IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 122 EDM 2016

BRUCE RHYNE and JANICE RHYNE, h/w
Plaintiffs-Respondents,
v.
UNITED STATES STEEL CORPORATION, et al., Defendants-Respondents

Petition of: HUNT REFINING COMPANY

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF HUNT REFINING COMPANY'S PETITION FOR REVIEW

On Petition for Review of the Order Entered September 15, 2016, in the Court of Common Pleas, Philadelphia County, Pennsylvania, January Term, 2016, No. 0228, denying a request for amendment of an interlocutory order for an appeal as of right pursuant to Pa. R.A.P. 311(b) or Pa.R.A.P. 1311(b)

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF IDENTITY OF *AMICI CURIAE*, THEIR INTEREST IN THE CASE, AND THE SOURCE OF THEIR AUTHORITY TO FILE 1

INTRODUCTION AND SUMMARY OF ARGUMENT 2

ARGUMENT 5

I. Pennsylvania May Not Subject Foreign Corporations To General Jurisdiction Based Solely On Their Registration To Do Business. 5

A. *Daimler* Bars The Assertion Of General Jurisdiction Over A Corporation That Merely "Does Business" Within A State. 7

1. *Daimler*'s logic shows that general jurisdiction cannot be based on mere qualification to do business. 7

2. U.S. Supreme Court decisions permitting general jurisdiction based on registration and appointment of an agent are no longer good law. 8

B. The Unconstitutional Conditions Doctrine Forbids States From Requiring Foreign Corporations To Consent To General Personal Jurisdiction. 12

II. This Court Should Review This Issue Now 14

A. The Jurisdictional Statute Harms Pennsylvania Citizens And Companies. 14

B. The Issue Warrants Immediate Interlocutory Review. 18

CONCLUSION 19

TABLE OF AUTHORITIES

Page(s)

Cases

Aluminum Bahrain B.S.C. v. Dahdaleh,
2012 WL 5305169 (W.D. Pa. Oct. 25, 2012) 19

AstraZeneca AB v. Mylan Pharm., Inc.,
72 F. Supp. 3d 549 (D. Del. 2014) 11, 18

Bane v. Netlink, Inc.,
925 F.2d 637 (3d Cir. 1991) 11

Bors v. Johnson & Johnson,
2016 WL 5172816 (E.D. Pa. Sept. 20, 2016) 11, 12

Bristol-Myers Squibb Co. v. Superior Court,
377 P.3d 874 (Cal. 2016) 11, 18

Brown v. Lockheed Martin Corp.,
814 F.3d 619 (2d Cir. 2016) 10, 18

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 2, 8, 15

Chatwal Hotels & Resorts LLC v. Dollywood Co.,
90 F. Supp. 3d 97 (S.D.N.Y. 2015) 11, 18

Daimler AG v. Bauman,
134 S. Ct. 746 (2014) .... *passim*

Genuine Parts Co. v. Cepec,
137 A.3d 123 (Del. 2016) 10, 16, 18

Goodyear Dunlop Tires Operations, S.A. v. Brown,
564 U.S. 915 (2011) 2, 10, 12, 19

Helicopteros Nacionales de Colombia, S.A. v. Hall,
466 U.S. 408 (1984) 3

Hertz Corp. v. Friend,
559 U.S. 77 (2010) 15

Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee,
456 U.S. 694 (1982) 12

Int'l Shoe Co. v. Washington,
326 U.S. 310 (1945) 2, 3, 8, 9

Keeley v. Pfizer Inc.,
2015 WL 3999488 (E.D. Mo. July 1, 2015) 10, 18

Koontz v. St. Johns River Water Mgmt. Dist.,
133 S. Ct. 2586 (2013) 13

Magill v. Ford Motor Co.,
2016 WL 4820223 (Colo. Sept. 12, 2016) 18

Nat'l Equip. Rental, Ltd. v. Szukhent,
375 U.S. 311 (1964) 12

Neeley v. Wyeth LLC,
2015 WL 1456984 (E.D. Mo. Mar. 30, 2015) 11, 18

Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co.,
243 U.S. 93 (1917) 8, 9, 10

