ¶¶ 10-11, which caused him to develop colon cancer, Id. at ¶¶ 13-14.

Defendant filed Preliminary Objections arguing this Court lacked personal jurisdiction. Plaintiff's Response in Opposition raised a single argument – Defendant consented to personal jurisdiction by registering to do business in Pennsylvania. This Court heard oral argument on Defendant's Preliminary Objections on February 6, 2018, at which Plaintiff argued Defendant consented to personal jurisdiction pursuant to 42 Pa. C.S.A § 5301 by registering to do business in Pennsylvania. By Order dated February 6, 2018, and docketed February 7, 2018, this Court sustained Defendant's Preliminary Objection and dismissed this matter for want of personal jurisdiction. Plaintiff filed a timely appeal.

Plaintiff's Concise Statement of Errors raised a single alleged error – this Court erred in finding it lacked personal jurisdiction over Defendant because § 5301 confers general jurisdiction by consent over any corporation who registers to do business in Pennsylvania. See Plaintiff's Concise Statement at ¶ 3.

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[1] The Complaint avers Defendant Norfolk Southern is a Virginia Corporation with its principal place of business in Norfolk, Virginia. Complaint at ¶2.

ANALYSIS

Pennsylvania Rule of Civil Procedure 1028 requires a party to assert a lack of personal jurisdiction by preliminary objection. Pa.R.C.P 1028(a)(1). "When a defendant challenges the court's assertion of personal jurisdiction, that defendant bears the burden of supporting such objections to jurisdiction by presenting evidence." De Lage Landen Fin. Servs., Inc. v. Urban P'ship, LLC, 903 A.2d 586, 590 (Pa. Super. 2006). Here, Defendant argues the Due Process Clause prohibits the Court from exercising personal jurisdiction over it. E.g. Preliminary Objections at ¶ 32. To support this argument, Defendant points to the averments of the Complaint – Defendant is a Virginia corporation with its principal place of business in Virginia and all alleged exposure to carcinogens occurred outside of Pennsylvania – to satisfy its burden.

This Court's exercise of personal jurisdiction must conform to both Pennsylvania's long arm statute and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Kubik v. Letteri, 614 A.2d 1110, 1112 (Pa. 1992). The long-arm statute provides:

> (a) General Rule – a tribunal of this Commonwealth may exercise personal jurisdiction over a person… who acts directly or by an agent, as to a cause of action of other matter arising from such person:

> 1) Transacting any business in this Commonwealth. Without excluding other act which may constitute transacting business in this Commonwealth, any of the following shall constitute transacting business for the purpose of this paragraph:
>
> i) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit …
>
> …
>
> iv) The engaging in any business or profession within this Commonwealth, whether or not such business requires license or approval by any government unit of this Commonwealth.
>
> …
>
> (b) Exercise of full constitutional power over non residents. In addition to the provisions of subsections (a) the jurisdiction of the tribunals of this Commonwealth shall extend to all persons … to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact within this Commonwealth allowed under the Constitution of the United States.

42 Pa. C.S. § 5322. Pennsylvania courts have recognized subsection (b) renders the reach of the long-arm statute coextensive with that permitted by

the Due Process Clause of the Fourteenth Amendment. See e.g. Gaboury v. Gaboury, 988 A.2d 672, 677-78 (Pa. Super. 2009); Efford v. Jockey Club, 796 A.2d 370, 373 (Pa. Super. 2002); Kingley and Keith (Canada) Ltd. v. Mercer Intern. Corp., 435 A.2d 585, 587-88 (Pa. Super. 1981); Koenig v. International Brotherhood of Boilermakers, 426 A.2d 635, 639-40 (Pa. Super. 1980). Therefore, this Court need only address the Due Process issue.

I.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution limits the authority of a state to exercise personal jurisdiction over non-resident defendants. Mendel v. Williams, 53 A.3d 810, 817 (Pa. Super. 2012) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174 (1985)). "A defendant's activities in the forum State may give rise to either specific jurisdiction or general jurisdiction." Id. (citations omitted).

