

Stay at Home Even After COVID-19: Pennsylvania Corporations Can Increase Their Chances of Litigating at Home

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In the United States, it is the plaintiff's prerogative to choose the court in which to file a lawsuit, at least among proper fora absent contractual provisions that designate a specific venue. Occasionally, due to variances in procedural laws across jurisdictions and the fact that certain jurisdictions tend to be more plaintiff-friendly than others, one forum will pose a strategic advantage for the plaintiff. Absent a clear benefit to litigating elsewhere, it may be no surprise that plaintiffs often choose the convenience of litigating close to home where possible.

Before filing any lawsuit, plaintiffs must assess whether their chosen forum is a proper forum, i.e., that the chosen court will have subject matter jurisdiction (power over the matter at issue) and personal jurisdiction (power over the defendants). Without both, the lawsuit will be dismissed.

Personal jurisdiction comes in two forms: general personal jurisdiction and specific personal jurisdiction, either is sufficient to maintain a lawsuit. Broadly speaking, general jurisdiction is fairly straightforward and exists where the defendant is considered "at home." What exactly constitutes specific personal jurisdiction, on the other hand, has been subject to change in the last few decades. While its complicated analysis tortures many first year law students, the inquiry boils down to whether the defendant has certain minimum contacts with the forum state in connection with the matter at issue and whether it would be fair for the court to hear the case.

There is no bright-line test for specific personal jurisdiction and the decision whether a defendant has the requisite minimum contacts with the forum state is universally a fact-specific inquiry that involves counsel analogizing the facts of the case to other cases. As with many areas of law, where a case is similar to previously litigated cases, the outcome is more predictable.

In a June 11, 2020 Opinion and Order issued by the Honorable Marilyn Horan of the United States District Court for the Western District of Pennsylvania in *Snyder Brothers, Inc. v. E. Ohio Reg. Hosp.*, Civ. No. 19-1238 (W.D. Pa. June 11, 2020), the District Court reinforced that out-of-state business entities who do business with Pennsylvania corporations can subject themselves to specific personal jurisdiction through their actions even without explicitly consenting to jurisdiction in Pennsylvania. Persuaded by arguments of Eckert Seamans Cherin & Mellott, LLC counsel, Ray F. Middleman, Derek J. Illar, and Carolyn O. Boucek, Judge Horan found that the District Court of Western Pennsylvania had proper specific personal jurisdiction over the Ohio defendants to hear and decide a contract dispute between them and the Pennsylvania plaintiff though the contract was brokered by a West Virginia broker and the contract directed supply of the Plaintiff's Pennsylvania sourced natural gas to the Defendants in Ohio. Even though the contract lacked a venue provision, it included a choice of Pennsylvania law as the governing substantive law. The District Court rejected the Defendants' claim that specific jurisdiction must be predicated by the Defendants' in-state activity; rather, the District Court

considered the choice of law provision; the circumstances of the contract's negotiations; the parties' long-term relationship; and the Defendants' contractual duty to provide notice and payment to the Plaintiffs in Pennsylvania, among other factors, in holding that it had proper specific personal jurisdiction over the Ohio Defendants.

In line with the *Snyder Brothers* decision and other precedent, Pennsylvania corporations and business entities can increase their ability to litigate contractual disputes against out-of-state entities in Pennsylvania, even without a contractual choice of forum provision. Because specific personal jurisdiction is established using affidavits or declarations of certain facts, it is important to develop a record of any act that an out-of-state entity takes in Pennsylvania of that affects change in Pennsylvania in connection with a dispute. To increase their chances of establishing specific personal jurisdiction in connection with a contractual dispute with an out-of-state entity, Pennsylvania corporations and business entities should consider taking certain steps, including the following:

1. Negotiate for Pennsylvania law to govern the contract;
2. Require the out-of-state entity to attend negotiations in Pennsylvania, if feasible;
3. Meticulously document any meetings where the out-of-state entity came to Pennsylvania;
4. Keep a call log of telephone calls where the out-of-state entity called into Pennsylvania to discuss the formation or performance under the contract;
5. Require payment under an agreement to be delivered to a location in Pennsylvania;
6. Create a paper trail indicating the length and depth of the relationship with the out-of-state entity; and
7. Document the effects in Pennsylvania of the out-of-state entity's performance (or lack thereof) of the contract.

This Legal Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact authors Ray F. Middleman at 412.566.6054 or rmiddleman@eckertseamans.com, Derek J. Illar at 412.566.6771 or dillar@eckertseamans.com, Carolyn O. Boucek at 412.566.6122 or cboucek@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.