

LITIGATION

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EDPA Breathes New Life into the Third Circuit's Pre-*Daimler* Decision, *Bane v. Netlink, Inc.*

By Samantha M.B. Demuren and Edward J. Sholinsky

The United States District Court for the Eastern District of Pennsylvania in *Winters v. Akzo Nobel Surface Chemistry, LLC* recently held that any company that registers to do business in Pennsylvania consents to general jurisdiction in the Commonwealth's courts. This departed from a recent trend in which other judges in the Eastern District held that constructive consent through registration violated the Due Process Clause of the Constitution and that the validity of the Third Circuit's 1991 decision in *Bane v. Netlink, Inc.* did not survive the U.S. Supreme Court's 2014 decision in *Daimler AG v. Bauman*.

In *Winters*, the plaintiffs, Pennsylvania residents, brought suit against multiple defendants, including BTX Global Logistics ("BTX"), for alleged injuries from chemical exposure. BTX is a Connecticut company with its principal place of business in Connecticut. BTX moved to dismiss the complaint for lack of personal jurisdiction. Plaintiffs opposed the motion by arguing that, because BTX had registered to do business in Pennsylvania, it had subjected itself to general personal jurisdiction in Pennsylvania.

In denying BTX's motion, Judge Schmehl sought to distinguish this case from *Sullivan v. A.W. Chesterton, Inc. et al.* (*In re Asbestos Products Liability Litigation*) – "the foremost opinion within [EDPA] to depart from Third Circuit precedent [*Bane*]." In doing so, Judge Schmehl reasoned that Judge Robreno focused on "a narrow issue of law in light of *Daimler* – whether consent to jurisdiction that foreign corporations give under Pennsylvania's statutory regime is knowing and voluntary and thus, valid." According to Judge Schmehl, because the "*Daimler* Court did not

reference anything regarding consent to jurisdiction based on business registration...and did not establish a new constitutional standard that is relevant to the narrow issue in this case...*Bane* remains valid and controlling law within the [Third Circuit]." The Court acknowledged that absent Pennsylvania's consent-by-registration law there would be no basis for the Court to exercise personal jurisdiction over BTX.

In *Bane*, the Third Circuit held that an out-of-state corporation with no offices, property or employees in Pennsylvania, that neither paid taxes nor advertised in the commonwealth, and only had employees occasionally travel to it on business, was subject to general jurisdiction because it registered to do business as a foreign corporation. The *Winters* Court held that the holding in *Bane* survived the Supreme Court's decisions in *Daimler* and its progeny.

Pennsylvania is in a jurisprudential ping-pong match concerning jurisdiction by constructive consent. To say the current state of affairs within Pennsylvania is far from game, set, match is an understatement. The questions surrounding the viability of *Bane* illustrate that Pennsylvania law is in flux. The current split in Pennsylvania's federal district courts cries out for resolution by the Third Circuit and the Pennsylvania Supreme Court. ♦

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For more information about Schnader's Litigation Department or to speak with a member of the firm, please contact:

*Stephen J. Shapiro
Co-Chair, Litigation Services Department
215-751-2259
sshapiro@schnader.com*

*Anne E. Kane
Co-Chair, Litigation Services Department
215-751-2397
akane@schnader.com*

*Edward J. Sholinsky
215-751-2304
esholinsky@schnader.com*

*Samantha M.B. Demuren
215-751-2022
sdemuren@schnader.com*

www.schnader.com

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