The seminal case of International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154 (1945), established the dichotomy between specific jurisdiction and general jurisdiction. "Specific jurisdiction … depends on an affiliation[n] between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." Mendel, 53 A.3d at 817 (citations omitted). International Shoe defined general jurisdiction as "instances in which the continuous corporate operations within a state [are] so substantial and of such nature as to justify suit

against it on causes of action arising from dealings entirely distinct from those activities." International Shoe, 66 S.Ct. at 159. For decades, courts interpreted this language as permitting a court to exercise general personal jurisdiction over a foreign corporation so long as the foreign corporation's business activities within the forum state were considered continuous and substantial. The United States Supreme Court's decision in Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 131 S.Ct. 2846 (2011) and Daimler AG v. Bauman, 134 S.Ct. 746, 755 (2014) dramatically altered general jurisdiction analysis. When read together, Goodyear and Daimler hold a court may only exercise general jurisdiction over a corporation if its "affiliations within the state are so continuous and systemic as to rend [it] essentially at home in the forum state," Goodyear, 131 S.Ct. at 2851, with "the place of incorporation and the principal place of business [being the paradigmatic] bases for general jurisdiction." Daimler, 134 S.Ct. at 755.

Accordingly, for Pennsylvania courts to acquire general personal jurisdiction over foreign corporations under the current state of the law, the foreign corporation must be incorporated in Pennsylvania, have its principal place of business in Pennsylvania, or have consented to the exercise of jurisdiction. See Daimler, 134 S.Ct. at 755; Moyer v. Teledyne Continental Motors, Inc., 979 A.2d 336, 349 (Pa. Super. 2009) (observing courts may exercise general jurisdiction over corporations who consent). In such case *sub judice*, Plaintiff's sole argument is Defendant consented to general jurisdiction by registering to do business in Pennsylvania. The crux of Plaintiff's argument rests on the notion foreign corporations

consented to general jurisdiction when they voluntarily register to do business in this Commonwealth, pursuant to § 5301.

II.

The United States Supreme Court and the Pennsylvania Supreme Court have long held a foreign corporation may consent to the jurisdiction of a court. For example, a foreign corporation may consent to jurisdiction by voluntarily appearing before the court. McDonald v. Mabee, 243 U.S. 90, 37 S.Ct. 343, 343-44 (1917) (stating in *dicta* a defendant's voluntary appearance before a tribunal is an acquiesce to the court's jurisdiction); Wagner v. Wagner, 768 A.2d 1112, 1120 (Pa. 2001). Likewise, foreign corporations may contractually agree to submit to a court's jurisdiction, National Equipment Rental Ltd. v. Szukhent, 375 U.S. 311, 84 S.Ct. 411, 414 (1964), or stipulate a court has jurisdiction over them. Petrowski v. Hawkeye-Security Ins. Co., 350 U.S. 495, 76 S.Ct. 490, 490-91 (1956); Wagner, 768 A.2d at 1120.

According to Plaintiff, Defendant consented to general jurisdiction by registering to do business in Pennsylvania. Section 5301 of the Judiciary Act provides.

> (a) General rule.—The existence of any of the following relationships between person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the

case of an individual, and to enable such tribunals to render personal orders against such person or representative:

...

(2) Corporations.—

(i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.

(ii) Consent, to the extend authorized by the consent.

(iii) The carrying on of a continuous and systemic part of its general business within this Commonwealth.

42 Pa.C.S.A § 5301; see also Plaintiff's Memorandum in Opposition at p. 7 (citing Simmers v. American Cyanamid Corp., 576 A.2d 376, 382 (Pa. Super. 1990) (stating "when jurisdiction is based on foreign corporation's general activity or consent, i.e. ... has voluntarily registered itself to do business here, the courts of this Commonwealth may exercise jurisdiction over the foreign corporation regardless of whether the cause of action being prosecuted is related to the corporation's activities in Pennsylvania")). Plaintiff also cites precedent from Pennsylvania's federal courts and the courts of our sister states for the proposition a corporation may voluntarily consent to jurisdiction by choosing to register as a foreign business organization in a given state. Id. at pp. 7-11.

