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ALERT
LITIGATION

Hangey v. Husqvarna Professional Products: Pennsylvania Supreme Court Closes Another Off-Ramp for Corporate Defendants Sued in Pennsylvania

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Last week, the Pennsylvania Supreme Court issued its much-anticipated decision in *Hangey v. Husqvarna Professional Products, Inc.*, No. 14 EAP 2022 (Pa. 2023).[1] The Court held that the percentage of a corporate defendant's national revenue derived from a forum county is not sufficient, on its own, to support a finding that the defendant does not "regularly conduct business" there for purposes of Pennsylvania's venue rules. The decision has potential far-reaching consequences for corporate defendants sued in the Commonwealth. Indeed, the plaintiffs' lawyers in *Hangey* already are cheering the ruling as "one of if not the most impactful venue decisions in the last 20 years."[2]

The background of *Hangey* is straightforward. Ronald Hangey was injured while using a Husqvarna lawnmower purchased in Bucks County on his property in Wayne County. The Hangeys thereafter sued Husqvarna Professional Products, Inc. (HPP), and others on various tort claims in Philadelphia County. Discovery revealed that HPP sold products through just two authorized dealers in Philadelphia County and derived only 0.005% of its national revenue from those business activities.

HPP challenged venue under Pennsylvania Rule of Civil Procedure 2179(a), which provides that suit against a corporation may be brought in "a county where…the corporation or similar entity regularly conducts business." Under Pennsylvania's two-pronged "quality-quantity" test for evaluating whether a defendant is regularly conducting business in the forum county, the "quality" prong is met when a defendant's activities in a county "directly…further[]" or are "essential to" the defendant's business objectives, while the "quantity" prong is satisfied by activities that are "so continuous and sufficient to be general or habitual."[3] The trial court held the quality prong was satisfied because HPP's sale of its products to two authorized dealers in Philadelphia County furthered its business objectives. On the quantity prong, however, the trial court held that the 0.005% of national revenue HPP derived from those sales was "*de minimis*," and not indicative of "general" and "habitual" contact, so it transferred the case to Bucks County. The Hangeys appealed, and the case made its way to the Pennsylvania Supreme Court.

The Supreme Court held that the trial court abused its discretion in focusing its quantity analysis exclusively on the percentage of national revenue HPP derived from Philadelphia County. According to the Court, percentage of revenue does not alone control the quantity inquiry; rather, it is but one "data point" a court may consider—if it deems the percentage relevant—in a broader assessment of how "regular" a defendant's business activities are in a forum.[4] The Court identified potential non-revenue data points to include the number of "days out of the year a business is open to the public,…units of product sold, or…hours billed by employees."[5]

Importantly, rather than remanding the case to the trial court for further review, the majority applied its gloss of the quality-quantity test to hold that venue was proper for HPP in Philadelphia County as a matter of law. The majority notes only that HPP's sales to two authorized dealers in Philadelphia County had been "consistent" and without "interruption" during the relevant period, and that HPP was "at least trying to make sales in Philadelphia, regularly and

1 *Hangey v. Husqvarna Prof'l Prods. Inc.*, No. 14 EAP 2022, slip op. at 44 n.23 (Pa. 2023).
2 Aleeza Furman, *Pa. High Court Rejects 'Percentage of Revenue' Venue Defense*, The Legal Intelligencer (Nov. 22, 2023), https://www.law.com/thelegalintelligencer/2023/11/22/pa-high-court-rejects-percentage-of-revenue-venue-defense/.
3 *Purcell v. Bryn Mawr Hosp.*, 579 A.2d 1282, 1285 (Pa. 1990) (quoting S*hambe v. Del. & Hudson R.R. CO.*, 135 A. 755, 757 (Pa. 1927)).
4 *Hangey*, slip op. at 39.
5 *Id.*

continuously."[6] The majority concluded that so long as "a company maintains a constant physical presence in the forum county" in furtherance of its business objectives—even if only through an authorized dealer and without much success—venue is appropriate in that county as a matter of law.[7] Notably, the majority does not mention percentage of revenue, nor any of the other quantitative metrics it had identified, in its analysis.

