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IN THE SUPREME COURT OF PENNSYLVANIA

No. 14 EAP 2022

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HUSQVARNA PROFESSIONAL PRODUCTS, INC., HUSQVARNA GROUP, HUSQVARNA U.S. HOLDING, INC. HUSQVARNA AB, and TRUMBAUER'S LAWN AND RECREATION, INC.,

Appellants

v.

RONALD SCOTT HANGEY and ROSEMARY HANGEY, H/W,

Appellees.

BRIEF OF *AMICUS CURIAE* PHILADELPHIA ASSOCIATION OF DEFENSE COUNSEL IN SUPPORT OF APPELLANT, HUSQVARNA PROFESSIONAL PRODUCTS, INC.

Appeal from the March 8, 2021 Order of the Superior Court in Case No. 3298 EDA 2017 Reversing September 7, 2017 Orders of the Court of Common Pleas of Philadelphia County in Case No. 170301015 Sustaining Petitioners' Preliminary Objections and Transferring Action to Court of Common Pleas of Bucks County

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case Law

Rules

Statutes

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Philadelphia Association of Defense Counsel ("PADC") is a nonprofit association of around 300 lawyers from the five-county Philadelphia area. PADC protects and advances the interests of civil defendants and their counsel, shares knowledge within the defense trial bar, speaks for civil defendants and their interests in the administration of justice, and encourages the highest standards of professional conduct.

PADC and its members have an interest in how Pennsylvania courts interpret the venue rules for civil actions. Defendants sued in Pennsylvania should be able to reasonably anticipate where they properly can be subject to suit. Defendants who conduct minimal or limited business within a county should maintain the ability to challenge venue where that county otherwise has no connection to the litigation at issue. Philadelphia County is the focal point for civil litigation in Pennsylvania. According to this Court's statistics, Philadelphia County accounted for nearly one third of all civil actions pending in the courts of common pleas statewide at the end of 2020.[1] Philadelphia County is a popular venue in which plaintiffs can sue. Philadelphia County is perceived as an unfriendly venue for defendants, including

[1] On December 31, 2020, 128,729 civil actions were pending statewide. *See* 2020 Caseload Statistics of the Unified Judicial System of Pennsylvania, at 24, https://www.pacourts.us/Storage/media/pdfs/20220110/171116-2020reportonline.pdf. 42,303 civil actions were pending in Philadelphia County. *See id.*, Philadelphia County, at 26.

corporations. This case, which involves a lawnmower bought in Bucks County that allegedly caused injury in Wayne County, is a classic example. Plaintiffs routinely seek to file in Philadelphia, no matter where their claims arose. Likewise, PADC members routinely litigate venue preliminary objections on behalf of their clients to try to transfer cases from Philadelphia.

PADC files this Brief in support of Appellant, Husqvarna Professional Products. PADC urges the Supreme Court to give effect to the Rules of Civil Procedure that it has promulgated. Under those Rules, venue against a company is proper only where it "regularly conducts business." The Superior Court's decision misinterprets that Rule and provides no guidance to trial courts.

No other person or entity other than PADC, its members, or its counsel, paid in whole or in part for preparing this *Amicus Curiae* Brief. *See* Pa. R.A.P. 531(b)(2).

SUMMARY OF THE ARGUMENT

The trial court correctly and appropriately exercised its broad discretion and transferred venue from Philadelphia County, based on its determination that 0.005 percent of a defendant's total sales occurring in the forum county is *de minimis* and, standing alone, insufficient to meet the standard of "regularly conduct[ing] business" as required for venue to be proper under Pennsylvania Rule of Civil Procedure 2179(a)(2). The Superior Court's reversal, disregarding the percentage of total sales and instead citing only the dollar amount of those sales, implicitly removed the word "regularly" from the phrase "regularly conducts business." That decision, if permitted to stand, will subject corporate defendants to venue wherever they conduct any business—the larger the corporation, the more miniscule a percentage required to subject that defendant to suit.

The Superior Court's decision undermines the express language of Rule 2179, leaving corporate defendants with no guidance as to the level of business necessary to render venue proper, and with no predictable recourse when sued in a forum otherwise unrelated to the cause of action. The decision further opens the doors for rampant, impermissible forum shopping, particularly against large corporate defendants with little actual business within the forum and in lawsuits where the plaintiff already has a choice of multiple potential venues. Recent jurisdictional rulings denounce such forum shopping, and the Superior Court's ruling, if permitted

to stand, will erode those decisions.

This Court should reverse the decision of the Superior Court and reinstate the trial court's order transferring venue from Philadelphia County.