Pennoyer v. Neff,
95 U.S. 714 (1877) 8, 9

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

S. Pac. Co. v. Denton,
146 U.S. 202 (1892) 13

Shaffer v. Heitner,
433 U.S. 186 (1977) 8, 9

Siemer v. Learjet Acquisition Corp.,
966 F.2d 179 (5th Cir. 1992) 13

Walden v. Fiore,
134 S. Ct. 1115 (2014) 17

Waldman v. Palestinian Liberation Org.,
2016 WL 4537369 (2d Cir. Aug. 31, 2016) 19

Wilson v. Humphreys (Cayman) Ltd.,
916 F.2d 1239 (7th Cir. 1990) 14

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 15

In re Zofran (Ondansetron) Prods. Liab. Litig.,
2016 WL 2349105 (D. Mass. May 4, 2016) 10, 18

Statutes

42 Pa.C.S. § 5301(a)(2)(i) .... *passim*

1887 Tex. Gen. Laws 116-17 13

Other Authorities

Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721 (1988) 9

Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343 (2015) 7

STATEMENT OF IDENTITY OF *AMICI CURIAE*, THEIR INTEREST IN THE CASE, AND THE SOURCE OF THEIR AUTHORITY TO FILE

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation, representing 300,000 direct members and indirectly representing an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country. One of the Chamber's most important responsibilities is to represent its members' interests before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community.

American Fuel & Petrochemical Manufacturers (AFPM) is a national trade association of approximately 400 companies, including virtually all U.S. refiners and petrochemical manufacturers; AFPM members operate 122 U.S. refineries comprising more than 95% of U.S. refining capacity. AFPM petrochemical members support 1.4 million American jobs, including approximately 214,000 employed directly in petrochemical manufacturing plants.

Most Chamber and AFPM members conduct business in states other than their states of incorporation and principal places of business. They therefore have a substantial interest in the rules governing whether, and to what extent, a nonresident corporation may be subjected to general personal jurisdiction.

INTRODUCTION AND SUMMARY OF ARGUMENT

Pennsylvania law purports to subject every foreign corporation that qualifies to do business in the Commonwealth to general personal jurisdiction. *See* 42 Pa.C.S. § 5301(a)(2)(i). But the Supreme Court's recent holding in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), makes clear that compelling foreign corporations to consent to general jurisdiction in this manner violates due process. Requiring such consent from foreign corporations also does not benefit Pennsylvania citizens—indeed, it is more likely to harm Pennsylvania consumers and corporations by discouraging investment here and encouraging other states to attempt to impose similar consent requirements. This Court should therefore grant interlocutory review of this important issue, reverse the Court of Common Pleas, and hold that Section 5301(a)(2)(i) is unconstitutional.

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). This limitation on a court's authority "protects [the defendant's] liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

Applying this due process principle, the U.S. Supreme Court has recognized "two categories of personal jurisdiction." *Daimler*, 134 S. Ct. at 754. Specific jurisdiction empowers courts to adjudicate claims relating to the defendant's in-forum conduct and exists when "the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum.'" *Id.* (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)).

General jurisdiction, by contrast, permits courts to adjudicate claims against a defendant arising out of actions occurring anywhere in the world (subject, of course, to any limits specific to a particular cause of action). It exists "where a foreign corporation's '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.'" *Daimler*, 134 S. Ct. at 754 (quoting *Int'l Shoe*, 326 U.S. at 318). "'[S]pecific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [plays] a reduced role.'" *Daimler*, 134 S. Ct. at 755.

For that reason, *Daimler* held that, in the absence of exceptional circumstances, general personal jurisdiction over a corporation is available only "where it is incorporated or has its principal place of business"—because those places are the "paradigm all-purpose forums" where the corporation may be "fairly regarded as at home." *Daimler*, 134 S. Ct. at 760 (quotation marks omitted).

Pennsylvania law, however, attempts to impose general jurisdiction on *all* foreign corporations—not just in situations where there is proof of "exceptional circumstances." Thus, Section 5301(a)(2)(i) purports to require all foreign corporations that qualify to do business in Pennsylvania to consent to general jurisdiction as a condition of doing business in the Commonwealth, which—in the absence of due process constraints—would make these corporations subject to suit in Pennsylvania on any claim.