It is fair to wonder what (if anything) remains of the "quantity" prong of the quality-quantity test after *Hangey*. Indeed, under the majority's reasoning, it is hard to imagine a scenario in which quantity will not follow quality in lockstep. Justice Kevin Brobson suggested as much in dissent. He agreed that percentage of revenue is not alone dispositive, but he believed the proper approach would have been a remand to the trial court for further review given that clarification. Justice Brobson also expressed "concern[]" that the majority opinion "could be construed as holding that, as a matter of law, a corporation's mere presence in a county is sufficient to establish that venue is proper in that county."[8]

The decision is all the more concerning when considered alongside litigation patterns in the Commonwealth—namely, plaintiffs' strategic channeling of lawsuits to notoriously plaintiff-friendly venues like Philadelphia and Allegheny County, and their success in achieving (and seeing appellate courts affirm) nuclear and thermonuclear verdicts in those venues[9]—and judicial trends winnowing available "off ramps" for corporate defendants haled into Pennsylvania courts. In its recent decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), the U.S. Supreme Court rejected a due-process challenge to Pennsylvania's consent-by-registration statute, holding that the Due Process Clause allows states to require corporations to consent to their general jurisdiction as a condition of doing business there; the decision green-lights lawsuits filed in the Commonwealth by plaintiffs with no ties to Pennsylvania, for conduct occurring beyond its borders. And while the doctrine of *forum non conveniens* once provided a reliable safety valve for defendants sued in forum-shopped venues, recent decisions from the Pennsylvania Superior Court have sown uncertainty into the doctrine, with some decisions appearing to increase the burden on defendants seeking transfer out of oppressive and vexatious forums.[10]

Nonetheless, the final word has not yet been said on many of these jurisprudential shifts. Other challenges to the consent-by-jurisdiction statute, remain pending; appeals seeking clarity (and reaffirmance of the long-settled status quo) regarding *forum non conveniens* are making their way to Pennsylvania appellate courts; and it is too early to predict how Pennsylvania courts will read and apply *Hangey*. In the immediate future, however, the *Hangey* decision likely will only exacerbate the forum-shopping problem already plaguing corporate defendants sued in Pennsylvania and overburdening Pennsylvania's busiest trial courts. As a result, all businesses—and small businesses in particular—should proceed with caution in considering whether the potential revenue stream to be derived from placing products in Pennsylvania's most plaintiff-friendly counties is worth the attendant litigation risk.

If you have questions about the *Hangey* decision, or its implications for your business, please contact Stefanie Pitcavage Mekilo at 570-590-8781 or smekilo@babstcalland.com or Joseph V. Schaeffer at 412-394-5499 or jschaeffer@babstcalland.com.

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6 *Id.* at 45.

7 *Id.* at 44.

8 *Hangey*, slip op. at 4 & n.2 (Brobson, J., dissenting).

9 *See, e.g., Amagasu v. Mitsubishi Motors N. Am.*, No. 181102406 (Phila. Cnty. Ct. Com. Pl.) ($908 million Philadelphia jury verdict); *Caranci v. Monsanto*, No. 210602213 (Phila. Cnty. Ct. Com. Pl.) ($175 million Philadelphia verdict); *see also Nuclear Verdicts Trends, Causes, and Solutions*, U.S. CHAMBER OF COM. INST. FOR LEGAL REFORM (Sept. 2022) (noting "[m]ore than half" of Commonwealth's nuclear verdicts are returned in Philadelphia County).

10 *See, e.g., Ehmer v. Maxin Crane Works*, L.P., 296 A.3d 1202 (Pa. Super. Ct. 2023); *Tranter v. Z&D Tour, Inc.*, ___ A.3d ___, 2023 WL 6613731 (Pa. Super. Ct. 2023).