A review of Pennsylvania's statutory scheme belies Plaintiff's argument because Defendant's consent to jurisdiction was not voluntary. Pursuant to the Associations Code, foreign corporations must register with the Commonwealth before conducting business within Pennsylvania. 15 Pa.C.S. § 411 (a) (stating "… a foreign filing association or foreign limited liability partnership *may not* do business in this Commonwealth until it registers with the department under this chapter") (emphasis added); see also 15 Pa.C.S. § 102(a) (defining "association" as "a corporation, for profit or not-for-profit,…"). The Associations Code punishes foreign corporations' failure to register prior to doing business in the Commonwealth by prohibiting them from seeking redress in Pennsylvania's courts.[2] 15 Pa. C.S. § 411(b) ("Penalty for failure to register – a foreign filing association … doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business under this chapter."); see also Hoffman Const. Co. v. Erwin, 200 A. 579 (Pa. 1938) (foreign corporation could not maintain breach of contract action because

[2] The committee notes to § 411 claim the closure of Pennsylvania's courts to foreign corporations who fail to register is not a punitive sanction. 15 Pa.C.S. § 411 at Committee Comment. This characterization is inaccurate. The Pennsylvania Constitution guarantees access to the courts. PA Const. art. I, § 11 ("All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law…"). By denying foreign corporations their constitutional right to access the courts unless they register, the Legislature imposed a punitive sanction upon those foreign corporations; it matters not if such a sanction is characterized as a carrot rather than a stick, the punitive result is the same.

the foreign corporation failed to register, as required by Pennsylvania law); University of Dominica v. Pennsylvania College of Podiatric Medicine, 446 A.2d 1339, 1340-41 (Pa. Super. 1982)(Section 411(b) prevented foreign corporation from prosecuting a breach of contract action in Pennsylvania court even though the foreign corporation attempted to register with the Commonwealth, since the Pennsylvania Department of Education rejected the registration).

Contrary to Plaintiff's argument, foreign corporations do not submit to general jurisdiction by choosing to register as a foreign business corporation at this Commonwealth. Instead, § 5301 of the Judiciary Act and § 411 of the Association Code, when read together, mandate foreign corporations to submit to general jurisdiction as a condition of being permitted to conduct business within the Commonwealth. State differently, a foreign corporation has two choices: 1) doing business in Pennsylvania while concomitantly consenting to general personal jurisdiction, or 2) not doing business in Pennsylvania.

III.

"Because a state court's assertion of jurisdiction exposes defendants to the State's coercive power, it is subject to review for compatibility with the Fourteenth Amendment's Due Process Clause, which limits the power of a state court to render a valid personal judgement against a nonresident defendant." Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County, 137 S.Ct. 1773, 1779 (2017) (internal quotations of citations

omitted). Accordingly, this Court must determine whether Pennsylvania's statutory scheme – i.e. forcing foreign corporations to choose between consenting to general jurisdiction in Pennsylvania or foregoing the opportunity to conduct business in Pennsylvania – offends the Due Process Clause. This Court finds that it does.

A.

"The Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgement." Bristol-Myers, 137 S.Ct. at 1780 (2017) (internal citation omitted). The United States Supreme Court recognized the burden placed on defendants when they are required to "[submit] to the coercive power of a state that may have little legitimate interest in the claims in question." Id. Since "[t]he sovereignty of each State [implies] a limitation on the sovereignty of all its sister States … the reasonableness of asserting jurisdiction over the defendant must be assessed 'in the context of our federal system of government.'" World-wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559, 565 (1980) (citations omitted).

[The] requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of [Pennoyer v. Neff, 95 U.S. 714, 720, 5 Otto 714 (1877)] to the flexible standard of [International Shoe Co.]. But it is a mistake to

> assume that this trend heralds the eventual demise of all restrictions on the personal

> jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.

Hanson v. Denckla, 357 U.S. 235, 251, 78 S.Ct. 1228 (1958) (internal quotations omitted). As the United States Supreme Court reiterated in Bristol-Myers, "[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; eve if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgement." Bristol-Myers, 137 S.Ct. at 1780-81 (citing World-Wide Volkswagen, 100 S.Ct. at 565-66).