But that requirement is flatly inconsistent with *Daimler*'s rule. *Daimler* emphasized that corporations should be able to structure their primary conduct to avoid being subject to expansive, all-purpose jurisdiction in multiple forums. Allowing Pennsylvania to impose general jurisdiction on all companies registered to do business in Pennsylvania would undermine that principle: every other State could follow the same course, and companies would be subject to nationwide general personal jurisdiction—the precise result that *Daimler* rejected.

Section 5301(a)(2)(i)'s requirement also runs afoul of the doctrine of "unconstitutional conditions." That doctrine forbids states from conditioning the availability of government benefits on the forfeiture of constitutional rights. Because Section 5301(a)(2)(i) conditions the benefit of doing business lawfully in Pennsylvania upon the surrender of a corporation's due process right to limit the forums in which it may be sued, it is unconstitutional and cannot stand.

Finally, the statute's compelled consent requirement discourages foreign investment in Pennsylvania, because out-of-state companies have less incentive to operate in Pennsylvania if by doing so, they become subject to suit here for claims arising anywhere in the world. And the statute's expansive approach to general jurisdiction is unnecessary to protect Pennsylvania citizens from injury by foreign corporations: such companies likely can be sued in Pennsylvania on a specific jurisdiction theory when their business conduct targeted towards Pennsylvania causes harm to Pennsylvania residents. In short, asserting general jurisdiction over all foreign companies registered to do business in Pennsylvania causes harm to the Commonwealth's economy, with no corresponding benefit to the Commonwealth or its citizens.

ARGUMENT

I. Pennsylvania May Not Subject Foreign Corporations To General Jurisdiction Based Solely On Their Registration To Do Business.

It is undisputed that plaintiffs' claims against defendant Hunt Refining Company ("Hunt") do not relate in any way to Hunt's activities in Pennsylvania, and that specific personal jurisdiction is therefore unavailable. Pennsylvania

accordingly may exercise jurisdiction over Hunt in this case only if Hunt is subject to general personal jurisdiction in Pennsylvania.[1]

The test for general jurisdiction is demanding: because of its extraordinary reach, general jurisdiction ordinarily may be exercised over a defendant only by those states in which the corporate defendant is considered "at home"—its state of incorporation and its principal place of business. *Daimler*, 134 S. Ct. at 760.

Hunt is incorporated in Delaware and has its principal place of business in Alabama; therefore, it is not "at home" in Pennsylvania. But under Section 5301(a)(2)(i), it is nonetheless deemed to be subject to general personal jurisdiction in Pennsylvania. This Court should hold that the statute is unconstitutional, for two reasons: *First,* the contacts between a foreign corporation and Pennsylvania that trigger the registration requirement are plainly insufficient under *Daimler* to permit the assertion of general jurisdiction. *Second*, subjecting foreign corporations to general jurisdiction as a condition of doing business in Pennsylvania violates the doctrine of unconstitutional conditions.

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[1] Several other defendants—including Ashland Inc., Radiator Specialty Company, and Univar—have also filed petitions for review of the lower court's jurisdictional ruling. Those petitions should also be granted.

A. *Daimler* Bars The Assertion Of General Jurisdiction Over A Corporation That Merely "Does Business" Within A State.

1. *Daimler*'s logic shows that general jurisdiction cannot be based on mere qualification to do business.

The plaintiffs in *Daimler* argued that general jurisdiction was available "in every state in which a corporation engages in a substantial, continuous, and systematic course of business." 134 S. Ct. at 761 (internal quotation marks omitted). But the U.S. Supreme Court rejected "[t]hat formulation" of the standard as "unacceptably grasping." *Id.* It explained that "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 762 n.20. A corporation therefore may not be subject to general jurisdiction outside its state of incorporation and its principal place of business, except in an "exceptional case."[2]

By restricting general jurisdiction to places in which a corporation is "at home," *Daimler* precludes general jurisdiction based merely on the level of corporate activity that is sufficient to trigger business registration. If the rule were otherwise, virtually every state and federal court would become an all-purpose forum with respect to every corporation registered to do business, because "[e]ach of the fifty states has a registration statute." Tanya J. Monestier, *Registration*

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[2] *Daimler*, 134 S. Ct. at 762 n.19. The only example that *Daimler* gave of an "exceptional case" was one in which a State had become a "surrogate" for the company's place of incorporation or headquarters. *Id.* at 756 & n.8 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952), where the corporation had temporarily moved its headquarters from the Philippines to Ohio during World War II).