ARGUMENT

Pennsylvania Rule of Civil Procedure 2179 sets forth several bases for venue over corporations in civil cases. While the Rule provides plaintiffs numerous options where to file suit, a plaintiff's choice of forum is not unlimited. It has long been the law that, just as individual defendants, "corporations have a constitutional right to seek a change of venue." *Purcell v. Bryn Mawr Hosp.*, 579 A.2d 1282, 1284 (Pa. 1990).

At issue here is Plaintiffs' and the Superior Court's reliance on Rule 2179(a)(2), which permits an action against a corporation in "a county where it regularly conducts business." The *Purcell* Court, more than 30 years ago, reiterated the quantity-quality test that courts must apply to evaluate a defendant's business contacts with a county to determine whether it regularly conducts business there. *See Purcell*, 579 A.2d at 1286. But *Purcell* concerned the quality prong of that test, not at issue, and not particularly controversial in its application.

The quantity prong of the test, however, requires a finding of "acts which are 'so *continuous and sufficient* to be general or habitual.'" *Purcell*, 579 A.2d at 1285 (emphasis added) (partly quoting *Shambe v. Del. & Hudson R.R. Co.*, 135 A. 755,

(Pa. 1927)). The trial court, applying this seemingly objectively measurable standard, permitted extensive discovery and briefing on the issue and rendered a decision setting forth the rationale supporting a transfer based on the evidentiary record and existing legal authority. The Superior Court, by determining that the trial court's decision amounts to an abuse of discretion, has simply supplanted its own subjective judgment in place of that of the trial court.

This Court should confirm that the term "regularly" is included in Rule 2179(a)(2) for a reason—to avoid the very result the Superior Court has reached here. The Superior Court's decision represents a step backwards from the current trend, both in this Court and the Supreme Court of the United States, to place limits on the ability to bring suit in any court of the plaintiff's choosing. It further creates an artificial, unsupported distinction between "large" corporations and "small" corporations, with no basis or authority to do so, inviting forum shopping against corporate defendants. This Court should reverse the Superior Court, reinstate the trial court's transfer order, and provide additional guidance for litigants and the courts in order to promote predictability of results and deter forum shopping.

I. The Express Language and History of Rule 2179 Require More Than *De Minimis* Business

Besides their headquarters or where a dispute arises, companies are subject to venue wherever they "regularly conduct[] business." *See* Pa. R.C.P. No. 2179(a)(2) (corporations or similar entities); *see also* Pa. R.C.P. Nos. 2130 (partnerships);

2156(a) (unincorporated associations). For the quantity part of the quality-quantity test, courts have historically evaluated the amount of a business's revenue or the percentage of revenue in a county as a whole.

"The words 'regularly conducts business' first appeared in Rule 2179(a)(2) in 1944." *Purcell*, 579 A.2d at 1285. This Court first construed that language in 1951. To do so, the Court relied on cases interpreting an antebellum law[2] about service of process on foreign corporations that used different language. *See Law v. Atl. Coast Line R.R. Co.*, 79 A.2d 252, 254-55 (Pa. 1951) (citing *Shambe*). That law permitted service on any foreign corporation wherever it transacted "any business." *See Shambe*, 135 A. at 757 (quoting the law).

There is good reason why the Court added "regularly" to Rule 2179. Older decisions interpreting this law applied various definitions to "any business." The first decision to construe the 1851 law held that corporations could not be sued "where they had ever had any matters of business." *Parke v. Cmwlth. Ins. Co.*, 44 Pa. 422, 422 (1863). One decision mentions counties where a corporation "regularly carried on its business and habitually transacted any of its affairs." *Eline v. W. Md. R.R. Co.*, 97 A. 1076, 1077 (Pa. 1916). Still another case required that business contacts be "continuous, systematic, and habitual." *New v. Robison-Houchin Optical Co.*, 53

[2] Act of Apr. 8, 1851, P.L. 353, No. 227, § 6, *repealed*, Judiciary Act Repealer Act, Act of Apr. 28, 1978, P.L. 202, No. 53, § 2, *found at* 42 P.S. § 20002.

A.2d 79, 81 (Pa. 1947). The older decisions relied on long-discarded, 19th-century cases about the constitutional limits on personal jurisdiction. *See Shambe*, 135 A. at 757 (citing *Pennoyer v. Neff*, 95 U.S. 714 (1877)). Even the later decisions lacked the benefit of the Supreme Court's modern view of personal jurisdiction. *Cf. New*, 53 A.2d at 80 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945)). The addition of the term "regularly" to Rule 2179(a)(2) was warranted to add clarity to the requirement, and it reflected the reality that *de minimis* business did not suffice to render venue proper.