The United States Supreme Court's recent decision in Bristol-Myers, over 600 plaintiffs, most of whom were not California residents, filed suit against Bristol-Myers Squibb Co., asserting state law claims based on injuries allegedly caused by the drug Plavix. Bristol-Myers, 137 S.Ct. at 1777. The California Supreme Court found it lacked general jurisdiction over the non-residents' claims because Bristol-Myers is a Delaware Corporation with its principal place of business in New York. Id. at 1778. Nevertheless, the California Supreme Court held it had specific jurisdiction over the claims of all plaintiffs, including those who were not California residents, based on Bristol-Myers' extensive contacts with California,

which included: 1) "the claims of the nonresidents were similar in several ways to the claims of the California residents," 2) "both the resident and nonresident plaintiffs' claims are based on the same allegedly defective product and the assertedly misleading marketing and promotion of that product," and 3) Bristol-Myers' research and development of other drugs in California. Id. at 1779. The United States Supreme Court, relying on the Due Process Clause as an instrument of interstate federalism, reversed the California Supreme Court stating "there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or occurrence that takes place in the forum State[;]" "a corporation's continuous activity of some sorts within a state … is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." Id. at 1781 (internal citations omitted). Furthermore, the Court held federalism prevented the California courts from exercising personal jurisdiction over the non-residents' claims, even though any inconvenience experience by Bristol-Myers in defending the suits in a foreign jurisdiction would be minimal in light of the fact the non-residents' claims were similar to the California residents' claims, because the nonresidents did not suffer harm in California and the conduct giving rise to their claims occurred outside California. Id. at 1782.

Similarly, the Pennsylvania Supreme Court recognizes federalism limits Pennsylvania courts' ability to regulate a foreign corporation's actions in our sister states. In United Farm Beureau Mut. Ins. Co. v. U.S. Fidelity & Guar. Co., an Indiana insurance company issued an automobile insurance policy to an

Indiana family, the Palmers. 462 A.2d 1300 (Pa. 1983). The Palmers subsequently suffered personal injury in a car accident in Mercer County, Pennsylvania. Id. at 1301-02. After the accident, the Palmers sought benefits under Pennsylvania's no-fault law. Id. The Pennsylvania insurer assigned under the Assigned Claims Plan, United States Fidelity and Guarantee Co., refused to pay no-fault benefits, asserting the only benefits to which the Palmers were entitled were from the Indiana insurance company. Id. at 1302. Following this refusal to pay, the Palmers sued United States Fidelity and Guarantee Co. in Allegheny County. United States Fidelity and Guarantee Co., in turn, filed a declaratory judgement action against the Palmers and the Indiana insurer, arguing the Palmers were not entitled to no-fault benefits or the Indiana insurer was responsible for paying the Palmers' no-fault benefits. Id. The Indiana insurer challenged Pennsylvania's exercise of personal jurisdiction, arguing it lacked sufficient contacts with Pennsylvania since it was an Indiana corporation who only did business in Indiana. Id. Our Supreme Court, relying on federalism, held Pennsylvania did not have jurisdiction over the Indiana insurer. Id. at 1305-07. In particular, the Court noted "federalism would not permit our legislature to require a totally foreign insurance company … to provide no-fault insurance to its policyholders. [Therefore,] the courts of this Commonwealth cannot require such an action, a requirement which would be implicit in our upholding jurisdiction in case s such as this." Id. at 1307.

B.

As the United States Supreme Court made clear in Daimler and Goodyear, federalism prevents this Court from exercising general jurisdiction over the Defendant simply because Defendant does business in Pennsylvania. Daimler, 134 S.Ct. at 754; Goodyear, 131 S.Ct. at 2846. This Court must determine whether federalism limits the exercise of general personal jurisdiction by consent.

In Szukhent and Petrowski, the United States Supreme Court held the defendents consented to jurisdiction because they voluntarily appeared before those courts, Szukhent, 84 S.Ct. at 414; Petrowski, 76 S.Ct. at 490-91; no similar voluntary action has occurred in the case *sub judice*. As set forth above, Pennsylvania law requires foreign corporations to submit to general jurisdiction in exchange for the right to do business within the Commonwealth. Under the current state of Pennsylvania law, the only way foreign corporations such as Defendant can avoid Pennsylvania courts' assertion of general jurisdiction over them is for those corporations to avoid doing business in Pennsylvania. Faced with this Hobson's choice, a foreign corporation's consent to general jurisdiction in Pennsylvania can hardly be characterized as voluntary. In light of the Supreme Court's repeated admonishment that the Due Process Clause prohibits a state from claiming general jurisdiction over every corporation doing business within its borders, see BNSF Ry. Co v. Tyrrell, 137 S.Ct. 1549, 1558 (2017); Daimler, 134 S.Ct. at 754; Goodyear, 131 S. Ct. at 2846, it logically follows the Due Process Clause also prohibits a state from forcing every corporation doing business within its borders to consent to general jurisdiction.