Statutes, General Jurisdiction, and the Fallacy of Consent, 36 Cardozo L. Rev. 1343, 1345 (2015). That would deprive a nonresident business of its due process right to be able to "'structure [its] primary conduct with some minimum assurance as to where that conduct will and will not render [it] liable to suit.'" *Daimler,* 134 S. Ct. at 762 & n.20 (quoting *Burger King Corp.*, 471 U.S. at 472).

2. U.S. Supreme Court decisions permitting general jurisdiction based on registration and appointment of an agent are no longer good law.

Nearly a century ago, registering to do business in a forum *was* considered sufficient to render a foreign corporation subject to general jurisdiction. *See, e.g.*, *Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 94-95 (1917). But that rule was a product of the "strict territorial approach" to personal jurisdiction adopted in *Pennoyer v. Neff*, 95 U.S. 714 (1877). *Daimler*, 134 S. Ct. at 753. *Pennoyer*'s approach was discarded seven decades ago by the "canonical" decision in *International Shoe Co. v. Washington* (*id.*); indeed, the Supreme Court has stated that decisions relying on *Pennoyer* have been overruled. *Shaffer v. Heitner*, 433 U.S. 186, 212 & n.39 (1977) (holding that "[t]o the extent that prior decisions are inconsistent with [the *International Shoe*] standard, they are overruled"); *see also Daimler*, 134 S. Ct. at 761 n.18 (cases "decided in the era dominated by *Pennoyer*'s territorial thinking . . . should not attract heavy reliance

today"). The compelled consent theory of general jurisdiction cannot be upheld on the basis of that now-rejected doctrine.

Pennoyer held that a tribunal's personal jurisdiction "reache[d] no farther than the geographic bounds of the forum." *Daimler*, 134 S. Ct. at 753. The theory of "consent" by registration to do business was therefore necessary to subject a foreign corporation to any personal jurisdiction at all.

But *International Shoe* brought about a sea change: "'the relationship among the defendant, the forum, and the litigation . . . became the central concern of the inquiry into personal jurisdiction.'" *Id.* at 754 (quoting *Shaffer*, 433 U.S. at 204). Under *Daimler* and other post-*International Shoe* rulings, a state's assertion of personal jurisdiction "*must* be evaluated according to the standards set forth in *International Shoe* and its progeny." *Shaffer*, 433 U.S. at 212 & n.39 (emphasis added); *see also Daimler*, 134 S. Ct. at 761 n.18; Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 758 (1988) (noting that neither pre-*International Shoe* cases addressing general jurisdiction, such as *Pennsylvania Fire*, nor "their underlying theories seem[] viable under today's due process standard").

The outmoded notion that a corporation consents to general jurisdiction simply by registering to do business or designating an agent for service of process violates the due process principles set forth in *International Shoe* and its progeny.

As the U.S. Court of Appeals for the Second Circuit recently put it, "the holding in *Pennsylvania Fire* cannot be divorced from the outdated jurisprudential assumptions of its era" and "has yielded to the doctrinal refinement reflected in *Goodyear* and *Daimler*." *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 639 (2d Cir. 2016).