In its decisions interpreting Rule 2179, this Court has used a defendant's amount and percentage of revenue to evaluate quantity of acts. This analysis makes sense since businesses generally quantify their own worth by revenue, profits, and losses. In *Monaco v. Montgomery Cab Co.*, 208 A.2d 252 (Pa. 1965), for example, a Montgomery County taxicab company earned 5% to 10% of gross revenue from trips that ended in Philadelphia. The suburban auto dealer in *Canter v. Am. Honda Motor Corp.* consummated only 1% to 2% of sales in Philadelphia, but by admission, 20% of its total business came from Philadelphia. 231 A.2d 140, 141 (Pa. 1967). That auto dealer moreover drove cars into Philadelphia to consummate sales.

This Court's historical decisions show that amount and percentage of revenue matter—as these factors inform the critical term "regularly" in the Rule. Further, as Judge Stabile illustrated in dissent, the Superior Court's own decisions likewise

demonstrate the significance of these factors. *Hangey v. Husqvarna Prof'l Prods.*, 247 A.3d 1136, 1144-45 (Pa. Super. 2021) (Stabile, J., dissenting) (discussing quantity analysis in *Singley v. Flier*, 851 A.2d 200 (Pa. Super. 2004), *PECO Energy Co. v. Phila. Suburb. Water Co.*, 802 A.2d 666 (Pa. Super. 2002), and *Battuello v. Camelback Ski Corp.*, 598 A.2d 1027 (Pa. Super. 1991)).

The Superior Court majority stated that percentage of sales is "but one factor"[3] to evaluate to determine quantity of business contacts, and that courts should evaluate sales percentages "within the context of the business at issue in each case." *Hangey*, 247 A.3d at 1143. The court did not, however, further elucidate what other factors a trial court should consider, or how the "context" of a particular business might impact the quantity analysis. As Judge Stabile observed, "[i]f five one-thousandths of a percent is sufficient to establish quantity, it is difficult to imagine a percentage that is too small." *Id*. at 1146 (Stabile, J., dissenting). The result of the Superior Court's decision is to effectively delete "regularly" from the venue rules altogether.

Indeed, the Superior Court majority relied on its own decision in *Zampana-Barry v. Donaghue*, 921 A.2d 500, 503 (Pa. Super. 2007), a case in which the

[3] While the Superior Court stated that "no court has stated that the percentage of a defendant's business is the sole evidence relevant to the 'quantity' analysis," 247 A.3d at 1141, likewise no court has held that evidence cannot be the primary focus of the analysis. As Judge Stable observed in dissent, by finding .005 percent of all sales sufficient for venue to be proper, the Superior Court "all but forbid[s] trial courts to transfer venue on that basis." *Id*. at 1146 (Stabile, J., dissenting).

defendant's percentage of Philadelphia business was 1,000 times greater than Husqvarna's. *See Zampagna-Barry*, 921 A.2d at 506 (noting that the defendant earned 3-5% of its total revenue in Philadelphia). The Superior Court did not acknowledge the 1,000-factor difference; nor did it explain why Husqvarna differed from the law firm in *Zampagna-Barry*. Simply, the Superior Court failed to properly apply the language of Section (a)(2), changing the existing standard with no explanation or basis.

II. The Superior Court's Decision Runs Counter to Recent Decisions of This Court and the U.S. Supreme Court

Over the past decade, the U.S. Supreme Court increasingly has expressed the need to reel in plaintiffs' unfettered ability to hold defendants hostage in any court of their choosing, by placing limits on the exercise of both general and specific jurisdiction. This Court's own decision mere months ago in *Mallory v. Norfolk Southern Railway Co.*[4] follows suit. While a plaintiff retains the right to choose where to file suit, recent decisions support the longstanding counterpoint that the plaintiff's right is not absolute. *See Jackson v. Laidlaw Transit, Inc. & Laidlaw Transit PA, Inc.*, 822 A.2d 56, 57 (Pa. Super. 2003). Just as older venue decisions relied on jurisprudence governing personal jurisdiction, *see Shambe*, 135 A. at 757 (citing *Pennoyer v. Neff*, 95 U.S. 714 (1877)); *New*, 53 A.2d at 80 (citing *Int'l Shoe*

[4] 266 A.3d 542 (Pa. 2021), *cert. granted*, 2022 U.S. LEXIS 2118, ___ S.Ct. ___, 2022 WL 1205835 (Apr. 25, 2022).