This Court acknowledges the existence of United States Supreme Court precedent form the late 1800s and early 1900s permitting state courts to obtain personal jurisdiction over foreign corporations via mandatory registration statutes or the required appointment of an in-state agent to accept service of process. See e.g. Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill Co., 243 U.S. 93, 37 S.Ct. 344 (1917) (finding the defendant insurer consented to jurisdiction in Missouri when it complied with Missouri's foreign corporation law, which required foreign corporations to grant the superintendent of the insurance department a power of attorney to accept service of process); Ex parte Schollenberger, 96 U.S. 369, 6 Otto 369 (1877) (holding the Eastern District of Pennsylvania had personal jurisdiction over foreign insurance corporations because Pennsylvania's state courts had personal jurisdiction over those same insurers under a Pennsylvania law requiring foreign insurers to appoint an agent to receive original process). These cases are relics of the Pennoyer era, in which a bright-line rule prohibited courts from exercising personal jurisdiction over persons or corporations outside the geographic boundary of the court. See Pennoyer v. Neff, 95 U.S. at 720, (holding "The authority of every tribunal is necessarily restricted by the territorial limits of the state in which it is established"). Due to the strict territorial nature of Pennoyer, courts and legislatures relied on innovative techniques to gain jurisdiction over otherwise untouchable foreign corporations, and cases such as Pennsylvania Fire and Schollenberger are the result of such innovative efforts. Indeed, the Pennsylvania Supreme Court recognized the purpose of the registration

requirement at issue her is to bring foreign corporations under the jurisdiction of Pennsylvania's courts. Hoffman Const., 200 A. at 386.

International Shoe obviated the need for such innovative efforts by creating the specific jurisdiction/general jurisdiction dichotomy, thereby allowing courts to exercise personal jurisdiction over foreign corporations in various scenarios. While the United States Supreme Court has never explicitly overruled Pennsylvania Fire and Schollenberger, the Court has acknowledged International Shoe and its progeny have implicitly overruled them. See Schaffer v. Heitner, 433 U.S. 186, 97 S.Ct. 2569, 2584 n.39 (1977) ("It would not be fruitful for us to examine the facts of cases decided on the rationales of Pennoyer and [Harris v. Balk, 198 U.S. 215, 25 S.Ct. 625 (1905)] to determine whether jurisdiction might have been sustained under [International Shoe and its progeny]. To the extent that prior decisions are inconsistent with [International Shoe and its progeny], they are overruled").

By requiring foreign corporations to submit to general jurisdiction as a condition of doing business here, Pennsylvania's statutory scheme infringes upon our sister state's ability to try cases against their corporate citizens. This infringement runs counter to the concept of federalism and should not be tolerated. Bristol-Myers, 137 S.Ct. at 1780 ("[T]he states retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts … at times, this federalism interest must be decisive") (internal quotations and citations omitted).

In the case *sub judice*, Plaintiff alleges a single violation of the Federal Employers' Liability Act Due to exposure to harmful carcinogens in Ohio and Virginia. Since Plaintiff's alleged exposure to carcinogens occurred outside this Commonwealth, Pennsylvania courts do not have specific jurisdiction over Plaintiff's claims. See e.g. Bristol-Myers, 137 S.Ct. at 1781; Mendel, 53 A.3d at 817. This Court also lacks general jurisdiction because Defendant Norfolk Southern is not "at home" in Pennsylvania; it is a Virginia corporation with its principal place of business located in Virginia. Daimler 134 S.Ct. at 754; Goodyear, 131 S.Ct. 2846.