For that reason, a number of courts have acknowledged that subjecting out-of-state corporations to general jurisdiction based on registration to do business would raise due process concerns under *Daimler*—and have therefore construed the relevant state statutes not to require consent to general jurisdiction. *See, e.g.*, *Brown*, 814 F.3d at 640 ("If mere registration and the accompanying appointment of an in-state agent . . . sufficed to confer general jurisdiction by implicit consent, 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."); *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 142 (Del. 2016) (noting that the "dependability" of cases such as *Pennsylvania Fire* has been undermined by *Daimler*"); *see also In re Zofran (Ondansetron) Prods. Liab. Litig.*, 2016 WL 2349105, at *4 (D. Mass. May 4, 2016) (explaining that interpreting registration statute to require consent to general jurisdiction "would distort the language and purpose of the" statute and "would be inconsistent with the Supreme Court's ruling in *Daimler*"); *Keeley v. Pfizer Inc.*, 2015 WL 3999488, at *4 (E.D. Mo. July 1,

2015) ("If following [corporate registration] statutes creates jurisdiction, national companies would be subject to suit all over the country. This result is contrary to the holding in *Daimler* that merely doing business in a state is not enough to establish general jurisdiction."); *Neeley v. Wyeth LLC*, 2015 WL 1456984, at *3 (E.D. Mo. Mar. 30, 2015); *Chatwal Hotels & Resorts LLC v. Dollywood Co.*, 90 F. Supp. 3d 97, 105 (S.D.N.Y. 2015); *AstraZeneca AB v. Mylan Pharm., Inc.*, 72 F. Supp. 3d 549, 557 (D. Del. 2014); *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 for disputes unrelated to its California transactions.").

Unlike those courts, the courts of this Commonwealth cannot use statutory interpretation to avoid these due process concerns; Section 5301(a)(2)(i)'s text is clear that it requires foreign corporations to submit to general jurisdiction. Thus, the Court should hold that Section 5301(a)(2)(i) is unconstitutional.[3]

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[3] A judge on the Eastern District of Pennsylvania recently declined to find the statute unconstitutional. *See Bors v. Johnson & Johnson*, 2016 WL 5172816, at *4-5 (E.D. Pa. Sept. 20, 2016). But that decision is of little relevance here: the *Bors* court considered itself bound by the Third Circuit's decision in *Bane v. Netlink, Inc.*, 925 F.2d 637, 641 (3d Cir. 1991), which had upheld the statute, whereas this Court is not similarly constrained by Pennsylvania Supreme Court precedent.

In any event, *Bors* is unpersuasive. The court there believed that unlike other state registration statutes, Section 5301(a)(2)(i) gives foreign corporations clear notice that they are submitting to general jurisdiction in Pennsylvania by registering to do business (*Bors*, 2016 WL 5172816, at *4)—but *Daimler* makes

B. The Unconstitutional Conditions Doctrine Forbids States From Requiring Foreign Corporations To Consent To General Personal Jurisdiction.

Section 5301(a)(2)(i) is also unconstitutional because it requires foreign corporations to consent to general jurisdiction as a condition of doing business. That compelled "consent" does not provide a valid basis for jurisdiction.

True, parties may *voluntarily* consent to jurisdiction in a particular forum in a variety of ways—such as by entering into a contract with a forum selection clause, *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964), or by appearing voluntarily in court, *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). That is why *Daimler* and predecessor decisions state that their focus is on defendants who have "'not consented to suit in the forum.'" *Daimler*, 134 S. Ct. at 756 (quoting *Goodyear*, 564 U.S. at 928). But although voluntary consent is a permissible basis for personal jurisdiction, the doctrine of "unconstitutional conditions" prohibits jurisdiction based on involuntary, *compelled* consent.

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clear that the problem with Section 5301(a)(2)(i) is not a lack of notice, but rather that it makes foreign corporations subject to general jurisdiction solely because they do business in the state. *Bors* also suggested that "[c]onsent remains a valid form of establishing personal jurisdiction . . . after *Daimler*" (*id.* at *4-5), but even if that is true with respect to *voluntary* consent, Section 5301(a)(2)(i) compels *in*voluntary consent and thus violates the doctrine of unconstitutional conditions. *See* pp. 12-14, *infra*.