Co. v. Washington, 326 U.S. 310 (1945)), so too should this Court's decision on the propriety of venue mirror the recent decisions imposing jurisdictional limitations.[5]

Starting with *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011), recent Supreme Court cases have imposed strict standards for courts exercising general personal jurisdiction over a corporate defendant, authorizing general jurisdiction only where corporations are incorporated, have their principal place of business, or where their contacts are "so 'continuous or systematic' as to render them essentially at home" in the plaintiff's chosen forum. *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (quoting *Daimler, AG. v. Bauman*, 571 U.S. 117, 127 (2014)). The result of *Daimler* and *Bauman* is that, by limiting the existence of general jurisdiction, plaintiffs in most cases must rely on the existence of specific jurisdiction, which requires an adequate connection between their lawsuit, the defendant, and the jurisdiction where they file suit.

This Court has recognized the impact of *Daimler* and *Goodyear*, in that even "continuous and systematic" contacts with the forum state does not equate to being "at home." *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 550 (Pa. 2021). *Mallory*, therefore, held that Pennsylvania's "statutory jurisdiction-by-registration scheme[6]

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[5] Plaintiffs made a similar comparison between jurisdiction and venue in their Superior Court briefing. *See* Pl. Substituted Br. on Rehearing, 3298 EDA 2017, at 35 ("Subsections (1) and (2) of [Rule 2179] represent the venue equivalent of general personal jurisdiction.").

[6] The statutory scheme purported to confer general jurisdiction pursuant to Pennsylvania's long-arm statute, 42 Pa. C.S. § 5301(a)(2)(i) and 3(i), and Pennsylvania's business registration statute, 15 Pa. C.S. § 411.

is unconstitutional to the extent that it affords Pennsylvania courts general jurisdiction over foreign corporations that are not at home in the Commonwealth." *Id*. at 567, 571 (footnote added). Thus, like *Daimler* and *Bauman*, *Mallory* reaffirms corporate defendants' rights to be sued only where they are truly at home, or where a plaintiff establishes an actual connection to the suit and the jurisdiction. *See also Hammons v. Ethicon, Inc.*, 240 A.3d 537 (Pa. 2020) (specific jurisdiction requires that "the defendant's conduct connects him to the forum in a meaningful way") (quoting *Walden v. Fiore*, 571 U.S. 277, 290 (2014)).

Just as national or multinational corporations are not, under *Daimler* and *Bauman*, "at home" in every jurisdiction simply because they have *some* business presence, venue does not exist in Philadelphia County simply because a national corporation conducts *some*, albeit minimal, business there. One cannot imagine any scenario in which .005% of a company's business could render it "at home" for purposes of general personal jurisdiction. The same principle holds true for the "venue equivalent" pursuant to Rule 2179(a)(2). *See* Pl. Substituted Br. on Rehearing, at 35. A plaintiff filing suit outside of where the defendant is headquartered or where the injury arose should be required to show that the defendant has a legitimate presence in the chosen venue.

III. Large Corporations Are Entitled to the Same Rights as Local Corporations

The Superior Court sustained venue over Husqvarna in Philadelphia, based on

the presence of one independent dealer and sales amounting to a paltry 0.005% of Husqvarna's total annual U.S. sales. Thus, the Superior Court held that a company with billions of dollars in annual sales "regularly conducts business" where it sold less than $100,000 of goods:

> Here, Husqvarna is a multi-billion-dollar corporation. It had at least one authorized dealer located in Philadelphia to which it delivered products for sale. Although Husqvarna sales through authorized dealers in Philadelphia constituted only 0.005% of Husqvarna national sales, the dollar figure of those Philadelphia sales in 2016 was $75,310. The number and dollar figure of sales in Philadelphia, and the fact that Husqvarna has an authorized dealer in Philadelphia to sell its products, is relevant to the determination of whether Husqvarna's contacts with Philadelphia satisfied the "quantity" prong of the venue analysis. Therefore, we conclude the trial court erred in relying almost exclusively on evidence of the percentage of defendant's business that occurred in Philadelphia when addressing the quantity prong.

247 A.3d at 1142-43 (name of petitioner changed and footnote omitted). As Judge Stabile wrote in dissent, "[i]f five one-thousandths of a percent is sufficient to establish quantity, it is difficult to imagine a percentage that is too small." *Id*. at 1146 (Stabile, J., dissenting).