Pennsylvania's statutory scheme requiring consent to personal jurisdiction does not comport with federalism as it encroaches our sister-states' power to render verdicts against their corporate citizens solely because those corporate citizens do business in Pennsylvania. The United States Supreme Court made clear a state cannot claim general jurisdiction over every corporation doing business within its borders. See Tyrrell, 137 S.Ct. at 1558; Daimler, 134 S.Ct. at 754; Goodyear, 131 S.Ct. at 2846. By wrapping general jurisdiction in the cloak of consent, Pennsylvania's mandated corporate registration attempts to do exactly what the United States Supreme Court prohibited in Tyrrell, Goodyear, and Daimler. Therefore, Plaintiff's jurisdiction by consent argument infringes upon the doctrine of federalism, as protected by the Due Process Clause.

WHEREFORE the above stated reasons, this Court properly held it lacked personal jurisdiction over Defendant Norfolk Southern, and this Court's

Order dated February 6, 2018 and docketed February 7, 2018 should be affirmed.

BY THE COURT:

/s/ Arnold L. New, J.
Arnold L. New, J.

APPENDIX D

LEVIN SEDRAN & BERMAN
LAURENCE S. BERMAN, ESQUIRE
DANIEL C. LEVIN, ESQUIRE
LUKE T. PEPPER, ESQUIRE
Identification No. 26965 80013 & 87100
510 Walnut Street, Suite 500
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(215) 592-1500 Attorneys for Plaintiff

ROBERT MALLORY 1836 10th St. NW Roanoke, VA 24012, Plaintiff, vs. NORFOLK SOUTHERN RAILWAY COMPANY Three Commercial Place Norfolk, VA 23510 Defendant.	CIVIL ACTION NO: 170901961 JURY TRIAL DEMANDED TWELVE JURORS REQUESTED

STATEMENT OF ERROR

1. On February 7, 2018, this Court sustained Defendant's Preliminary Objections to Plaintiff's Complaint finding this Court lacked

personal jurisdiction of Norfolk Southern Railway Company ("Norfolk").

2. Plaintiff filed a Notice of Appeal with this Court of March 5, 2018.

3. The error in question for appeal is whether Pennsylvania's Registration Statute, 42 Pa. C.S.A. § 5301, requiring a foreign corporation who registers under Pennsylvania's Registration Statute to consent to general jurisdiction confers jurisdiction on this Court. See *Bors v. Johnson & Johnson*, 208 F.Supp. 3d 648, 655 (E.D. Pa. 2016) ("Consent remains a valid form of establishing personal jurisdiction under the Pennsylvania Registration Statute after *Daimler*.")

4. Plaintiff seeks appeal on this issue from this Court.

Date: March 16, 2018

Respectfully submitted,

/s/ Daniel C. Levin
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OF COUNSEL:

RAYMOND P. FORCENO, ESQUIRE

APPENDIX F

COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

ROBERT MALLORY	SEPTEMBER TERM
v.	2017
NORFOLK	
SOUTHERN RAILWAY	NO. 001961
CO.	JURY TRIAL
	DEMANDED

ORDER

AND NOW, this 6th day of Feb. 2018, upon consideration of the Preliminary Objections of Defendant, Norfolk Southern Railway Company to Plaintiff's Complaint, and any response thereto, it is hereby ORDERED and DECREED that said Preliminary Objections are SUSTAINED and that:

Defendant, Norfolk Southern Railway Company is DISMISSED, WITH PREJUDICE.

BY THE COURT:

APPENDIX G

Civil Action

Laurence S. Berman, Esquire, Daniel C. Levin, Esquire, Luke T. Pepper, Esquire, Identification No. 26965 80013 & 87100, Levin Sedran & Berman, 510 Walnut Street, Suite 500, Philadelphia, PA 19106, (215) 592-1500, for plaintiff.

JURY TRIAL DEMANDED

TWELVE JURORS REQUESTED

F2-Personal Injury

Federal Employers' Liability Act

1. The Plaintiff, Robert Mallory, is a competent adult individual whose address is 1836 10th St NW, Roanoke, VA 24012.

2. The Defendant, Norfolk Southern Railway Company ("Norfolk"), is a corporation organized and existing under the laws of the Commonwealth of Virginia, whose principal place of business and address for service of process is Three Commercial Place, Norfolk, VA 23510.