The unconstitutional conditions doctrine holds that a state may not "requir[e] [a] corporation, as a condition precedent to obtaining a permit to do business within [a] State, to surrender a right and privilege secured to it by the Constitution." *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2596 (2013) (quoting *S. Pac. Co. v. Denton*, 146 U.S. 202, 207 (1892)). In *Denton*, for example, the Supreme Court invalidated a Texas law that, as a condition of doing business in Texas, barred a company from exercising its right to remove to federal court a suit filed in state court. 146 U.S. at 206-07 (citing 1887 Tex. Gen. Laws 116-17). Describing the statute's "attempt to prevent removals" as "vain," the Court concluded that the law "was unconstitutional and void." *Id.*

Subjecting foreign corporations to general jurisdiction in Pennsylvania solely on the basis of registration to do business imposes precisely the same kind of unconstitutional choice that the Court held impermissible in *Denton*: an out-of-state company must surrender its federal due process right to avoid general personal jurisdiction in states other than its state of incorporation and principal place of business, or else completely avoid doing business in Pennsylvania. The Constitution therefore bars Pennsylvania from invoking the state's registration law as a basis for compelling consent to general jurisdiction. *See, e.g., Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 183 (5th Cir. 1992) ("[A] foreign corporation that properly complies with the Texas registration statute only consents

to personal jurisdiction where such jurisdiction is constitutionally permissible."); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1245 (7th Cir. 1990) (it would be "constitutionally suspect" to subject a corporation to general jurisdiction as a consequence of registering to do business in the state).

II. This Court Should Review This Issue Now.

It is imperative that this Court grant interlocutory review and resolve this issue now. The all-purpose jurisdiction that Section 5301(a)(2)(i) improperly attempts to confer is having continuing deleterious effects on Pennsylvania citizens and the Commonwealth's economy by threatening investment and jobs here. Moreover, failing to resolve the issue now would waste the judicial resources of the court below and impose unnecessary litigation costs on the parties to this case.

A. The Jurisdictional Statute Harms Pennsylvania Citizens And Companies.

Section 5301(a)(2)(i) is not only unconstitutional but also—if it is not struck down—threatens to have negative consequences for Pennsylvania citizens and corporations. The statute makes it far less attractive for out-of-state corporations to operate in Pennsylvania, thereby threatening investment here, and also imposes increased burdens on the Commonwealth's court system. For both reasons, therefore, the statute imposes serious costs on the Commonwealth and its citizens.

The due process limits on personal jurisdiction confer "'a degree of predictability to the legal system that allows potential defendants to structure their

primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Burger King Corp.*, 471 U.S. at 472 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). A corporation's place of incorporation and principal place of business—the jurisdictions in which it is subject to general jurisdiction under *Daimler*—"have the virtue of being unique." *Daimler*, 134 S. Ct. at 760. "[T]hat is, each ordinarily indicates only one place"—a forum that is "easily ascertainable." *Id. Daimler*'s rule thus allows corporations to anticipate that they will be subject to general jurisdiction in only a few (usually one or two) well-defined jurisdictions. This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

The approach to general jurisdiction embodied in Section 5301(a)(2)(i) undermines that predictability, making it impossible for corporations to structure their affairs to limit the number of jurisdictions in which they can be haled into court on any claim by any plaintiff residing anywhere. Many corporations do some amount of business in a large number of states; thus, if merely qualifying to do business in a forum were deemed sufficient to give rise to general jurisdiction, a corporation could be sued throughout the country on claims arising from anywhere. "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants" to structure their affairs to provide some assurance

regarding where a claim might be asserted. *Daimler*, 134 S. Ct. at 761-62. Indeed, a corporation would be completely unable to predict where any particular claim might be brought.

Because Section 5301(a)(2)(i), if upheld, would require companies to face all-purpose liability merely by virtue of doing business in Pennsylvania, any rational business has little choice but to weigh carefully the benefits of investing in Pennsylvania in light of the substantial risk of being sued here on claims arising anywhere in the world. That risk will likely result in the movement of jobs and capital investment away from Pennsylvania and an aversion to future investment in the Commonwealth.

For similar reasons, the Delaware Supreme Court—recognizing the importance of investment by out-of-state companies to the citizenry of that State—refused to interpret Delaware's corporate registration statute to compel consent to general jurisdiction there. As that neighboring court convincingly explained, "[o]ur 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." *Cepec*, 137 A.3d at 142. By contrast, companies that *do* currently operate in Pennsylvania will be forced to pass on their increased legal costs to Pennsylvania consumers, increasing the financial burden on Pennsylvania residents.