Nor did the Superior Court provide any guidance as to a dollar amount threshold—while the court evidently found the amount of Husqvarna's sales in Philadelphia, $75,310, to be sufficient, it offered no explanation or basis for that conclusion. Though stating that the number and dollar figure of sales, and the authorized dealer were "relevant" to the quantity prong, *id*. at 1141, it provided no

guidance as to how to balance percentage against dollar amount, or what dollar amount would *not* satisfy the quantity prong. Percentage of revenue and amount of sales are objective, concrete factors on which a trial court may evaluate whether a company regularly conducts business in a county. While $75,310 clearly would meet the quantity prong for a company with net sales of $300,000, so might $2,000 for a company with net sales of $50,000. Such variations underscore the importance of looking to percentages of overall business, which the trial court did.

The Superior Court acted out of misplaced concern that a nationwide business's sales in a particular county will always be a fraction of total sales. In other words, a small or local business may do all of its work in just one or a few counties, even though a multi-billion-dollar company might always have a fraction of total sales in a particular county. But the size of a corporate defendant or its total revenue are irrelevant to whether venue is proper. A large corporate defendant who operates on some level, or whose products reach consumers, in many counties already is subject to venue in those counties *if* the cause of action arose there. See Pa. R.C.P. 2179(a)(3). The qualification that a defendant must "regularly" conduct business is a requirement only when a plaintiff seeks to file suit in a county otherwise unrelated to the litigation. Without such limitation, a large corporation potentially is subject to venue in any county in the Commonwealth, perhaps hundreds of miles from where the suit arose.

Loose application of venue rules also encourages plaintiffs to sue in Philadelphia, particularly against large corporations, no matter where they are from or where their claims accrued. A glut of litigation could cause backlogs, one of the concerns for the medical-malpractice venue rule change. It is no secret that Philadelphia is viewed as a plaintiff-friendly venue. This Court has repeatedly "disapprove[d]," "discourage[d]," and sought to "prevent" or "eliminat[e]" forum-shopping whenever possible. *Zappala v. Brandolini Prop. Mgmt., Inc.*, 909 A.2d 1272, 1286 n.14 (Pa. 2006); *Stone Crushed P'ship v. Kassab Archbold Jackson & O'Brien*, 908 A.2d 875, 887 (Pa. 2006); *Stackhouse v. Commonwealth*, 832 A.2d 1004, 1008-09 (Pa. 2003); *Duchess v. Langston Corp.*, 769 A.2d 1131, 1145 n.20 (Pa. 2001); *Laudenberger v. Port Author. of Allegheny County*, 436 A.2d 147, 153 (Pa. 1981). Indeed, a "result" that would allow "a type of forum shopping" is "untenable." *Commonwealth v. Perfetto*, 207 A.3d 812, 822 n.7 (Pa. 2019). Yet, the Superior Court's decision encourages and will proliferate forum-shopping, particularly against large corporations who may have some percentage of business—however miniscule—in every county in the state.

In contrast, stricter application of the venue rules will not put plaintiffs out of court. Under Rule 2179, plaintiffs can elect to file in several other places:

- Where companies make their headquarters or have a registered office.
- Where the cause of action arose, or where a transaction or occurrence took place out of which the cause of action arose.

- Where property, or a part of it, is in an action seeking equitable relief.

Litigants and lower-court judges deserve a clear standard to determine venue. Amount and percentage of revenue are objective factors which trial courts should be able to use to evaluate a defendant's quantity of contacts with a particular county. Properly applying the venue rules will limit venue in civil actions to appropriate forums, for large and small corporations alike.

CONCLUSION

The term "regularly" in Rule 2179(a)(2) does not mean "principally," but it means *something* and must be given effect in a proper venue analysis. The Court should clarify that Rule 2179(a)(2) permits venue over companies only where they *generally* and *habitually* conduct business. A corporation's percentage of business—regardless of the size of the corporation—is relevant to that inquiry, and a trial court does not abuse its discretion by transferring venue on that basis.

Respectfully submitted,

Dated: July 21, 2022

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COMBINED CERTIFICATES OF COMPLIANCE

This Brief contains 3,557 words (exclusive of supplementary matter). In preparing this certification, I relied on the word count of the word processing system used to prepare the brief.

I certify that this Brief complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information differently than non-confidential information.

Dated: July 21, 2022

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The Brief of *Amicus Curiae*, Philadelphia Association of Defense Counsel, is being filed by electronic filing under Pa.R.A.P. 125.

This Brief is being served on these persons by first-class mail, electronic filing, facsimile, or email, which satisfies the requirements of Pa.R.A.P. 121.

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