3. This suit is brought pursuant to Acts of Congress known as the Federal Employers' Liability Act, Title 45 U.S.C. Secs. 51-60.

4. At all times material hereto, the Defendant were engaged in interstate commerce as a common carrier by railroad operating a line and system of railroads in the Commonwealth of Virginia, and other states of the United States.

5. At the time and place hereinafter mentioned, the acts of omission and commission causing injuries to the Robert Mallory were done by the Defendant, their agents, servants, workmen and/or employees acting in the course and scope of their employment with and under the direct and exclusive control of the Defendant.

6. At the time and place hereinafter mentioned, the Robert Mallory was employed by Defendant railroads and was action in the scope of his employment by the Defendant and was engaged in the furtherance of interstate commerce within the meaning of said Act.

7. The injuries and damages sustained by Robert Mallory, while working as an employee of the Defendant, were caused by his exposure to and inhalation of toxic fumes, hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane.

8. All the property, equipment and operations involved in Robert Mallory's injury were owned and/or under the direct and exclusive control of the

Defendant, their agents, servants, workmen and/or employees.

9. Robert Mallory worked for Norfolk in 1988 – 2005. He was employed as a carman. Mr. Mallory's asbestos exposure began in 1988 through 2005, primarily while Robert Mallory worked for Norfolk.

10. Mr. Mallory first worked in Bruester, Ohio where he worked cleaning out box cars and flat cars. He ripped out flooring, walls and ceilings of the cars. He worked in Bruester, Ohio for five years. All of these cars contained asbestos. The site where he worked in Bruester, Ohio was the Mingo Junction.

11. Mr. Mallory transferred to Roanoke, Virginia for 18 years from 1988 to 2005. While working for Norfolk in Virginia, Mr. Mallory sprayed pipes with asbestos foam. Pipes caught fire releasing asbestos dust into the air. He worked building built ins on box cars and parts for the railroads. He worked in the paint shop and was exposed to chemicals and asbestos. Mr. Mallory was exposed to asbestos during his employment in Roanoke, Virginia.

12. Mr. Mallory then worked in Harrisburg, Pennsylvania until his retirement.

13. Mr. Mallory was diagnosed with colon cancer in June, 2016.

14. Mr. Mallory's colon cancer was caused in whole or in part by his exposure to asbestos and toxic chemicals at Defendant's sites where he worked.

COUNT I
FELA 45 USC 51 et seq.

15. Mr. Mallory's colon cancer was caused in whole or in part by the negligence, carelessness and recklessness of the Defendant and Defendant's predecessors for failing to provide a safe workplace in which Mr. Peterman was not exposed to asbestos and other toxic chemicals.

16. Defendant failed in providing a safe workplace by:

a) failing to exercise reasonable care to adequately warn Robert Mallory of the risks, dangers and harms to which he was exposed in working with, touching or inhaling toxic fumes, hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane;

b) failing to provide Robert Mallory with reasonably safe and sufficient personal safety apparel and equipment including respirators necessary to protect him from being injured, poisoned, disabled, killed or otherwise harmed, by inhaling, working with, using, handling and/or coming in contact with and being exposed to inhalation of toxic fumes, hazardous dusts, substances, solvents and

chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane;

c) failing to provide Robert Mallory with a reasonably safe place in which to work by exposing him to toxic fumes, hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane;

d) failing to minimize or eliminate Robert Mallory's exposure to and inhalation of toxic fumes, hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane, while requiring Robert Mallory to work in a building without a ventilation system, exhaust fans, dampening or wetting procedures and other safety procedures recommended by the AAR, OSHA and industrial hygienists;

e) failing to conduct any tests to determine the presence and/or amount of toxic fumes, hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane;

f) failing to transfer Robert Mallory from workplaces where he had been exposed to toxic fumes, hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane to other workplaces with no such or lesser exposure;

g) failing to conduct physical examinations of Robert Mallory of such quality as to detect any deleterious effects caused by his exposure to and inhalation of toxic fumes, hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane, so that Robert Mallory, could be advised as to the dangers of such exposures and inhalations and take appropriate safety measures;

h) failing to issue and enforce appropriate safety rules limiting or eliminating exposure to and inhalation of toxic fumes, hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane;

i) failing to properly dispose of the waste material created by the use of hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene,

perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane;

j) spray painting over warning labels on the containers of substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane, before they were released to Robert Mallory and the other workers to prevent them from learning how dangerous the substances were;

k) failing to obey appropriate and applicable federal and state regulations and industrial hygiene recommendations intended to protect Robert Mallory from exposure to and inhalation of toxic fumes, of hazardous dusts, substances, solvents and chemicals, including but not limited to diesel exhaust, mineral spirits, benzene, perchloroethylene, trichloroethylene, asbestos, sub-turps, naptha, inhibitol, asbestos and trichloroethane.

