

Pennsylvania Superior Court Shifts Focus of Venue Analysis

With Hangey v. Husqvarna Prof'l Prods., 2021 PA Super 37, the Pennsylvania Superior Court handed down an *en banc* decision which will significantly shift the focus of how venue challenges are decided. When a corporate defendant is not a resident of a plaintiff's chosen venue, and the incident giving rise to the lawsuit did not occur there, venue will only remain if the defendant "regularly conducts business" there. Whether a defendant regularly conducts business in a venue depends on the "quality" and "quantity" of the defendant's contacts with the venue. The quality portion of the test generally asks whether the defendant was furthering their business interests in the venue, which is often undisputed. The quantity part of the test is frequently litigated, with a focus on the percentage of revenue a defendant has from the venue in question. There has been no bright line rule on what percentage meets the quantity standard, resulting in varied and often conflicting rulings. However, the appellate courts have generally given trial courts wide discretion in making those determinations.

The Hangey decision explicitly says the Court will no longer focus on percentage of revenue when analyzing quantity, but it will simply be one factor in determining whether business activities were "regular, continuous and habitual." However, the Court did not leave much guidance as to what else was to be considered, other than that they believed the trial court abused its discretion by transferring venue when the defendant did \$75,310 in sales in Philadelphia County in 2016, even where that was only .005% of the defendant's sales. The Court also noted that the corporate defendant had an authorized dealer located in Philadelphia County. This decision also signals that the Superior Court is no longer going to give wide latitude to trial courts to decide venue on their own. The Court also said they were not overturning prior cases on quantity analysis, but it certainly feels as though the analysis has changed with this ruling.

Comment: The Hangey decision will give Plaintiffs suing companies with significant revenues and multi-county sales great discretion in choosing their venue, even where the venue has little to do with the underlying case. Given the mobility of modern society and ever increasing internet-driven commerce, any company meeting this description will have little say where a case is heard.