Subjecting all foreign corporations qualified to do business in Pennsylvania to general jurisdiction also imposes burdens on the Commonwealth's court system. It encourages forum-shopping by out-of-state plaintiffs, like plaintiff here, by enabling them to bring cases in Pennsylvania that lack any connection to the Commonwealth. Pennsylvania courts are accordingly less able to deliver speedy justice to plaintiffs—such as Pennsylvania residents—whose claims are properly brought here.

There are no countervailing benefits to Pennsylvania from imposing these significant costs on the court system and the Commonwealth's economy. If a nonresident corporation creates meaningful contacts with Pennsylvania and its in-state conduct harms a Pennsylvania resident, it likely may be sued in Pennsylvania on a specific jurisdiction theory. *See, e.g.*, *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). And Pennsylvania corporations, by virtue of being incorporated here, can already be sued in Pennsylvania on any cause of action arising anywhere without resort to any compelled consent theory. *See Daimler*, 134 S. Ct. at 760.

Compelling corporations to "consent" to general jurisdiction is therefore not necessary to ensure that companies that are incorporated in Pennsylvania or that conduct business here may be held accountable for their conduct *in Pennsylvania*. Rather, it serves only to consume the resources of the courts of this Common-

wealth in deciding disputes that—like this case—have nothing to do with Pennsylvania.

B. The Issue Warrants Immediate Interlocutory Review.

Rather than waiting to decide this jurisdictional issue later, this Court should grant interlocutory review to resolve it now. The issue is a critical one that affects countless cases—as witnessed by the large number of cases from other courts addressing it just in the last few years. *See Brown*, 814 F.3d at 640; *In re Zofran (Ondansetron) Products Liab. Litig.*, 2016 WL 2349105, at *4; *Keeley*, 2015 WL 3999488, at *4; *Neeley*, 2015 WL 1456984, at *3; *Chatwal*, 90 F. Supp. 3d at 105; *AstraZeneca*, 72 F. Supp. 3d at 557; *Bristol-Myers Squibb*, 377 P.3d at 874; *Magill v. Ford Motor Co.*, 2016 WL 4820223, at *6 (Colo. Sept. 12, 2016); *Cepec*, 137 A.3d at 127.[4]

Moreover, in the absence of interlocutory review, the court below will expend resources on litigating a case that does not belong in this Commonwealth in the first place; all of that court's time and effort—not to mention the litigation costs that the parties will incur—will be for naught if, on review from a final judgment, that judgment must be reversed for lack of personal jurisdiction. That is no mere hypothetical; the U.S. Court of Appeals for the Second Circuit recently

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[4] Indeed, there is also another currently-pending petition for interlocutory review to this Court raising the same issue. *See Jones v. Sunoco, Inc.*, No. 121 EDM 2016.

concluded that due process required it to overturn a judgment following a seven-week jury trial in a case that had taken more than a decade to litigate. *See Waldman v. Palestinian Liberation Org.*, 2016 WL 4537369, at *2 (2d Cir. Aug. 31, 2016). Judicial economy strongly weighs in favor of resolving the jurisdictional issue now so that the court below and the parties will be spared these potentially massive costs.

Finally, interlocutory review is crucial because the issue presented implicates Hunt's and other defendants' right under the Due Process Clause not to be haled into courts that lack personal jurisdiction over them. *Goodyear*, 564 U.S. at 923. Forcing Hunt to litigate this case below and wait until a putative appeal from final judgment to raise the jurisdictional issue would eviscerate that due process right. The only way to prevent constitutional injury to Hunt is to reverse the judgment below now so that Hunt can be dismissed from the case. *See, e.g.*, *Aluminum Bahrain B.S.C. v. Dahdaleh*, 2012 WL 5305169, at *3, 4 (W.D. Pa. Oct. 25, 2012) (granting interlocutory review of personal jurisdiction issue because interlocutory review could avoid the need for "lengthy and complex" discovery and "materially advance the ultimate termination of the litigation").

CONCLUSION

For the foregoing reasons, this Court should grant review and reverse the decision of the Court of Common Pleas.

Respectfully submitted,

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