17. As a direct result of Defendant's negligence, Plaintiff has colon cancer.

18. As a direct result of the Defendant's negligence, through their agents, servants, workmen and/or employees, the Robert Mallory was unable to attend to his usual duties and occupations, all of which caused substantial financial loss.

19. As a direct result of the Defendant's negligence, through their agents, servants, workmen and/or employees, the Robert Mallory experienced extreme physical pain, suffering, mental suffering, emotional distress, inconvenience, and a loss of enjoyment of life.

20. As a direct result of the Defendant's negligence, the Plaintiff sustained and economic loss due to the loss of Robert Mallory's pension benefits.

WHEREFORE, the Plaintiff demands judgement against the Defendant in an amount in excess of ONE HUNDRED THOUSAND DOLLARS, ($100,000.00).

Date: September 18, 2017

LIVEN SEDRAN & BERMAN

BY: /s/ Laurence S. Berman
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APPENDIX H

15 Pa.C.S.A. § 411 Formerly cited as PA ST 15 Pa.C.S.A. § 4121; PA ST 15 Pa.C.S.A. § 4141; PA ST 15 Pa.C.S.A. § 4144; PA ST 15 Pa.C.S.A. § 6141; PA ST 15 Pa.C.S.A. § 6144; PA ST 15 Pa.C.S.A. § 8583; PA ST 15 Pa.C.S.A. § 8587

§ 411. Registration to do business in this Commonwealth

Effective: July 1, 2015

(a) Registration required.--Except as provided in section 401 (relating to application of chapter) or subsection (g), a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter.

(b) Penalty for failure to register.--A foreign filing association or foreign limited liability partnership doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business under this chapter.

(c) Contracts and acts not impaired by failure to register.--The failure of a foreign filing association or foreign limited liability partnership to register to do business in this Commonwealth does not impair the validity of a contract or act of the foreign filing association or foreign limited liability partnership or

preclude it from defending an action or proceeding in this Commonwealth.

(d) Limitations on liability preserved.--A limitation on the liability of an interest holder or governor of a foreign filing association or of a partner of a foreign limited liability partnership is not waived solely because the foreign filing association or foreign limited liability partnership does business in this Commonwealth without registering.

(e) Governing law not affected.--Section 402 (relating to governing law) applies even if a foreign association fails to register under this chapter.

(f) Registered office.--Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), every registered foreign association shall have, and continuously maintain, in this Commonwealth a registered office, which may but need not be the same as its place of business in this Commonwealth.

(g) Foreign insurance corporations.--A foreign insurance corporation is not required to register under this chapter.

42 Pa.C.S.A. § 5301
§ 5301. Persons

(a) General rule.–The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:

(1) Individuals.--

(i) Presence in this Commonwealth at the time when process is served.

(ii) Domicile in this Commonwealth at the time when process is served.

(iii) Consent, to the extent authorized by the consent.

(2) Corporations.--

(i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.

(ii) Consent, to the extent authorized by the consent.

(iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

(3) Partnerships, limited partnerships, partnership associations, professional

associations, unincorporated associations and similar entities.—

(i) Formation under or qualification as a foreign entity under the laws of this Commonwealth.

(ii) Consent, to the extent authorized by the consent.

(iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

(b) Scope of jurisdiction.--When jurisdiction over a person is based upon this section any cause of action may be asserted against him, whether or not arising from acts enumerated in this section. Discontinuance of the acts enumerated in subsection (a)(2)(i) and (iii) and (3)(i) and (iii) shall not affect jurisdiction with respect to any act, transaction or omission occurring during the period such status existed.